

addition to free flow of order flow to and among off-exchange venues which comprises more than 40% of industry volume in recent months.

The Exchange's proposal to add a new transaction credit is pro-competitive in that the Exchange intends for the credit to increase liquidity addition activity in midpoint orders on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*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.<sup>8</sup>

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 (<http://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-NASDAQ-2022-063 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-NASDAQ-2022-063. 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 comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2022-063 and should be submitted on or before December 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[SEC File No. 270-817, OMB Control No. 3235-0771]**

**Proposed Collection; Comment Request; Extension: Rule 3a71-3(d)**

*Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,*

100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 3a71-3(d), (17 CFR 240.3a71-3(d)), under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 3a71-3 under the Exchange Act provides in part that, for purposes of determining whether they can avail themselves of the *de minimis* exception to the "security-based swap dealer" definition, non-U.S. persons must count certain dealing transactions with non-U.S. counterparties that have been "arranged, negotiated, or executed" by personnel in the United States. Rule 3a71-3(d) provides an exception from that "arranged, negotiated, or executed" counting requirement.

The Commission estimates that up to 24 entities may seek to rely on the exception to the *de minimis* counting requirement of Rule 3a71-3. In connection with the conditions to the exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer or registered broker. In general, the registered entity would be required to comply with the collections of information. Applications for "listed jurisdiction" status may be submitted by the up to 24 relying entities, but the staff believes that the greater portion of such applications will be submitted by foreign financial authorities.

The Commission estimates that the total annual time burden for Rule 3a71-3(d), for all respondents, is approximately 235,243 hours per year. In addition, the Commission estimates that the total annual cost burden for Rule 3a71-3(d), for all respondents, is approximately \$1,242,595 per year. A detailed break-down of the burdens is provided in the supporting statement.

*Written comments are invited on:* (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA\_Mailbox@sec.gov*.

Dated: November 14, 2022.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96306; File No. SR-MEMX-2022-30]

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

November 14, 2022

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 October 31, 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<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 November 1, 2022. 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 adopting a new Liquidity Provision Tier 4 and modifying the required criteria under Liquidity Provision Tier 2; (ii) increase the fee and modify the required criteria under Liquidity Removal Tier 1; (iii) increase the fee for certain executions of Pegged Orders<sup>4</sup> with a Midpoint Peg<sup>5</sup> instruction (such orders, "Midpoint Peg Orders") and a time-in-force ("TIF") instruction of IOC<sup>6</sup> or FOK<sup>7</sup> that execute at the midpoint of the national best bid and offer ("NBBO"); and (iv) modify the pricing for certain executions of orders in securities priced below \$1.00 per share (such orders, "Sub-Dollar Volume"), each 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>8</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 3.5% of the overall market share.<sup>9</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 standard rebate of \$0.0020 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"). The Exchange also currently offers Liquidity Provision Tiers 1-4 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 4, and the current Liquidity Provision Tier 4 would be renumbered as Liquidity Provision Tier 5 (hereinafter referred to as such). The rebate for executions of Added Displayed Volume and the required criteria under Liquidity Provision Tier 5 would remain unchanged.

Under the proposed new Liquidity Provision Tier 4, the Exchange would provide an enhanced rebate of \$0.0028 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving one of the following two alternative criteria: (1)

<sup>4</sup> See Exchange Rule 11.6(h).

<sup>5</sup> See Exchange Rule 11.6(h)(2).

<sup>6</sup> See Exchange Rule 11.6(o)(1).

<sup>7</sup> See Exchange Rule 11.6(o)(3).

<sup>8</sup> Market share percentage calculated as of October 31, 2022. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

<sup>9</sup> *Id.*

<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).