

differentiate between Market Makers. The proposal would allow any interested Market Makers to purchase Purge Port functionality based on their business needs.

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

The Exchange received one comment letter on the Initial Proposal and one comment letter on the Second Proposal, both from the same commenter.³⁸ These comment letters were submitted not only on these proposals, but also the proposals by the Exchange and its affiliates to amend fees for 10Gb ULL connectivity and certain other ports. The Exchange received one other comment letter on the Second Proposal and another on the Third Proposal from a separate commenter.³⁹ Overall, the Exchange believes that the issues raised by the first commenter are not germane to this proposal because they apply primarily to the other fee filings. Also, both commenters raised concerns with the current environment surrounding exchange non-transaction fee proposals that should be addressed by the Commission through rule making, or Congress, more holistically and not through an individual exchange fee filings. However, the commenters do raise one issue that concerns this proposal whereby it asserts that the Exchange's comparison to fees charged by other exchanges for similar ports is irrelevant and unpersuasive. The core of the issue raised is regarding the cost to connect to one exchange compared to the cost to connect to others. A thorough response to this comment would require the Exchange to obtain competitively sensitive information about other exchanges' architecture and how their members connect. The Exchange is not privy to this information. Further, the commenters compare the Exchange's proposed rate to other exchanges that offer purge port functionality across all matching engines for a single fee, but fails to provide the same comparison to other exchanges that charge for purge port functionality as proposed herein. The Exchange does not have insight into the technical architecture of other exchanges so it is difficult to ascertain the number of purge ports a firm would need to connect to another exchange's

³⁸ See letters from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. ("Virtu"), to Vanessa Countryman, Secretary, Commission, dated November 8, 2023 and January 2, 2024.

³⁹ See letters from John C. Pickford, Counsel, Susquehanna International Group, LLP ("SIG"), to Vanessa Countryman, Secretary, Commission, dated January 4, 2024 and March 1, 2024.

entire market. Therefore, the Exchange is limited to comparing its proposed fee to other exchanges' purge port fees as listed in their fee schedules.

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,⁴⁰ and Rule 19b-4(f)(2)⁴¹ 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 should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2024-14 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-MIAX-2024-14. 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-MIAX-2024-14 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-06348 Filed 3-25-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99797; File No. SR-Phlx-2024-12]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Cabinet Proximity Option Fee To Establish a Reservation Fee for Cabinets With Power Densities Greater Than 10kW

March 20, 2024.

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 March 13, 2024, 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.

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

The Exchange proposes to amend the Exchange's Cabinet Proximity Option

⁴² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴¹ 17 CFR 240.19b-4(f)(2).

Fee at General 8, Section 1, as described further below.

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 purpose of the proposed rule change³ is to amend the Exchange's Cabinet Proximity Option Fee at General 8, Section 1(d) by establishing a reservation fee for cabinets with power densities greater than 10 kilowatts ("kW").⁴

The Exchange currently offers a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available, unused cabinet space in proximity to their existing equipment. Cabinets reserved under the Cabinet Proximity Option program are unused cabinets that customers reserve for future use and can be converted to a powered cabinet at the customer's request. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange endeavors to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. Should reserved data

center space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the data center space.⁵

The applicable monthly fees for the Cabinet Proximity Option program are in General 8, Section 1(d). The Cabinet Proximity Option fee is \$1,055/month⁶ per medium or low density cabinets and \$1,583/month⁷ per medium/high or high density cabinets.⁸ The Exchange proposes to establish a Cabinet Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW.⁹ As such, the Exchange proposes to amend its fee schedule at General 8, Section 1(d) to reflect the addition to the existing Cabinet Proximity Option fees.

The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW. Such option is available to all customers. Similar to other fees related to cabinet and power usage, the Cabinet Proximity Option fee is incremental, with higher fees being imposed based on higher levels of cabinet and power allocation. The proposed Cabinet

Proximity Option fee of \$3,000 for cabinets with power densities greater than 10 kW is comparable to pricing for "PNU cabinets"¹⁰ available to customers of co-location facilities of the New York Stock Exchange LLC ("NYSE"), which charges a monthly fee of \$360 per kW for PNU cabinets.¹¹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, the proposal is reasonable because the proposed fee is comparable to NYSE's monthly fee of \$360 per kW for PNU cabinets.¹⁴ As noted above, NYSE offers "PNU cabinets," which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests.¹⁵ The Exchange's proposal would establish a flat \$3,000 Cabinet Proximity Option fee for cabinets with power densities greater than 10 kW. Under NYSE's fee schedule, a reservation for a cabinet with power density equal to 10 kW would be \$3,600 (e.g., 10 kW x \$360). Because NYSE's PNU cabinet fees are charged on a per kW basis, PNU cabinet fees for cabinets with power densities greater than 10 kW would be more than \$3,600 and increase as the power density of the cabinet increases. Therefore, the Exchange's proposal reflects a discounted price to reserve

¹⁰ Similar to the Exchange's Cabinet Proximity Option program, the New York Stock Exchange offers "PNU cabinets," which are reserved cabinets that are not active and can be converted to powered, dedicated cabinets when the user requests. Due to heightened demand for power and cabinets, NYSE established certain procedures related to PNU cabinet conversion and restrictions on new PNU cabinet offerings. NYSE adopted a policy that, if unallocated cabinet inventory is at or below 40 cabinets, new PNU cabinets are not offered. However, when the unallocated cabinet inventory is more than 40 cabinets, NYSE may continue to offer PNU cabinets. See Securities Exchange Act Release No. 34-90732 (December 18, 2020), 85 FR 84443 (December 28, 2020). See also Securities Exchange Act Release No. 34-91515 (April 8, 2021), 86 FR 19674 (April 14, 2021).

