All submissions should refer to File Number SR–DTC–2022–012. 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 (*http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2022–012 and should be submitted on or before December 28, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26536 Filed 12–6–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96430; File No. SR–MEMX–2022–32]

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 Market Data Fees

December 1, 2022.

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 November 18, 2022, 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 Members [3] and non-Members (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

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

Background

The purpose of the proposed rule change is to amend the Fee Schedule to adopt fees the Exchange will charge to Members and non-Members for each of its three proprietary market data feeds, namely MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale (collectively, the ''Exchange Data Feeds''). The Exchange is proposing to implement the proposed fees immediately.

The Exchange previously filed the proposal on March 24, 2022 (SR–MEMX–2022–03) (the ''Initial Proposal''). The Exchange withdrew the Initial Proposal and replaced the proposal with SR–MEMX–2022–14 (the ''Second Proposal''). The Exchange withdrew the Second Proposal and replaced the proposal with SR–MEMX–2022–19 (the ''Third Proposal''). The Exchange withdrew the Third Proposal and replaced the proposal with SR–MEMX–2022–28 (the ''Fourth Proposal''). The Exchange recently withdrew the Fourth Proposal and is replacing it with the current proposal (SR–MEMX–2022–32).

The Exchange notes that it has previously included a cost analysis in connection with the proposed fees for the Exchange Data Feeds, however, the prior cost analysis coupled costs related to operating its trading system, or transaction services, with costs of producing market data. As described more fully below, this filing provides an updated cost analysis that focuses solely on costs related to the provision of the Exchange Data Feeds (the ''Cost Analysis''). Although the baseline Cost Analysis used to justify the fees has been updated, the fees themselves have not changed since the Initial Proposal and the Exchange still proposes fees that are intended to cover the Exchange's cost of producing the Exchange Data Feeds with a reasonable mark-up over those costs. Before setting forth the additional details regarding the proposal as well as the updated Cost Analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

The Exchange offers three separate data feeds to subscribers—MEMOIR Depth, MEMOIR Top and MEMOIR Last Sale. The Exchange notes that there is no requirement that any Firm subscribe to a particular Exchange Data Feed or any Exchange Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Exchange Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Exchange Data Feeds and their use thereof, which are in turn based upon factors deemed relevant by each Firm. The proposed pricing for each of the Exchange Data Feeds is set forth below.

MEMOIR Depth

The MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,*

[35] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.[4] The Exchange proposes to charge each of the fees set forth below for MEMOIR Depth.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Depth feed, the Exchange proposes to charge $1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Depth feed for purposes of internal distribution (*i.e.,* an ''Internal Distributor''). The Exchange proposes to define an Internal Distributor as ''a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor's own organization.'' [5] The proposed access fee for internal distribution will be charged only once per month per subscribing entity (''Firm''). The Exchange notes that it has proposed to use the phrase ''own organization'' in the definition of Internal Distributor and External Distributor because a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an Exchange Data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.

2. *External Distribution Fee.* For redistribution of the MEMOIR Depth feed, the Exchange proposes to establish an access fee of $2,500 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Depth feed, which would be defined to mean ''a Distributor that receives an Exchange Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.'' [6] The proposed access fee for external distribution will be charged only once per month per Firm. As noted above, while a Firm will be permitted to share data received from an Exchange Data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange without such distribution being considered external to a third party, if a Firm distributes data received from an Exchange Data product to an unaffiliated third party that would be considered distribution to data recipients outside the Distributor's own organization and the access fee for external distribution would apply.

3. *Non-Display Use Fees.* The Exchange proposes to establish separate non-display fees for usage by Trading Platforms and other Users (*i.e.,* not by Trading Platforms).[7] Non-Display Usage would be defined to mean ''any method of accessing an Exchange Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.'' [8] For Non-Display Usage of the MEMOIR Depth feed not by Trading Platforms, the Exchange proposes to establish a fee of $1,500 per month.[9] For Non-Display Usage of the MEMOIR Depth feed by Trading Platforms, the Exchange proposes to establish a fee of $4,000 per month. The proposed fees for Non-Display Usage will be charged only once per category per Firm.[10] In other words, with respect to Non-Display Usage Fees, a Firm that uses MEMOIR Depth for non-display purposes but does not operate a Trading Platform would pay $1,500 per month, a Firm that uses MEMOIR Depth in connection with the operation of one or more Trading Platforms (but not for other purposes) would pay $4,000 per month, and a Firm that uses MEMOIR Depth for non-display purposes other than operating a Trading Platform and for the operation of one or more Trading Platforms would pay $5,500 per month.

4. *User Fees.* The Exchange proposes to charge a Professional User [11] Fee (per User) of $30 per month and a Non-Professional User [12] Fee (per User) of $3 per month. The proposed User fees would apply to each person that has access to the MEMOIR Depth feed for displayed usage. Thus, each Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. Internal Distributors and External Distributors of the MEMX Depth feed must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the MEMOIR Depth feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Depth feed.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

[4] *See* MEMX Rule 13.8(a).

[5] *See* Market Data Definitions under the proposed MEMX Fee Schedule. The Exchange also proposes to adopt a definition for ''Distributor'', which would mean any entity that receives an Exchange Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

[6] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[7] The Exchange proposes to define a Trading Platform as ''any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).'' *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[8] *See* Market Data Definitions under the proposed MEMX Fee Schedule.

