

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95445; File No. SR-MEMX-2022-10)

August 8, 2022

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Rules to Govern the Trading of Options on the Exchange for a New Facility Called MEMX Options

I. Introduction

On April 21, 2022, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules to establish a facility to trade options, which will be named MEMX Options. The proposed rule change was published for comment in the Federal Register on May 10, 2022.³ In its filing, MEMX consented to an extension of time for Commission action to ninety (90) days after the date of publication of the proposal.⁴ On August 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94847 (May 4, 2022), 87 FR 28064 (“Notice”). The Commission received one comment letter on the proposed rule change. See Letter from Andrew Robinson, dated May 5, 2022, available at <https://www.sec.gov/comments/sr-memx-2022-10/srmemx202210-289458.htm>. The comments expressed by the commenter are not relevant to the proposed rule change.

⁴ See Item 6 of MEMX’s Rule 19b-4 filing. See also Notice, supra note 3, at 28076, n.37.

⁵ Amendment No. 1 superseded and replaced the original filing. In Amendment No. 1, the Exchange proposes non-material revisions to the proposed rule text and added additional detail to the filing. See infra Section VI. When it submitted Amendment No. 1, the Exchange also submitted it as a comment letter to the filing, available at: <https://www.sec.gov/comments/sr-memx-2022-10/srmemx202210.htm>.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt new Chapters 16-29 into its rulebook to govern MEMX Options. In addition, the Exchange proposes to add rule text to existing Chapters 2 (Members of the Exchange) and 8 (Discipline) so that those chapters take into account the new options rule set. MEMX Options will operate an electronic trading system for options (the “System”) that will provide for the electronic display and execution of orders, which the Exchange intends to operate “in a manner similar to that of other options exchanges.”⁶ As such, the proposed rules for MEMX Options are, for the most part, substantially similar to those of currently operating options exchanges, in particular Cboe BZX Exchange, Inc. (“Cboe BZX” or “Cboe BZX Options”).

MEMX Options Members

The proposed rules relating to qualification and participation on MEMX Options are set forth in proposed Chapters 17 and 22. These rules are substantively identical to the corresponding rules of Cboe BZX Options, with the only differences being internal references and other minor technical differences.⁷ A detailed summary of the provisions set forth in Chapters 17 and 22 is provided in the filing.⁸

MEMX will have only one type of member, referred to as an “Options Member,” which

⁶ See Notice, supra note 3, at 28064. See also Amendment No. 1 at 4.

⁷ See Cboe BZX Rules, Chapters XVII and XXII.

⁸ See Notice, supra note 3, at 28065. See also Amendment No. 1 at 5-8.

must be a registered broker-dealer.⁹ Only Options Members and their Sponsored Participants will be permitted to transact on the System.¹⁰ An Options Member must maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Act,¹¹ or in the Financial Industry Regulatory Authority (“FINRA”).¹² Every Options Member will be required to have at least one registered and licensed Options Principal that has responsibility for the overall oversight of the Options Member’s options related activities on the Exchange.¹³

An Options Member that represents customer orders as an agent on MEMX Options and those that conduct proprietary trading as principal other than in the capacity of a market maker are referred to as Options Order Entry Firms (“OEFs”). OEFs may only transact business with Public Customers if they are members of FINRA.¹⁴

In addition, an Options Member can seek to register with the Exchange as an Options Market Maker to make markets in specific classes of options it chooses in advance (“appointed classes”) where it would have certain rights and bear certain responsibilities beyond those of

⁹ See MEMX Rule 2.3.

¹⁰ See MEMX Rule 17.1(a). Options Members can provide sponsored access to MEMX Options to a non-Member (i.e., a Sponsored Participant) pursuant to MEMX Rule 11.3, subject the conditions of that rule. MEMX Options will assign a unique Executing Firm ID (“EFID”) to identify a single User and a specific number. See MEMX Rule 21.1(j). A User may obtain one or more EFIDs from the Exchange.

