

days of discovery of the material violation.

7. The Time-Limited Exemption will remain in place for 12 months from the date of the closing of the Transaction.

8. Within 30 days of the expiration of the Time-Limited Exemption, Applicants will submit a report, signed by the chief executive officer of CS Holdings USA, to the Chief Counsel of the Commission's Division of Investment Management, describing (i) the findings of the internal compliance review concerning the process for assessing collateral consequences described in Section IV.G of the application and any steps taken to address areas for improvement identified in those findings and (ii) the steps that the Fund Servicing Applicants have taken since the date of the Time-Limited Exemption to foster a culture of compliance, as further described in Section IV.G of the application.

9. As a condition of the Temporary Order, Applicants will hold in a segregated account, amounts equal to all fees payable by the Funds to the Fund Servicing Applicants for the period from October 24, 2022 through the date upon which the Commission grants the Temporary Order. Amounts placed in the segregated account will be released from the account after the Commission has acted on the application for the Permanent Order.

### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants and UBS Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective as of the date of the closing of the Transaction, solely with respect to the Injunction, subject to the representations and conditions in the application, until the Commission takes final action on their application (or, in the case of the Time-Limited Exemption, until it expires by its terms, if sooner).

By the Commission.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-12579 Filed 6-12-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97662; File No. SR-MEMX-2023-09]

### Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 31, 2023, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members<sup>3</sup> (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 on June 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to

(i) modify the Liquidity Provision tiers by modifying the required criteria under Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, and (ii) modify the Liquidity Removal Tiers by increasing the fee and modifying the required criteria under Liquidity Removal Tier 1 and eliminating Liquidity Removal Tier 2, as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.<sup>4</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3.2% of the overall market share.<sup>5</sup> The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

##### Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0018 per share for executions of Added Displayed Volume.<sup>6</sup> The Exchange also currently

<sup>4</sup> Market share percentage calculated as of May 31, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

<sup>5</sup> *Id.*

<sup>6</sup> The base rebate for executions of Added Displayed Volume is referred to by the Exchange on

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

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

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

offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under such Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, as further described below.

First, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV<sup>7</sup> that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is greater than or equal to 2,000,000 shares and a Step-Up Displayed ADAV<sup>8</sup> from April 2023 that is greater than or equal to 50% of the Member's April 2023 Displayed ADAV.<sup>9</sup> The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 4 such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. Thus, such proposed change would keep the existing criteria (1) intact and modify the alternative Displayed ADAV and a Step-Up Displayed ADAV thresholds in criteria (2), which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023, which is currently the case under the existing Liquidity Provision Tier 4 criteria (2). The Exchange is not proposing to

change the rebate provided under such tier.

Second, the Exchange is proposing to establish a new tier under the Liquidity Provision Tiers, which, as proposed, would be referred to by the Exchange as Liquidity Provision Tier 6. Under the proposed new Liquidity Provision Tier 6, the Exchange would provide an enhanced rebate of \$0.0024 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV that is equal to or greater than 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV.<sup>10</sup> The Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 6 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below \$1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to such executions under each of the existing Liquidity Provision Tiers. Additionally, the Exchange is proposing that Liquidity Provision Tier 6 will expire no later than November 30, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

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

structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1–6 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

#### Liquidity Removal Tiers

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange also currently offers Liquidity Removal Tiers 1 and 2 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Removal Tiers by increasing the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 and modifying the required criteria under such tier and eliminating Liquidity Removal Tier 2, as further described below.

With respect to Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of \$0.0029 per share for executions of Removed Volume by achieving one of the following two alternative criteria: (1) an ADV<sup>11</sup> that is equal to or greater than 0.50% of the TCV<sup>12</sup> and a Remove ADV<sup>13</sup> that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.

Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.00295 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.50% of the TCV; or (2) a Remove ADV

the Fee Schedule under the existing description "Added displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

<sup>7</sup> As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

<sup>8</sup> As set forth on the Fee Schedule, "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

<sup>9</sup> The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

<sup>10</sup> The proposed pricing for new Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

<sup>11</sup> As set forth on the Fee Schedule, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

<sup>12</sup> As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>13</sup> As set forth on the Fee Schedule, "Remove ADV" means ADV with respect to orders that remove liquidity.

that is equal to or greater than 0.30% of the TCV.<sup>14</sup> Thus, the proposed change to the required criteria would keep the ADV threshold and Remove ADV thresholds in the current criteria (1) the same, but rather than requiring Members to meet both thresholds as a single criteria, the Remove ADV threshold of 0.30% of the TCV would become an alternative, and the current alternative of an ADV that is equal or greater than 1.00% of the TCV would be eliminated. In other words, the existing “and” in criteria (1) would become an “or”, which would replace the existing criteria (2). The Exchange is not proposing to change the fee for executions of orders in securities priced below \$1.00 per share under such tier.

With respect to Liquidity Removal Tier 2, the Exchange currently charges a discounted fee of \$0.00295 per share for executions of Removed Volume by achieving an ADV that is equal to or greater than 0.25% of the TCV. The Exchange now proposes to eliminate Liquidity Removal Tier 2, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

The proposed changes to the Liquidity Removal Tiers are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed discounted fee for executions of Removed Volume. While the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>14</sup> The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

the provisions of Section 6 of the Act,<sup>15</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>16</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>17</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and/or liquidity-removing orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,

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

<sup>16</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>17</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tier 4 as modified by the proposed change to the required criteria under such tier, the proposed new Liquidity Provision Tier 6, and the Liquidity Removal Tier 1 as modified by the proposed changes to the fee for executions of Removed Volume and the required criteria under such tier are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding and/or liquidity removing orders, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 4 and the proposed new Liquidity Provision Tier 6, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. While the Exchange has proposed increasing its fees for certain executions of Removed Volume, the Exchange believes that such change represents a modest increase from the current fee applicable to such executions.

For the reasons discussed above, the Exchange submits that the proposal

satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>18</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>19</sup>

#### *Intramarket Competition*

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the

Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 6, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tier, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the proposed modified criteria under Liquidity Provision 4 and the proposed modified criteria under Liquidity Removal Tier 1, and thus received the enhanced rebate for executions of Added Displayed Volume or be charged the discounted fee for executions of Removed Volume, respectively, would continue to be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intermarket Competition*

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction

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

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>20</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . .".<sup>21</sup> Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>20</sup> See *supra* note 17.

<sup>21</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>19</sup> See *supra* note 17.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>22</sup> and Rule 19b-4(f)(2)<sup>23</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2023-09 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-2023-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-09 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-12574 Filed 6-12-23; 8:45 am]

**BILLING CODE P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97666; File No. SR-Phlx-2023-23]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 4**

June 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 1, 2023, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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

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

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)."

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**

Phlx proposes to amend its Pricing Schedule at Options 7, Section 4, "Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed) (Excludes SPY)." Specifically, Phlx proposes to amend its Floor Transaction (Open Outcry) Floor Broker Incentive Program.

Today, the Exchange offers an incentive program for Floor Brokers<sup>3</sup> that is designed to attract order flow to Phlx's trading floor for execution in open outcry. Today, the Exchange pays Floor Transaction (Open Outcry) Floor Broker Incentive Program rebates on qualifying volume at each threshold level per the below schedule.

Qualifying contracts	Per contract rebate
0-5,000,000 .....	\$0.03
5,000,001-10,000,000 .....	0.06
Greater than 10,000,000 .....	0.09

<sup>3</sup> The term "Floor Broker" means an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and handling options orders. See Phlx Options 7, Section 1(c).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).