[9] Non-Display Usage not by Trading Platforms would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

[10] The Exchange proposes to adopt note 1 to the proposed Market Data fees table, which would make clear to subscribers that use of the data for multiple non-display purposes or operate more than one Trading Platform would only be charged once per category per month. Thus, the footnote makes clear that each fee applicable to Non-Display Usage is charged per subscriber (*e.g.,* a Firm) and that each of the fees represents the maximum charge per month per subscriber regardless of the number of non-display uses and/or Trading Platforms operated by the subscriber, as applicable.

[11] As proposed, a Professional User is any User other than a Non-Professional User. *See infra* note 12.

[12] As proposed, a Non-Professional User is a natural person or qualifying trust that uses Exchange Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

5. *Enterprise Fee.* Other than the Digital Media Enterprise Fee described below, the Exchange is not proposing to adopt an Enterprise Fee for the MEMOIR Depth feed at this time.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Depth for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $5,000 per month for a Digital Media Enterprise license to the MEMOIR Depth feed.

MEMOIR Top

The MEMOIR Top feed is a MEMX-only market data feed that contains top of book quotations based on equity orders entered into the System as well as administrative messages.[13] The Exchange proposes to charge each of the fees set forth below for MEMOIR Top.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Top feed, the Exchange proposes to charge $750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Top feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Top feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Top feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Top.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Top feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Top feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Top feed must report all Professional and Non-Professional Users [14] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Top feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Top feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Professional and Non-Professional Users. The Exchange proposes to establish a fee of $10,000 per month for an Enterprise license to the MEMOIR Top feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Top for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month for a Digital Media Enterprise license to the MEMOIR Top feed.

MEMOIR Last Sale

The MEMOIR Last Sale feed is a MEMX-only market data feed that contains only execution information based on equity orders entered into the System as well as administrative messages.[15] The Exchange proposes to charge each of the fees set forth below for MEMOIR Last Sale.

1. *Internal Distribution Fee.* For the receipt of access to the MEMOIR Last Sale feed, the Exchange proposes to charge $500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Last Sale feed for purposes of internal distribution (*i.e.,* an Internal Distributor). The proposed access fee for internal distribution will be charged only once per month per Firm.

2. *External Distribution Fee.* For redistribution of the MEMOIR Last Sale feed, the Exchange proposes to establish an access fee of $2,000 per month. The proposed redistribution fee would be charged to any External Distributor of the MEMOIR Last Sale feed. The proposed access fee for external distribution will be charged only once per month per Firm.

3. *Non-Display Use Fees.* The Exchange does not propose to establish separate non-display fees for usage by Trading Platforms or other Users with respect to MEMOIR Last Sale.

4. *User Fees.* The Exchange proposes to charge a Professional User Fee (per User) of $0.01 per month and a Non-Professional User Fee (per User) of $0.01 per month. The proposed User fees would apply to each person that has access to the MEMOIR Last Sale feed that is provided by an External Distributor for displayed usage. The Exchange does not propose any per User fees for internal distribution of the MEMOIR Last Sale feed. Each External Distributor's count will include every individual that accesses the data regardless of the purpose for which the individual uses the data. External Distributors of the MEMOIR Last Sale feed must report all Professional and Non-Professional Users [16] in accordance with the following:

- In connection with an External Distributor's distribution of the MEMOIR Last Sale feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the MEMOIR Last Sale feed.
- External Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If an External Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

5. *Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Professional and Non-Professional

[13] *See* MEMX Rule 13.8(b).

[14] The Exchange notes that while it is not differentiating Professional and Non-Professional Users based on fees (in that it is proposing the same fee for such Users) for this data feed, and thus will not audit Firms based on this distinction, it will request reporting of each distinct category for informational purposes.

[15] *See* MEMX Rule 13.8(c).

[16] *See supra* note 14.

Users. The Exchange proposes to establish a fee of $10,000 per month per Firm for an Enterprise license to the MEMOIR Last Sale feed.

6. *Digital Media Enterprise Fee.* As an alternative to User fees, a recipient Firm may purchase a monthly Digital Media Enterprise license to receive MEMOIR Last Sale for distribution to an unlimited number of Users for viewing via television, websites, and mobile devices for informational and non-trading purposes only. The Exchange proposes to establish a fee of $2,000 per month per Firm for a Digital Media Enterprise license to the MEMOIR Last Sale feed.

Additional Discussion—Background

In two years, MEMX has grown from 0% to monthly market share ranging between 3–4% of consolidated trading volume. During that same period, the Exchange has had a steady increase in the number of subscribers to Exchange Data Feeds. Until April of this year, MEMX did not charge fees for market data provided by the Exchange. The objective of this approach was to eliminate any fee-based barriers for Members when MEMX launched as a national securities exchange in 2020, which the Exchange believes has been helpful in its ability to attract order flow as a new exchange. The Exchange also did not initially charge for market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services. As discussed more fully below, the Exchange recently calculated its annual aggregate costs for providing the Exchange Data Feeds at approximately $3 million. In order to establish fees that are designed to recover the aggregate costs of providing the Exchange Data Feeds plus a reasonable mark-up, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is reasonable based on a comparison to competitors.