¹¹ 15 U.S.C. 78f(g).

¹² See MEMX Rule 17.2(f).

¹³ See MEMX Rule 17.2(g).

¹⁴ See id. See also MEMX Rule 16.1 (defining “Public Customer” to means a person that is not a broker or dealer in securities). In addition, an OEF may only transact business with Public Customers if such Options Member also is an options member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Act pursuant to which such other exchange or association is the designated options examining authority for the OEF. See MEMX Rule 26.1.

other Options Members.¹⁵ In particular, Options Market Makers commit to electronically engage in a course of dealings to enhance liquidity available on MEMX Options and to assist in the maintenance of fair and orderly markets.¹⁶ Among other things, an Options Market Maker must, at a minimum for its appointed classes subject to the provisions of MEMX's rules, maintain a continuous two-sided quotation for 60% of time those classes are open for trading, excluding any adjusted series, any intraday add-on series on the day during which such series are added for trading, any Quarterly Option Series, and any series with an expiration of greater than 270 days.¹⁷ In their appointed classes, Options Market makers must also: (i) engage to a reasonable degree under the existing circumstances, in dealings for its own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class; (ii) compete with other market makers, (iii) maintain firm quotes; (iv) update their quotes in response to changed market conditions; and (v) maintain active markets.¹⁸ Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties would subject the Options Market Maker to disciplinary action or suspension or revocation of registration as an Options Market Maker or

¹⁵ See MEMX Rule 22.2. Market Makers are designated as specialists on MEMX Options for all purposes under the Act. See id.

¹⁶ See MEMX Rule 22.5. MEMX's rules will not, at this time, limit the number of Market Makers that can register to make markets on MEMX Options or limit the number of class appointments a Market Maker can hold. MEMX Rule 22.2(c) allows the Exchange to file a proposed rule change to propose certain limitations based on system constraints, capacity restrictions, or other factors relevant to protecting the integrity of the System. In the absence of an effective rule, the Exchange cannot restrict access in any options class.

¹⁷ See MEMX Rule 22.6.

¹⁸ See MEMX Rule 22.5(a).

its appointment in one or more appointed classes.¹⁹

Furthermore, existing Exchange Rules applicable to the MEMX equities market contained in Chapters 1 through 15 of the Exchange Rules will apply to Options Members unless a specific Exchange Rule applicable to MEMX Options (i.e., proposed Chapters 16 through 29 of the Exchange Rules) governs.²⁰

Definitions

Chapter 16.1 sets forth the defined terms used in Chapters 16 to 29 relating to the trading of options contracts on the Exchange. Each of the terms defined in Rule 16.1 is either identical or substantially similar to definitions in Cboe BZX Rule 16.1. A complete list of the defined terms is set forth in the filing.²¹

Options Trading System

The Exchange states that MEMX Options will leverage the Exchange's current technology, including its customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure.²² According to the Exchange, MEMX Options will closely resemble the Exchange's equities market, as well as other options markets, such as Cboe BZX Options.²³

MEMX Options will not have a physical trading floor. All trading interest entered into the System will be automatically executable. Orders entered into the System will be displayed

¹⁹ See MEMX Rule 22.5(c).

²⁰ See MEMX Rule 16.2(b).

²¹ See Notice, supra note 3, at 28065-67. See also Amendment No. 1 at 8-18.

²² See Notice, supra note 3, at 28067. See also Amendment No. 1 at 16. According to the Exchange, this will minimize the technical effort required for existing Exchange members to begin trading options on MEMX Options. See id.

²³ See id.

anonymously.²⁴

Like the Exchange's equities facility, MEMX Options will maintain a price/time allocation model across all participants rather than differentiating between participants. As such, MEMX Options will execute all trading interest at the best price level within the System before executing trading interest at the next best price.²⁵ At each price level, trading interest will be executed in time sequence, such that the order established as the first entered into the System at such price level will have priority up to its specific number of contracts.²⁶ MEMX has not proposed any additional priority overlays. In addition, MEMX Options has not proposed to have non-displayed orders, and thus all interest will be displayable.

