

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100583; File No. SR-
MEMX-2024-27]

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

July 23, 2024.

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 July 16, 2024, 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 Members³ (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 July 16, 2024. 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 make certain non-substantive, clarifying changes to the Fee Schedule, including: (1) adding definitions of fee codes B, D, J, and I in the Transaction Fees pricing table; (2) adding a clarifying note under the Transaction Fees pricing table related to the applicability of tiers to executions in securities priced at or above \$1.00 per share; and (3) correcting an inadvertent error in the location of the Display-Price Sliding Tier pricing table within the Fee Schedule. The Exchange proposes to implement these changes effective immediately.

Define Certain Fee Codes

Currently, the Exchange provides a base rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume,") which is reflected on the first line of the Transaction Fees pricing table on the Fee Schedule, with a Fee Code description of "B, D, J, or I". Fee code B refers to orders, other than Retail Orders, that establish the NBBO (*i.e.*, "set" the NBBO), fee code D refers to orders, other than Retail Orders, that add displayed liquidity to the Exchange but do not set or join the NBBO, and fee code J refers to orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market (*i.e.*, "join" the NBBO). Fee code I does not correspond to the type of order originally entered, but rather, is assigned to executions of orders subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed (such orders, "Added Price Improved Volume", or orders with a fee code "P") if a Member otherwise meets the criteria under Display-Price Sliding Tier 1.⁴

⁴ Fee code I is included in the rows of the Transaction Fees pricing table related to Added Displayed Volume, even though fee code I is only appended to executions of Added Price Improved Volume, because pursuant to the criteria of Display-Price Sliding Tier 1, if a Member meets said criteria, the rebate provided for its executions of Added Price Improved Volume will be the highest rebate otherwise achieved for that Member for its executions of Added Displayed Volume. Thus, the possible rebate provided for such "I" executions could be any of those on the Transaction Fees pricing table otherwise applicable to fee codes B, D, or J, excluding the base rebate for Added Displayed Retail Volume or the rebate provided under Retail

With the exception of fee code I, which is described under the Display-Price Sliding Tier pricing table on the Fee Schedule, the Exchange historically has not included the specific definitions of fee codes B, D, and J on the Fee Schedule, because all represent Added Displayed Volume and there is no difference in the rebate provided between these particular codes. For example, if a Member meets the criteria under Liquidity Provision 2, all of its executions of Added Displayed Volume in securities priced at or above \$1.00 per share for that month will be provided a rebate of \$0.0033 per share, regardless of whether those executions have a fee code of B, D, or J. Further, the Exchange has provided the specific definitions of these fee codes in each rule filing in which they are referenced.⁵ However, the Exchange is now proposing to include high level definitions of these fee codes within the Fee Schedule to provide more clarity to Members. Specifically, the Exchange is proposing to add a note directly under the Transaction Fees pricing table which defines the fee codes as previously stated. This change will not affect when the fee codes are appended to any execution or modify the rebate provided, and only serves to clarify to Members the definitions of the fee codes within the Transaction Fees pricing table on the Fee Schedule.

Clarify Tier Rebate/Fee Execution Applicability

The Exchange also proposes to add a note under the Transaction Fee pricing table indicating that unless otherwise indicated, rebates provided or fees charged under the tiers below apply only to executions in securities priced at or above \$1.00. Currently, the Fee Schedule either specifically denotes to which executions a rebate or fee will apply in a note under the table in which the tier is described, and in the absence of such a note, the specific rebate provided or fee charged, separated by securities priced at or above \$1.00 or below \$1.00, is provided alongside each tier description in the Transaction Fees pricing table on the first page of the Fee Schedule. The Exchange proposes to add the clarifying note in order to provide additional certainty related to the tiers and avoid any potential

Tier 1, as the Display-Price Sliding Tier 1 excludes Retail Orders, and as such, the Exchange included the "I" in each of those applicable rows of the Transaction Fees pricing table.

⁵ See, e.g., most recently, Securities Exchange Act Release No. 100469 (July 9, 2024), SR-MEMX-2024-26, notes 13-14, available at: <https://www.sec.gov/files/rules/sro/memx/2024/34-100469.pdf>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

Member confusion. This proposed change will not modify the rebates provided or fees charged under any of the Exchange's pricing tiers.

Re-Order the Display-Pricing Tier Within the Fee Schedule

Lastly, in adopting the Display-Price Sliding Tier, the Exchange inadvertently added its pricing table to the Fee Schedule immediately after the DLI Tiers pricing table, but before the Definitions and Notes section applicable only to the DLI Tiers. As such, the Exchange is proposing to delete the Display-Price Sliding Tier from its current location and move it immediately before the DLI Tiers pricing table on the Fee Schedule (*i.e.*, immediately after the existing Cross Asset Tier pricing table). This correction will improve the readability of the Fee Schedule and again, avoid any potential Member confusion.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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.

The Exchange believes its proposal to amend the Transaction Fees pricing table related to fee codes B, D, J and I and add the clarifying language regarding the applicability of the tiers to executions in securities priced at or above \$1.00 per share is reasonable, equitable, and consistent with the Act because such changes are designed to provide additional clarity to Members with respect to the Exchange's pricing without changing how the fee codes and pricing tiers are applied. Further, the Exchange's proposal to move the location of the Display-Price Sliding Tier pricing table is intended to correct an inadvertent error in where the table should have been placed within the Fee Schedule. Additionally, the proposed changes promote just and equitable principles of trade and are designed to removed impediments to and perfect the mechanism of a free and open market and a national market system as they provide transparency to Members regarding the definitions of the fee codes with the Transaction Table and the applicability of the tiers to

executions in securities priced at or above \$1.00 per share.

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 Act.

The proposed changes would not affect competition among national securities exchanges or among Members of the Exchange. The proposed rule change is not designed to address any competitive issues but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible Member confusion that may arise. The proposed rule change would have no impact on pricing or existing services. Rather, the changes would clarify the Fee Schedule, making it easier to understand and alleviating any possible Member confusion.

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 Act⁸ and Rule 19b-4(f)(2)⁹ thereunder.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-27 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-2024-27. 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-2024-27 and should be submitted on or before August 19, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Sherry R. Haywood,
Assistant Secretary.

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⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).