Additional Discussion—Comparison With Other Exchanges

The proposed fee structure is not novel but is instead comparable to the fee structure currently in place for the equities exchanges operated by Cboe Global Markets, Inc., in particular BZX.[17] As noted above, in January 2022, MEMX had 4.2% market share; for that same month, BZX had 5.5% market share.[18] The Exchange is proposing fees for its Exchange Data Feeds that are similar in structure to BZX and rates that are equal to, or in most cases lower, than the rates data recipients pay for comparable data feeds from BZX.[19] The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca[20] and Nasdaq.[21] However, the Exchange has focused its comparison on BZX because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges.[22]

The fees for the BZX Depth feed—which like the MEMOIR Depth feed, includes top of book, depth of book, trades, and security status messages—consist of an internal distributor access fee of $1,500 per month (the same as the Exchange's proposed rate), an external distributor access fee of $5,000 per month (two times the Exchange's proposed rate), a non-display usage fee for non-Trading Platforms of $2,000 per month ($500 more than the Exchange's proposed rate), a non-display usage fee for Trading Platforms of $5,000 per month ($1,000 more than the Exchange's proposed rate), a Professional User fee (per User) of $40 per month ($10 more than the Exchange's proposed rate), and a Non-Professional User fee (per User) of $5 per month ($2 more than the Exchange's proposed rate).[23]

The comparisons of the MEMOIR Last Sale feed and MEMOIR Top feed to the BZX Last Sale feed and BZX Top feed, respectively, are similar in that BZX generally maintains the same fee structure proposed by the Exchange and BZX charges fees that are comparable to, but in most cases higher than, the Exchange's proposed fees. Notably, the User fees proposed by the Exchange for External Distributors of MEMOIR Last Sale and MEMOIR Top ($0.01 for both Professional Users and Non-Professional Users) are considerably lower than those charged by BZX for BZX Top and BZX Last Sale ($4 for Professional Users and $0.10 for Non-Professional Users).

By charging the same low rate for all Users of MEMOIR Top and MEMOIR

[17] *See* BZX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/* (the ''BZX Fee Schedule'').

[18] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[19] The Exchange notes that although no fee proposed by the Exchange is higher than the fee charged for BZX for a comparable data product, under certain fact patterns a BZX data recipient could pay a lower rate than that charged by the Exchange. For instance, while the Exchange has proposed to adopt identical fees to those charged for internal distribution of MEMOIR Top as compared to BZX Top ($750 per month) and for internal distribution of MEMOIR Last Sale as compared to BZX Last Sale ($500 per month), BZX permits a data recipient who takes both feeds to pay only one fee and, upon request, to receive the other data feed free of charge. *See* BZX Fee Schedule, supra note 17. Because the Exchange has not proposed such a discount, a data recipient taking both MEMOIR TOP and MEMOIR Last Sale would pay more ($1,250 per month) than they would to take comparable data feeds from BZX ($750 per month).

[20] Fees for the NYSE Arca Integrated Feed, which is the comparable product to MEMOIR Depth, are $3,000 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for its Integrated Feed, NYSE Arca charges for three different categories of non-display usage, each of which is $10,500 and each of which can be charged to the same firm more than one time (*e.g.,* a customer operating a Trading Platform would pay $10,500 compared to the Exchange's proposed fee of $4,000 but would also pay for each Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange; if that customer also uses the data for the other categories of non-display usage they would also pay $10,500 for each other category of usage, whereas the Exchange would only charge $1,500 for any non-display usage other than operating a Trading Platform). Finally, the NYSE Arca Integrated Feed user fee for pro devices is $60 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the NYSE Arca Integrated user fee for non-pro devices is $20 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.*

[21] Fees for the Nasdaq TotalView data feed, which is the comparable product to MEMOIR Depth, are $1,500 for access (internal use) and $3,750 for redistribution (external distribution), compared to the Exchange's proposed fees of $1,500 and $2,500, respectively. In addition, for TotalView, Nasdaq charges Trading Platforms $5,000 compared to the Exchange's proposal of $4,000, and, like NYSE Arca, charges customers per Trading Platform, up to three, if they operate more than one, instead of the single fee proposed by the Exchange. Nasdaq also requires users to report and pay usage fees for non-display access at levels of from $375 per subscriber for smaller firms with 39 or fewer subscribers to $75,000 per firm for a larger firm with over 250 subscribers. The Exchange does not require counting of devices or users for non-display purposes and instead has proposed flat fee of $1,500 for non-display usage not by Trading Platforms. Finally, the Nasdaq TotalView user fee for professional subscribers is $76 compared to the proposed Professional User fee of $30 for MEMOIR Depth and the Nasdaq TotalView user fee for non-professional subscribers is $15 compared to the proposed Non-Professional User fee of $3 for MEMOIR Depth. *See* Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN.*

[22] *See supra* notes 20–21.