MEMX will be a member of the Options Price Reporting Authority ("OPRA") and will disseminate its quotations in accordance with Rule 602 of Regulation NMS.²⁷ MEMX Options also will offer proprietary data feeds including "MEMOIR Options Depth" (depth of book quotations/orders and execution information), "MEMIR Options Top" (top of book quotations/orders and execution information), "DROP" (regarding the trading activity of the User), and Historical Data.²⁸

²⁴ However, aggregated and individual transaction reports produced by the System will indicate the details of a User's transactions, including the contra party's executing firm ID ("EFID"), capacity, and clearing firm account number. The Exchange also will reveal a User's identity: (i) when a registered clearing agency ceases to act for a participant, or the User's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the User's trades; and (ii) for regulatory purposes or to comply with an order of an arbitrator or court. See MEMX Rule 21.10.

²⁵ See MEMX Rule 21.8(a).

²⁶ See id.

²⁷ See 17 CFR 242.602.

²⁸ See MEMX Rule 21.15(b).

The Exchange will become an exchange member of the Options Clearing Corporation (“OCC”). The System will be linked to OCC for the Exchange to transmit locked-in trades for clearance and settlement.

Hours of Operation. MEMX Options will accept orders from 9:30 a.m. until 4:00 p.m. Eastern Time, except that it will accept orders until 4:15 p.m. for option contracts on Fund Shares, exchange-traded notes, and broad-based indexes.²⁹

Minimum Quotation and Trading Increments. The Exchange’s minimum quotation and trading increments will be the same as on other exchanges, including Cboe BZX Options.³⁰ Specifically, the Exchange will have the following standard quotation increments: (i) if the options series is trading at less than \$3.00, five (5) cents; (ii) if the options series is trading at \$3.00 or higher, ten (10) cents; and (iii) if the options series is trading pursuant to the Penny Interval Program, one (1) cent if the options series is trading at less than \$3.00, or five (5) cents if the options series is trading at \$3.00 or higher, unless for QQQ, SPY, or IWM where the minimum quoting increment will be one (1) cent for all series.³¹ In addition, the minimum trading increment will be one (1) cent for all series.³²

Penny Interval Program. The Exchange’s Penny Interval Program is substantially similar to the penny programs of other exchanges, which includes minimum quoting requirements for option classes listed under the Penny Interval Program. However, eligibility for inclusion in the Penny Interval Program will be limited to those classes already operating under

²⁹ See MEMX Rule 21.2(a).

³⁰ See Cboe BZX Rule 21.5(a) and (b).

³¹ See MEMX Rule 21.5(a).

³² See MEMX Rule 21.5(b).

penny programs of other options exchanges at the time MEMX Options is launched.³³ The list of option classes included in the Penny Interval Program will be announced by the Exchange via circular distributed to Options Members and published by the Exchange on its website.³⁴

Order Types and Handling Instructions. MEMX Options will make available to Users two Order Types: Limit Orders³⁵ and Market Orders.³⁶ MEMX Options also may make available to Users a few additional instructions that can be designated on an order (“Handling Instructions”).³⁷ Those Handling Instructions include Book Only,³⁸ Post Only,³⁹ and Intermarket Sweep Order (“ISO”).⁴⁰ The characteristics and functionality of each Order Type and Handling

³³ See MEMX Rule 21.5(d)(1).

³⁴ See MEMX Rule 21.5(d).

³⁵ Limit Orders are orders (including bulk messages) to buy or sell an option at a specified price or better. A Limit Order is marketable when, for a Limit Order to buy, at the time it is entered into the System the order is priced at the current inside offer or higher, or for a Limit Order to sell, at the time it is entered into the System the order is priced at the current inside bid or lower. See MEMX Rule 21.1(d)(1).

