

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98528; File No. SR–PHLX–2023–40]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Equity 4, Rules 3301A and 3301B To Establish New “Contra Midpoint Only” and “Contra Midpoint Only With Post-Only” Order Types and To Make Other Corresponding Changes to the Rulebook

September 26, 2023.

On August 28, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend Equity 4, Rules 3301A and 3301B<sup>3</sup> to establish new “Contra Midpoint Only” and “Contra Midpoint Only with Post-Only” Order Types, and to make other corresponding changes to the Rulebook. The proposed rule change was published for comment in the **Federal Register** on September 8, 2023.<sup>4</sup> The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23, 2023. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates December 7, 2023, as the date by which the

Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–PHLX–2023–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Sherry R. Haywood,  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98533; File No. SR–MEMX–2023–24]

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

September 26, 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 September 15, 2023, MEMX LLC (“MEMX” or the “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 is filing with the Commission a proposed rule change to amend the Exchange’s fee schedule applicable to Members<sup>3</sup> pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt transaction fees (“Transaction Fees”), routing fees (“Routing Fees”), and definitions (“Definitions”) within the MEMX Options Fee Schedule (the “Options Fee Schedule”). The Transaction Fees section of the Options Fee Schedule would establish transaction fees and rebates applicable to Options Members trading on the Exchange’s options trading platform (such platform, “MEMX Options” and such Members, “Options Members”). The Routing Fees section of the Options

Fee Schedule would establish fees for Options Members who route their orders to away exchanges. The Definitions section of the Options Fee Schedule would define and clarify terms used in the Options Fee Schedule. The Exchange proposes to implement the changes to the Options Fee Schedule pursuant to this proposal on September 20, 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 (i) establish transaction rebates and fees applicable to all Options Members trading on MEMX Options; (ii) establish routing fees applicable to all Options Members trading on MEMX Options who route orders to away exchanges; and (iii) define and clarify terms used in the Options Fee Schedule.

###### Transaction Fees

The proposed Transaction Fees section of the Options Fee Schedule sets forth transaction rebates and fees for executions on MEMX Options. MEMX Options will operate a “Maker-Taker” model whereby it provides rebates to Options Members that provide liquidity and charges fees to those that remove liquidity, as further described below. The proposed rebates and fees vary depending on whether a transaction was executed in a customer capacity (“Customer”)<sup>4</sup> or in a non-customer capacity (“Non-Customer”)<sup>5</sup>, whether the underlying security of the applicable option is in the Penny Pilot Program

<sup>4</sup> Customer capacity applies to any order for the account of a Priority Customer. “Priority Customer” means any person or entity that is neither a broker or dealer in securities nor a Professional. See Rule 16.1 of the MEMX Rulebook.

<sup>5</sup> Non-Customer capacity applies to any transaction that is not a Customer order.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

<sup>4</sup> See Securities Exchange Act Release No. 98280 (September 1, 2023), 88 FR 62129.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *Id.*

<sup>7</sup> 17 CFR 200.30–3(a)(31).

<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).