[23] *See* BZX Fee Schedule, supra note 17. The Exchange notes that there are differences between the structure of BZX Depth fees and the proposed fees for MEMOIR Depth, including that the Exchange has proposed a Digital Media Enterprise License for MEMOIR Depth but a comparable license is not available from BZX. Additionally, BZX maintains a general enterprise license for User fees, similar to that proposed by the Exchange for MEMOIR Top and MEMOIR Last Sale, but the Exchange has not proposed adding a general Enterprise license at this time.

Last Sale the Exchange believes it is proposing a structure that is not only lower cost but that will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. However, the Exchange does not believe this is equally true for MEMOIR Depth, as most individual Users of MEMOIR Depth are likely to be Professional Users and the Exchange has proposed pricing for such Users that the Exchange believes is reasonable given the value to Professional Users (*i.e.,* since Professional Users use data to participate in the markets as part of their full-time profession and earn compensation based on their employment). While the Exchange would prefer the simplicity of a single fee, similar to that imposed for Professional Users and Non-Professional Users of the MEMOIR Top and MEMOIR Last Sale feeds, as that would reduce audit risk and simplify reporting, the proposed fee for Professional Users of the MEMOIR Depth feed if also applied to Non-Professional Users of such feed would be significantly higher than other exchanges charge. The Exchange reiterates that it does not anticipate many Non-Professional Users to subscribe to MEMOIR Depth. In fact, the Exchange is only aware of a single Non-Professional User (*i.e.,* one User) that is reported to receive MEMOIR Depth.

Additional Discussion—Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for market data, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[24] and Rule 19b–4 thereunder,[25] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[26] which requires, among other things, that exchange fees be reasonable and equitably allocated,[27] not designed to permit unfair discrimination,[28] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[29] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[30]

As noted above, MEMX has conducted and recently updated a study of its aggregate costs to produce the Exchange Data Feeds—the Cost Analysis. The Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transactions, market data, membership services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (75%), with smaller allocations to logical ports (2.6%), and the remainder to the provision of transaction execution and market data services (22.4%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue.

Through the Exchange's extensive Cost Analysis, which was again recently updated to focus solely on the provision of the Exchange Data Feeds, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of the Exchange Data Feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the Exchange Data Feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to the Exchange Data Feeds. Based on its analysis, MEMX calculated its aggregate annual costs for providing the Exchange Data Feeds, at $3,014,348. This results in an estimated monthly cost for providing Exchange Data Feeds of $251,196. In order to cover operating costs and earn a reasonable profit on its market data, the Exchange has determined it necessary to charge fees for its proprietary data products, and, as such, the Exchange is proposing to modify its Fee Schedule, pursuant to MEMX Rules 15.1(a) and (c), as set forth above.

[24] 15 U.S.C. 78s(b)(1).

[25] 17 CFR 240.19b–4.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

[30] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidancesro-rule-filings-fees.*

Costs Related to Offering Exchange Data Feeds

The following chart details the individual line-item (annual) costs considered by MEMX to be related to offering the Exchange Data Feeds to its Members and other customers as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 6.9% of its overall Human Resources cost to offering Exchange Data Feeds).

Costs drivers	Costs	Percent of all
Human Resources	$1,729,856	6.9
Network Infrastructure (*e.g.*, servers, switches)	232,452	8.8
Data Center	318,456	9.8
Hardware and Software Licenses	246,864	9.8
Depreciation	399,911	18.0
Allocated Shared Expenses	86,809	1.8
Total	3,014,348	6.5

Human Resources

For personnel costs (Human Resources), MEMX calculated an allocation of employee time for employees whose functions include directly providing services necessary to offer the Exchange Data Feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it has fewer than eighty (80) employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Exchange Data Feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the Exchange Data Feeds. The Exchange notes that senior level executives were allocated Human Resources costs to the extent the Exchange believed they are involved in overseeing tasks related to providing the Exchange Data Feeds. The Exchange's cost allocation for employees who perform work in support of generating and disseminating the Exchange Data Feeds arrive at a full time equivalent (''FTE'') of 5.2 FTEs. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Network Infrastructure

The Network Infrastructure cost includes cabling and switches required to generate and disseminate the Exchange Data Feeds. The Network Infrastructure cost was narrowly estimated by focusing on the servers used at the Exchange's primary and back-up data centers specifically for the Exchange Data Feeds. Further, as certain servers are only partially utilized to generate and disseminate the Exchange Data Feeds, only the percentage of such servers devoted to generating and disseminating the Exchange Data Feeds was included (*i.e.,* the capacity of such servers allocated to the Exchange Data Feeds). From this analysis, the Exchange determined that 9.8% of its servers are used to generate and disseminate the Exchange Data Feeds. When combined with the applicable switches used for Exchange Data Feeds, the Exchange has determined that approximately 8.8% of its overall Network Infrastructure costs are attributable to the Exchange Data Feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the Exchange Data Feeds in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange applied the same percentage calculated above with respect to servers, *i.e.* 9.8%, to allocate the applicable Data Center costs for the Exchange Data Feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of Network Infrastructure.

Hardware and Software Licenses

Hardware and Software Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the Exchange Data Feeds. Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 9.8% of its costs for Hardware and Software Licenses to the Exchange Data Feeds.