³⁶ Market Orders are orders to buy or sell at the best price available at the time of execution. Market Orders to buy or sell an option traded on MEMX Options will be rejected if they are received when the underlying security is subject to a “Limit State” or “Straddle State” as defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan”). Bulk messages may not be Market Orders. See MEMX Rule 21.1(d)(2).

³⁷ See MEMX Rule 21.1(e). A Handling Instruction applied to a bulk message applies to each bid and offer within that bulk message. See id.

³⁸ See MEMX Rule 21.1(e)(1). Book Only is an instruction that an order is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another options exchange. See id. Users may designate bulk messages as Book Only as set forth in MEMX Rule 21.1(l). See id.

³⁹ See MEMX Rule 21.1(e)(2). Post Only is an instruction that an order is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another options exchange except that the order will not remove liquidity from the MEMX Options Book. A Market Order cannot be designated as Post Only. See id. Users may designate bulk messages as Post Only as set forth in MEMX Rule 21.1(l). See id.

⁴⁰ See MEMX Rule 21.1(e)(3). ISO orders, defined in MEMX Rule 27.1(a)(10), may be

Instruction is substantially similar to what is used for the Exchange’s equities trading facility or on other options exchanges, including Cboe BZX Options, except where discussed in the amended filing or as relates to the display-price sliding process offered by Cboe BZX Options, which the Exchange is not proposing to adopt.⁴¹ Cboe BZX Options offers additional order types, such as reserve orders, minimum quantity orders, price-improving orders, stop orders, and stop limit orders, none of which the Exchange proposes to adopt.⁴²

Time-in-Force Designations. Users entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time.⁴³ Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. The Time-in-Force designations available on MEMX Options include Immediate or Cancel (“IOC”)⁴⁴ or Day.⁴⁵

executed at one or multiple price levels in the System without regard to Protected Quotations at other options exchanges (i.e., may trade through such quotations) because the User represents that it simultaneously has routed additional orders to execute against the full displayed size of any Protected Bid/Offer (as applicable). See id. The Exchange will rely on the marking of an order as an ISO order when handling such order. See id. ISOs are not eligible for routing pursuant to MEMX Rule 21.9. See id. Users may not designate a Market Order as an ISO. See id. Users may not designate bulk messages as ISOs. See id.

⁴¹ The Exchange explains that, in contrast to Cboe BZX Options, it proposes characterizing Book Only, Post Only, and ISO as Handling Instructions rather than Order Types, as each of these instructions represents an additional modifier that can be appended to an order rather than a unique Order Type. See Notice, supra note 3, at 28069. See also Amendment No. 1 at 23. Not all Handling Instructions can be applied to all Order Types (e.g., Market Orders cannot be designated ISO). See MEMX Rule 21.1(e)(3). The Exchange does not believe that this characterization changes anything with respect to the proposed operation of these order types and Handling Instructions. See Notice, supra note 3, at 28069. See also Amendment No. 1 at 23-24.

⁴² See Notice, supra note 3, at 28069. See also Amendment No. 1 at 24.

⁴³ A Time-in-Force applied to a bulk message applies to each bid and offer within that bulk message. See MEMX Rule 21.1(g).

⁴⁴ See MEMX Rule 21.1(g)(1). IOC orders are to be executed in whole or in part as soon as

The Time-in-Force designations are identical to the same Time-in-Force designations available on Cboe BZX Options, except that Cboe BZX Options rules describe Time-in-Force designations as applicable only to limit orders on Cboe BZX Options, whereas the Exchange has proposed allowing such designations to be placed on both Limit Orders and Market Orders.⁴⁶