¹¹ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See NYSE Connectivity Fee Schedule, available at https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁵ *Supra* note 10.

⁵ See Securities Exchange Act Release No. 34-62395 (June 28, 2010), 75 FR 38584 (July 2, 2010)(SR-Phlx-2010-18).

⁶ On March 1, 2024, the Exchange increased the fee from \$1,000 to \$1,055. See SR-Phlx-2024-08 (not yet published).

⁷ On March 1, 2024, the Exchange increased the fee from \$1,500 to \$1,583. See SR-Phlx-2024-08 (not yet published).

⁸ Low density cabinets are cabinets with power densities less than or equal to 2.88 kW. Medium density cabinets are cabinets with power densities greater than 2.88 kW and less than or equal to 5 kW. Medium/High density cabinets are cabinets with power densities greater than 5 kW and less than or equal to 7 kW. High density cabinets are cabinets with power densities greater than 7 kW and less than 10 kW. See General 8, Section 1(a).

⁹ Currently, the Exchange offers Super High Density Cabinets with power densities greater than 10 kW and less than or equal to 17.3 kW. See General 8, Section 1(a). In addition, the Exchange intends to offer cabinets with new power densities in the future, including power densities greater than 17.3 kW.

³ The Exchange initially filed the proposed pricing change on March 1, 2024 (SR-Phlx-2024-09). The instant filing replaces SR-Phlx-2024-09, which was withdrawn on March 13, 2024.

⁴ On February 26, 2024, the Exchange filed a proposal to offer the Exchange's Cabinet Proximity Option program for cabinets with power densities greater than 10 kW. See Securities Exchange Act Release No. 34-99644 (February 29, 2024), 89 FR 16069 (March 6, 2024) (SR-Phlx-2024-06).

such cabinets as compared to NYSE's fees for comparable PNU cabinets.

Furthermore, the Exchange offers the Cabinet Proximity Option program as a convenience to customers, providing an option to reserve unused cabinet space in proximity to their existing equipment. No firms are required to reserve cabinets via the Cabinet Proximity Option program. Clients may simply order cabinets without utilizing reservations. The proposed Cabinet Proximity Option fee of \$3,000 would only be charged to those customers that voluntarily choose to reserve cabinets with power densities greater than 10 kW and such option is available to all customers.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁶ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of this proposed fee can choose to connect to the Exchange through a vendor (or order cabinets without reservations, as noted above).

In offering the Cabinet Proximity Option the Exchange incurs certain costs, including costs related to the data center, including maintaining an adequate level of power so that reserved cabinets can be available and powered on promptly at the request of customers.

If the Exchange is incorrect in its determination that the proposed fee reflects the value of the Cabinet

Proximity Option for cabinets with power densities greater than 10 kW, customers will not reserve such cabinets.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because the proposed fee is less than NYSE's fee for a comparable service, customers have choices in how they connect to the Exchange, and reservations under the Cabinet Proximity Option program are optional and provided as a convenience to customers.

The Exchange believes that the proposed fee change is not unfairly discriminatory because the Cabinet Proximity Option fee is assessed uniformly across all market participants that voluntarily select the option, which is available to all customers. All customers have the choice of whether and how to connect to the Exchange and may order cabinets without utilizing reservations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Cabinet Proximity Option program is available to any customer under the same fees as any other customer, and any customer that wishes to reserve a cabinet pursuant to the Cabinet Proximity Option program can do so on a non-discriminatory basis.

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

No written comments were either solicited or received.

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.¹⁷

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-12 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-Phlx-2024-12. 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,

¹⁶ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 15% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated January 11, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 14% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated January 11, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-Phlx-2024-12 and should be submitted on or before April 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-06332 Filed 3-25-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99808; File No. SR-NYSEARCA-2024-26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 8, 2024, NYSE Arca, Inc. (“NYSE Arca” 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 self-regulatory organization. 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 the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. The proposed rule change is available on the Exchange’s website at www.nyse.com, 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users⁴ with wireless connectivity to MEMX LLC (“MEMX”) market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”),⁵ and wired connections to more than 45 market data feeds or combinations of feeds.⁶ The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed⁷ (“MEMX Data” and, together with the Existing Third Party Data, the

“Third Party Data”). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).⁸

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange’s proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, “[t]he 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., last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.”⁹

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a \$5,000 non-recurring initial charge and a monthly recurring charge of \$6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the MEMX Data, as one would not be needed.¹⁰ Rather, the User would be

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEARCA-2015-82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange’s affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-15, SR-NYSEAMER-2024-18, SR-NYSECHX-2024-11, and SR-NYSEAT-2024-09.

⁵ See Securities Exchange Act Release Nos. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR-NYSEARCA-2015-99); 78377 (July 21, 2016), 81 FR 49327 (July 27, 2016) (SR-NYSEARCA-2016-99); and 80116 (February 28, 2017), 82 FR 12663 (March 6, 2017) (SR-NYSEARCA-2017-18).

⁶ See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEARCA-2016-89).

⁷ MEMX Data would also include the test feed for MEMX Memoir market data.

⁸ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

⁹ Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR-MEMX-2023-04).

¹⁰ Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.