Depreciation

The vast majority of the software the Exchange uses with respect to its operations, including the software used to generate and disseminate the Exchange Data Feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation cost related to depreciated software used to generate and disseminate the Exchange Data Feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the Exchange Data Feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the Exchange Data Feeds.

Allocated Shared Expenses

Finally, certain general shared expenses were allocated to the Exchange Data Feeds. However, contrary to its prior cost analysis, rather than taking the whole amount of general shared expenses and applying an allocated percentage, the Exchange has narrowly selected specific general shared expenses relevant to the Exchange Data Feeds. The costs included in general shared expenses allocated to the Exchange Data Feeds include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of

paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing Exchange Data Feeds.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable cost drivers across its core services and used the same approach to analyzing costs to form the basis of a separate proposal to adopt fees for connectivity services (the ''Connectivity Filing'') [31] and this filing proposing fees for Exchange Data Feeds. Thus, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

The Exchange anticipates that the proposed fees for Exchange Data Feeds will generate approximately $262,500 monthly ($3,150,000 annually) based on billing and reporting that has taken place since the Exchange commenced billing for such data feeds. The proposed fees for Exchange Data Feeds are designed to permit the Exchange to cover the costs allocated to providing Exchange Data Feeds with a mark-up that the Exchange believes is modest (approximately 4%), which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Exchange Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange also reiterates that prior to April of this year the Exchange has not previously charged any fees for Exchange Data Feeds and its allocation of costs to Exchange Data Feeds was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses.

The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Exchange Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Exchange Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.[32] Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [33] of the Act in general, and furthers the objectives of Section 6(b)(4) [34] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [35] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure described above are consistent with the definitions and fee structure used by most U.S. securities exchanges, and Cboe BZX in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and Section 6(b)(5) [36] of the Act in particular.

As noted above, the Exchange's executed trading volume has grown from 0% market share to approximately 3–4% market share in less than two years and the Exchange believes that it is reasonable to begin charging fees for the Exchange Data Feeds. One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure, with fees that are discounted when compared to comparable data products and services offered by competitors.[37]

Reasonableness

Overall. With regard to reasonableness, the Exchange

[31] *See* SR–MEMX–2022–26, filed September 15, 2022, available at: *https://info.memxtrading.com/rules-and-filings/.*

[32] The Exchange notes that it does not believe that a 4% mark-up is necessarily competitive, and instead that this is likely significantly below the mark-up many businesses place on their products and services.

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78f(b)(4).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(5).

[37] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for Exchange's aggregate costs of offering the Exchange Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing market data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $3.15 million, representing a potential mark-up of just 4% over the cost of providing market data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its expenses for providing market data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing equities exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Exchange Data Feeds are reasonable when compared to fees for comparable products, such as the BZX Depth feed, BZX Top feed, and BZX Last Sale feed, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Exchange Data Feeds.[38] Specifically with respect to the MEMOIR Depth feed, the Exchange believes that the proposed fees for such feed are reasonable because they represent not only the value of the data available from the MEMOIR Top and MEMOIR Last Sale data feeds, which have lower proposed fees, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fees. The Exchange believes that it is reasonable to charge

Fees to access the Exchange Data Feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees for MEMOIR Depth, MEMOIR Top, and MEMOIR Last Sale are reasonable as they are the same amounts charged by at least one other exchange of comparable size for comparable data products,[39] and are lower than the fees charged by several other exchanges for comparable data products.[40]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the Exchange Data Feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any Exchange Data Feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange also believes the proposed monthly External Distribution fee for the MEMOIR Depth Feed is reasonable because it is half the amount of the fee charged by at least one other exchange of comparable size for a comparable data product,[41] and significantly less than the amount charged by several other exchanges for comparable data products.[42] Similarly, the Exchange believes the proposed monthly External Distribution fees for the MEMOIR TOP and MEMOIR Last Sale feeds are reasonable because they are discounted compared to same amounts charged by at least one other exchange of comparable size for comparable data products,[43] and significantly less than the amount charged by several other exchanges for comparable data products.[44]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the MEMOIR Depth feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the Exchange Data Feeds by providing the same data that is available to Professional Users. The proposed monthly Professional User fee and monthly Non-Professional User fee are

[38] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

[39] *See* BZX Fee Schedule, supra note 17.

[40] *See, e.g.,* NYSE Proprietary Market Data Pricing list, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf* (''NYSE Fee Schedule''); Nasdaq Global Data Products pricing list, available at: *http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN* (''Nasdaq Fee Schedule'').

[41] *See* BZX Fee Schedule, supra note 17.

[42] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[43] *See* BZX Fee Schedule, supra note 17.