Member Match Trade Prevention Modifiers. As with its equities market, the Exchange will allow Users to use certain Match Trade Prevention (“MTP”) modifiers.⁴⁷ Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same EFID, Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier. The Exchange will offer the following MTP modifiers: (i) MTP Cancel Newest; (ii) MTP Cancel Oldest; and (iii) MTP Cancel Both.⁴⁸ The Exchange explains that each of the proposed MTP modifiers available on MEMX Options is identical to the same MTP modifier available on Cboe BZX Options.⁴⁹

such order is received. See id. The portion not so executed immediately on the Exchange or another options exchange is cancelled and is not posted to the MEMX Options Book. See id. IOC orders that are not designated as Book Only and that cannot be executed in accordance with MEMX Rule 21.8 on the System when reaching the Exchange will be eligible for routing away pursuant to proposed MEMX Rule 21.9. See id. Users may designate bulk messages as IOC. See id.

⁴⁵ See MEMX Rule 21.1(g)(2). Day orders, if not executed, expire at market close. Users may designate bulk messages as Day. See id.

⁴⁶ The Exchange notes that Cboe BZX Options offers additional Times-in-Force, such as good til cancelled, fill-or-kill, at the open, limit-on-close, and market-on-close, none of which the Exchange proposes to adopt. See Notice, supra note 3, at 28069. See also Amendment No. 1 at 25.

⁴⁷ See MEMX Rule 21.1(h).

⁴⁸ See MEMX Rule 21.1(h)(1)-(3).

⁴⁹ See Notice, supra note 3, at 28069. See also Amendment No. 1 at 25. The Exchange notes that Cboe BZX Options offers additional MTP modifiers, such as MTP Decrement

Re-Pricing Mechanism. MEMX Options will offer a re-pricing mechanism (“Price Adjust”) to comply with the order protection and trade through restrictions of the Linkage Options Order Protection and Locked/Crossed Market Plan (“Linkage Plan”). This re-pricing mechanism is identical to the Price Adjust mechanism offered by Cboe BZX Options, with the exception of the handling of an order with a Post Only instruction subject to the Price Adjust process.⁵⁰ The Exchange explains that Cboe BZX Options applies the Price Adjust process when a Post Only Order locks or crosses a Protected Quotation displayed on Cboe BZX Options and re-prices such Post Only Order pursuant to Cboe BZX Rule 21.1(i)(4), but MEMX is not proposing to adopt this clause. Rather, the System will cancel a Post Only Order that locks or crosses a Protected Quotation displayed on MEMX Options. If a User elects to not subject an order (including bulk messages) to the Price Adjust process, it can use a “Cancel Back” instruction.⁵¹ The System will cancel or reject an order with a Cancel Back instruction if displaying it on the Book would create a violation of Rule 27.3 (Locked and Crossed Markets), or if the order cannot otherwise be executed or displayed in the Book at its limit price.⁵²

Ports and Bulk Messages. MEMX Options will offer “physical ports” that provide a physical connection to the System and “logical ports” (or “application sessions”) that provide Users with the ability within the System to accomplish a specific function through a connection, such as order entry, data receipt, or access to information.⁵³

and Cancel and MTP Cancel Smallest, neither of which the Exchange proposes to adopt. See id.

⁵⁰ See MEMX Rule 21.1(i). See also Cboe BZX Rule 21.1(i).

⁵¹ See MEMX Rule 21.1(m).

⁵² See id.

⁵³ A User is able to designate which of its EFIDs may be used for each of its ports. See MEMX Rule 21.1(j)(3). If a User submits an order or quote through a port with an EFID

MEMX Options will offer “bulk message” functionality whereby Market Makers will be able to use a single electronic message to enter, modify, or cancel up to a specified number of bids and offers.⁵⁴ Bulk messages are subject to the following conditions: (i) bulk messages must contain a Time-in-Force of Day or IOC; (ii) a Market Maker with an appointment in a class must designate a bulk message for that class as Post Only or Book Only, and a non-appointed Market Maker must designate a bulk message for that class as Post Only; (iii) the System cancels or rejects a Post Only bulk message bid (offer) with a price that locks or crosses the Exchange best offer (bid) or ABO (ABB);⁵⁵ and (iv) the System executes a Book Only bulk message bid (offer) that locks or crosses the ABO (ABB) against offers (bids) resting in the Book at prices the same as or better than the ABO (ABB) and then cancels the unexecuted portion of that bid (offer).⁵⁶

Market Opening Procedures. The Exchange is not proposing to have an opening cross or opening auction. Rather, for stock options, the System simply will open a class of options following the first regular hours (i.e., after 9:30 a.m. Eastern Time) transaction in the underlying security as reported on the first print disseminated pursuant to an effective national market system plan.⁵⁷ In the event of a delay, the Exchange can determine in the interests of a fair and

not enabled for that port, the System cancels or rejects the order or quote. See id.

⁵⁴ Cboe BZX Options offers specific ports used for bulk messages whereas the Exchange is not proposing to offer bulk ports. See Notice, supra note 3, at 28070. See also Amendment No. 1 at 27.

⁵⁵ The term “ABBO” means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (as defined in MEMX Rule 27.1) and calculated by the Exchange based on market information the Exchange receives. See MEMX Rule 16.1.

⁵⁶ See MEMX Rule 21.1(l)(1)-(4).

⁵⁷ See MEMX Rule 21.7(a). The proposed market opening procedures for stock options are identical to the market opening procedures for such options that were initially adopted by Cboe BZX Options. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified

orderly market to open trading in the class.⁵⁸ With respect to index options, the System will open a class for trading after a period following the first post-9:30 a.m. (Eastern Time) disseminated index value for the applicable index.⁵⁹ Because the Exchange does not propose to adopt an opening cross or similar opening process, the opening trade that occurs on the Exchange will be a trade in the ordinary course of dealings on the Exchange. Accordingly, the System will ensure that the opening trade in an options series will not trade through a Protected Quotation at another options exchange, consistent with the general standard regarding trade throughs in MEMX Rule 21.6(e).⁶⁰

Additionally, the Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.⁶¹ Orders received prior to the opening of the System will be cancelled.⁶²

In the filing, the Exchange explains that it proposes a simplified opening procedures because for a successful opening process to function, MEMX believes an exchange needs a critical mass of liquidity from market participants in order to price and execute opening

by Amendment No. 1 Thereto, To Establish Rules Governing the Trading of Options on the BATS Options Exchange).

⁵⁸ See MEMX Rule 21.7(b).

⁵⁹ See MEMX Rule 21.7(a). The proposed opening procedures for index options are similar to Cboe BZX Options (Cboe BZX Rule 21.7(d)(2)), with a difference in that once the Cboe BZX Options system observes that an index value has been disseminated for the applicable index, Cboe BZX Options then commences an opening rotation (*i.e.*, an opening process to match liquidity at a price determined by the Cboe BZX Options system) while the Exchange is not proposing to adopt an opening rotation.

⁶⁰ See Notice, supra note 3, at 28070. See also Amendment No. 1 at 29.

⁶¹ See MEMX Rule 21.7(c).

⁶² See MEMX Rule 21.6(c).

transactions.⁶³ In turn, as a new options exchange, MEMX Options does not know the amount of pre-opening interest it will have, and it will have to gain market share in order to accumulate such interest.⁶⁴

Routing. Users may designate orders as eligible for routing to another options exchange during regular trading hours when trading interest on MEMX Options is not available.⁶⁵ An order that is designated as routable will be routed to other options exchanges to be executed at the National Best Bid and Offer (“NBBO”) when MEMX Options is not at the NBBO consistent with the Linkage Plan. Orders routed to other options exchanges do not retain time priority with respect to orders in the System, and the System will continue to execute orders while routed orders are away.⁶⁶ If a routed order is returned to MEMX Options, in whole or in part, that order (or its remainder) will receive a new time stamp reflecting the time of its return to the System.⁶⁷ Users whose orders are routed away will be obligated to honor trades executed on other options exchanges.⁶⁸

Subject to the exceptions contained in Rule 27.2(b), the System will ensure that an order will not be executed at a price that trades through another options exchange. Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing

⁶³ See Notice, supra note 3, at 28070. See also Amendment No. 1 at 30.