[44] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

reasonable because they are lower than the fees charged by at least one other exchange of comparable size for comparable data products,[45] and significantly less than the amounts charged by several other exchanges for comparable data products.[46]

The Exchange also believes it is reasonable to charge the same low per User fee of $0.01 for both Professional Users and Non-Professional Users receiving the MEMOIR Top and MEMOIR Last Sale feeds, as this is not only pricing such data at a much lower cost than other exchanges charge for comparable data feeds[47] but doing so will also simplify reporting for subscribers who externally distribute these data feeds to Users, as the Exchange believes that categorization of Users as Professional and Non-Professional is not meaningful for these products and that requiring such categorization would expose Firms to unnecessary audit risk of paying more for mis-categorization. The Exchange also believes that the proposal to require reporting of individual Users, but not devices, is reasonable as this too will eliminate unnecessary audit risk that can arise when recipients are required to apply complex counting rules such as whether or not to count devices or whether an individual accessing the same data through multiple devices should be counted once or multiple times. In addition, the Exchange believes it is reasonable to charge User fees only for External Distribution of the MEMOIR Top and MEMOIR Last Sale feeds, and not charge User fees for Internal Distribution of such market data feeds, because vendors receive additional value from being able to redistribute such data to their customers and can recoup associated expenses by passing on such fees either directly to those customers or indirectly by using the data to facilitate other revenue-generating activity.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds is reasonable because it would allow a market participant that wishes to disseminate information from the Exchange Data Feeds through a digital media platform such as a public website without determining the number of Users, which would be practically impossible. The Exchange further believes it is reasonable for the Digital Media Enterprise Fee to be higher for MEMOIR Depth than MEMOIR Top or MEMOIR Last Sale because of the additional information that is contained in MEMOIR Depth, and in turn, the potential additional value to data recipients.

The Exchange also believes it is reasonable to adopt an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also notes that given the low cost proposed per User, only a market participant with a substantial number of Users would likely choose to subscribe for and pay the Enterprise Fee. The Exchange also believes it is reasonable not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth. While MEMOIR Top and MEMOIR Last Sale also currently have relatively low User counts, the Exchange does believe that there is potential demand for a market data recipient that wishes to disseminate top of book and last sale information to a large subscriber base, and thus again believes it is reasonable to offer an Enterprise Fee option for such a market data recipient.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are reasonable, because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Usage fees for the MEMOIR Depth feed reflect the significant value of the non-display data use to data recipients, most of whom purchase such data on a voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate Trading Platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, several exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead categorizes different types of use. The Exchange proposes to distinguish between non-display use for the operation of a Trading Platform and other non-display use, which is similar to exchanges such as BZX and EDGX,[48] while other exchanges maintain additional categories and in many cases charge multiple times for different types of non-display use or the operation of multiple Trading Platforms.[49]

The Exchange believes that it is reasonable to segment the fee for non-display use into these two categories. As noted above, the uses to which customers can put the MEMOIR Depth feed are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how the customer makes use of the data.

The Exchange believes that the proposed fees for non-display use other than operation of a Trading Platform is reasonable. These fees are comparable to, and lower than, the fees charged by at least one other exchange of comparable size for a comparable data product,[50] and significantly less than the amounts charged by several other

[45] *See* BZX Fee Schedule, supra note 17.

[46] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[47] *See id.*

[48] *See* BZX Fee Schedule, supra note 17; EDGX Fee Schedule, available at: *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[49] *See supra* notes 20–21.

[50] *See* BZX Fee Schedule, supra note 17.

exchanges for comparable data products.[51] The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using data on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. Further, in contrast to non-display use for operation of a Trading Platform, discussed below, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance). Based on the Exchange's desire to encourage other non-display use by market participants, the Exchange believes it is reasonable to provide data for non-display use other than operation of a Trading Platform at a price that is discounted when compared to that for non-display use for operation of a Trading Platform.

The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is reasonable to charge a higher monthly fee than for other non-display use because such use of the Exchange's data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. For example, alternative trading systems or ''ATSs'' often utilize exchange market data such as the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, which may choose to use the Exchange Data Feeds for Regulation NMS compliance and order routing, the Exchange notes that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds and instead utilize SIP data for such purposes.[52] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds. The Exchange also believes that it is reasonable to charge the proposed fees for non-display use for operation of a Trading Platform because the proposed fees are comparable to, and lower than, the fees charged at least one other exchange of comparable size for a comparable data product,[53] and significantly less than the amounts charged by several other exchanges for comparable data products, which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per Firm, as proposed by the Exchange.[54]

The proposed Non-Display Usage fees for the MEMOIR Depth feed are also reasonable because they take into account the extra value of receiving the data for Non-Display Usage that includes a rich set of information including top of book quotations, depth-of-book quotations, executions and other information. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the MEMOIR Depth feed on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[55] For the same reasons, the Exchange believes it is reasonable to provide other data feeds, namely MEMOIR Top and MEMOIR Last Sale, free of charge for Non-Display Usage. The Exchange does not believe that either MEMOIR Top or MEMOIR Last Sale has the same value to market participants with respect to non-display usage as MEMOIR Depth, as neither of MEMOIR Top or MEMOIR Last Sale contains the amount of information that the Exchange expects market participants need for typical trading and non-trading non-display applications.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the Exchange Data Feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Exchange Data Feeds. Any subscriber or vendor that chooses to subscribe to one or more Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Exchange Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The MEMOIR Top and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fee. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the Exchange Data Feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the Exchange Data Feeds that choose to redistribute the feeds externally. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution

[51] *See, e.g.,* NYSE Fee Schedule, supra note 40; Nasdaq Fee Schedule, supra note 40.

[52] *See, e.g.,* NYSE Arca Rule 7.37–E.(d), Order Execution and Routing, and BZX Rule 11.21, each of which discloses the data feeds used by each respective exchange and state that SIP products are used with respect to MEMX.

[53] *See* BZX Fee Schedule, supra note 17.

[54] *See supra* notes 20–21.

[55] *See also* Exchange Act Release No. 69157, March 18, 2013, 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.''

because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is equitable. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[56] Offering the MEMOIR Depth feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange also believes it may be unreasonable to charge a Non-Professional User the same fee that it has proposed for Professional Users, as this fee would be higher than any other U.S. equities exchange charges to Non-Professional Users for receipt of a comparable data product. These User fees would be charged uniformly to all individuals that have access to the MEMOIR Depth feed based on the category of User.

The Exchange also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are equitable because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month. In addition, the Exchange believes it is equitable to charge User fees only for External Distribution of the MEMOIR Top and MEMOIR Last Sale feeds, and not charge User fees for Internal Distribution of such market data feeds, because vendors receive additional value from being able to redistribute such data to their customers and can recoup associated expenses by passing on such fees either directly to those customers or indirectly by using the data to facilitate other revenue-generating activity.

Finally, the Exchange believes it is equitable to adopt User fees for the Memoir Depth feed that are significantly higher than the User fees for the MEMOIR Top and MEMOIR Last Sale feeds because, as described above, MEMOIR Depth contains significantly more data than such data feeds. The Exchange believes it is equitable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds is equitable because it would allow a market participant that wishes to disseminate information from the Exchange Data Feeds through a digital media platform such as a public website without determining the number of Users, which would be practically impossible. The Exchange further believes it is equitable for the Digital Media Enterprise Fee to be higher for MEMOIR Depth than MEMOIR Top or MEMOIR Last Sale because of the additional information that is contained in MEMOIR Depth, and in turn, the potential additional value to data recipients.

The Exchange also believes it is equitable to adopt an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also believes it is equitable not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth, as described above.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers that use MEMOIR Depth data for purposes other than operation of a Trading Platform as proposed because all such subscribers would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the BZX Depth feed but several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading platforms or for several types of non-display use.[57]

In contrast to non-display use for operation of a Trading Platform, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers as well as more broadly beneficial uses such as risk management and compliance). Based on the Exchange's desire to encourage other non-display use by market participants, the Exchange believes it is equitable to charge a lower rate for non-display not by Trading Platforms than it does for non-display by Trading Platforms. The Exchange also believes, regarding non-display use for operation of a Trading Platform, it is equitable to charge a higher rate for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. As noted above, ATSs can utilize the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, the Exchange reiterates that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds.[58] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds.

The Exchange believes that it is equitable to charge a single fee per Firm rather than multiple fees for a Firm that operates more than one Trading

[56] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

[57] *See supra* notes 20–21.

[58] *See* supra note 52.

Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there are multiple liquidity pools operated by the same competitor.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Exchange Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Exchange Data Feed(s). Any vendor or subscriber that chooses to subscribe to the Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fees for MEMOIR Depth are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the MEMOIR Top and/or MEMOIR Last Sale feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the MEMOIR Depth feed in order to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the MEMOIR Top and Last Sale data feeds, can be utilized to trade on the Exchange but contain less information than that is available on the MEMOIR Depth feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Last Sale having the lowest price, MEMOIR Top the next lowest price, and MEMOIR Depth the highest price (and more than MEMOIR Last Sale and MEMOIR Top combined).

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for redistributing the Exchange Data Feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same Exchange Data Feed(s) that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distribution than Internal Distribution is not unfairly discriminatory because data recipients that are externally distributing Exchange Data Feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use of the MEMOIR Depth feed is not unfairly discriminatory. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[59] Offering the Exchange Data Feeds to Non-Professional Users with the same data as is available to Professional Users, albeit at a lower cost, results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the Exchange Data Feeds based on the category of User. The Exchange also believes the proposed User fees for MEMOIR Depth are not unfairly discriminatory, with higher fees for Professional Users than Non-Professional Users, because Non-Professional Users may have less ability to pay for such data than Professional Users as well as less opportunity to profit from their usage of such data. The Exchange also believes the proposed User fees for MEMOIR Depth are not unfairly discriminatory, even though substantially higher than the proposed User fees for MEMOIR Top and MEMOIR Last Sale, because, as described above, MEMOIR Depth has significantly more information than the other Exchange Data Feeds and is thus potentially more valuable to such Users. The Exchange also believes the proposed User fees for MEMOIR Top and MEMOIR Last Sale are not unfairly discriminatory because the Exchange has proposed to charge Professional Users and Non-Professional Users the same low rate of $0.01 per month.

The Exchange further believes that its proposal to adopt a Digital Media Enterprise Fee for each of the Exchange Data Feeds and an Enterprise Fee for MEMOIR Top and MEMOIR Last Sale is not unfairly discriminatory because these optional alternatives to counting and paying for specific Users will provide market participants the ability to provide information from the Exchange Data Feeds to large numbers of Users without counting and paying for such Users. The Exchange also believes it is not unfairly discriminatory not to adopt an Enterprise Fee for MEMOIR Depth at this time as the Exchange does not believe there is sufficient demand for an Enterprise Fee given relatively low User counts for subscribers of MEMOIR Depth, as described above.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees for the MEMOIR Depth feed are not unfairly discriminatory because they would require subscribers for non-display use to pay fees depending on their use of the data, either for operation of a Trading Platform or not, but would not impose multiple fees to the extent a Firm operates multiple Trading Platforms or has multiple different types of non-display use. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that, regarding non-display use other than for operation of a Trading Platform, it is not unreasonably discriminatory to charge a lower rate than that which is charged to a Firm operating a Trading Platform based on the Exchange's desire to encourage other non-display use by market participants. Similarly, the Exchange also believes that, it is not unreasonably discriminatory to charge a higher fee for each Firm operating a Trading Platform (as compared to other Non-Display Usage not by Trading Platforms) because such use of the data is directly in competition with the

[59] *See supra* note 56.

Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible. As noted above, ATSs can utilize the Exchange Data Feeds to form prices for trading on such platforms and thus benefit from such data feeds without any direct benefit to the Exchange (other than payment of the applicable market data fee). With respect to other exchanges, the Exchange reiterates that several exchange competitors of the Exchange have not subscribed to any Exchange Data Feeds.[60] Accordingly, other exchanges clearly have a choice whether to subscribe to the Exchange Data Feeds.

The Exchange believes that it is not unreasonably discriminatory to charge a single fee for an operator of Trading Platforms that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor. The Exchange again notes that certain competitors to the Exchange charge for non-display usage per Trading Platform,[61] in contrast to the Exchange's proposal. In turn, to the extent they subscribe to Exchange Data Feeds, these same competitors will benefit from the Exchange's pricing model to the extent they operate multiple Trading Platforms (as most do) by paying a single fee rather than paying for each Trading Platform that they operate that consumes Exchange Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

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

In accordance with Section 6(b)(8) of the Act,[62] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees for Exchange Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Exchange Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Exchange Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Exchange Data Feeds consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the Exchange Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for market data feeds.[63] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing equities exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

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[64] and Rule 19b–4(f)(2)[65] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MEMX–2022–32 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–2022–32. 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 (*http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–32 and should be submitted on or before December 28, 2022.

[60] *See* supra note 52.

[61] *See supra* notes 20–21.

[62] 15 U.S.C. 78f(b)(8).

[63] *See supra* notes 20–21; *see supra* note 23 and accompanying text.

[64] 15 U.S.C. 78s(b)(3)(A)(ii).

[65] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–26537 Filed 12–6–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96432; File No. SR–Phlx–2022–48]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Short Term Option Series

December 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 proposes to amend certain rule text within Equity 2, Market Participants; Options 1, General Provisions; Options 2, Options Market Participants; Options 4A, Options Index Rules; Options 7, Pricing Schedule; and Options 10, Doing Business with the Public.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 amend the description of the term ''Short Term Option Series'' within Options 1, Section 1, Definitions, to conform the term to Nasdaq ISE, LLC's (''ISE'') term of Short Term Option Series which was recently amended.[3]

The Exchange also proposes certain other non-substantive amendments. Each change is described below.

Short Term Option Series

Options 1, Section 1(b)(53) describes the term ''Short Term Option Series'' as follows:

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Wednesday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

ISE's Options 4 rules were recently amended to expand the Short Term Option Series Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.[4] In conjunction with that change, ISE amended its definition of Short Term Option Series, within Options 1, Section 1(a)(49), to accommodate the listing of options series that expire on Tuesdays and Thursdays.[5] Specifically, the Exchange added Tuesday and Thursday to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open a series for trading.

At this time, the Exchange proposes to amend the term ''Short Term Option Series'' at Options 1, Section 1(b)(53) to provide,

> The term ''Short Term Option Series'' means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this Rule for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

Today, Phlx's listing rules permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program.

Other Non-Substantive Amendments

The Exchange proposes to remove and reserve the rules within Equity 2, Section 3 and Options 2, Section 2 which are both titled, ''Member and Member Organization Participation.'' The Nasdaq Stock Market LLC (''Nasdaq'') recently filed to relocate a similar Nasdaq Rule into General 3, Rule 1032.[6] Phlx's General 3 is incorporated by reference to Nasdaq's General 3. The rules within Equity 2, Section 3 and Options 2, Section 2 are not necessary as they are nearly identical to Phlx General 3, Rule 1000 Series.[7]

The Exchange proposes to amend a rule citation to Streaming Quote Traders

[66] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR–ISE–2022–18) (Order Granting Approval of a Proposed Rule Change to Amend the Short Term Option Series Program). Phlx's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules and therefore the approval of ISE's Options 4 rules permits the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ on Phlx.

[4] *See* note 3 above. Phlx's Options 4 Rules are incorporated by reference to ISE's Options 4 Rules.

[5] *See* note 3 above.

[6] *See* Securities Exchange Act Release No. 96132 (October 24, 2022), 87 FR 65272 (October 28, 2022) (SR–NASDAQ–2022–058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate Equity 2, Section 3).

[7] While the term ''Floor Based Management System'' or ''FBMS'' is not specifically noted within Phlx General 3, Rule 1032, the term ''System'' is utilized. FBMS is part of the Exchange's System as that term is defined within Options 1, Section 1(b)(57).