⁶⁴ See Notice, supra note 3, at 28070. See also Amendment No. 1 at 30. The Exchange states that it will re-evaluate its opening procedures over time and may propose to add an opening process through a proposed rule filing submitted to the Commission in the future. See id.

⁶⁵ Bulk messages are not eligible for routing. See MEMX Rule 21.9(a). Alternatively, a User may designate an order as not eligible for routing.

⁶⁶ See MEMX Rule 21.9(b).

⁶⁷ See id.

⁶⁸ See MEMX Rule 21.9(c).

or the price adjust process as defined in Rule 21.1(i) will be cancelled.

The Exchange explains that the routing functionality for MEMX Options is designed to operate much like the routing functionality for the Exchange's equities market, in that the Exchange "offers a simple routing service to facilitate compliance with applicable regulations and does not currently offer other complex routing strategies."⁶⁹

The Exchange will use its existing affiliated routing broker-dealer, MEMX Execution Services LLC ("MEMX Execution Services"), to route orders solely on behalf of MEMX Options.⁷⁰ MEMX Options will maintain a "System routing table" to determine the specific options exchanges to which the System will route orders and the order in which it will route

⁶⁹ See Notice, supra note 3, at 28071. See also Amendment No. 1 at 31. The Exchange notes that the proposed rules relating to the routing of orders on MEMX Options to away options markets are similar to the rules of Cboe BZX Options, except that the Exchange proposes to cancel any unexecuted portion of a Market Order after the System has routed to and received response from an away options market, whereas Cboe BZX Options offers additional handling instructions that may be chosen with respect to the unexecuted portion of an order after the System has routed to and received a response from an away options market, and Cboe BZX Options offers various additional routing options, such as routing to a specific destination or at specified price levels. See also Amendment No. 1 at 31-32.

⁷⁰ See MEMX Rules 2.11 and 21.9. MEMX Options will also offer back-up routing services in conjunction with one or more routing brokers that are not affiliated with the Exchange in case it is not able to provide order routing services through its affiliated broker-dealer, subject to the certain conditions and limitations. See MEMX Rule 21.9(e). Among other things, the Exchange would control the routing logic and the routing broker would not have any discretion. See MEMX Rule 21.9(e)(5). In addition, the Exchange would enter into an agreement with each routing broker that would, among other things, restrict the use of any confidential and proprietary information that the routing broker receives. See MEMX Rule 21.9(e)(1). The Exchange also must have procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange. See MEMX Rule 21.9(e)(2). The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. See MEMX Rule 21.9(e)(3).

them.⁷¹ MEMX Execution Services is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Act.⁷²

Use of routing services, including routing using MEMX Execution Services, is optional. Users that do not want to use routing services provided by the Exchange must designate orders as not available for routing.

To mitigate the financial and regulatory risks associated with providing Users with access to away options exchanges, MEMX has implemented certain tests to comply with market access requirements under Rule 15c3-5.⁷³ Pursuant those policies and procedures, if an order or series of orders are deemed to be erroneous or duplicative, would cause the entering User's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in Rule 15c3-5), MEMX Execution Services will reject such orders prior to routing and/or seek to cancel any orders that have been routed.

⁷¹ See MEMX Rule 21.9(a)(3).

⁷² See 15 U.S.C. 78s. MEMX Execution Services is required to be a member of a self-regulatory organization unaffiliated with the Exchange that is its designated examining authority, and the Exchange is required to establish and maintain procedures and internal controls reasonably designed to restrict the flow of confidential and proprietary information between MEMX and its facilities. See MEMX Rule 2.11(a)(2) and (5). In addition, the books, records, premises, officers, directors, agents, and employees of MEMX Execution Services, as a facility of the Exchange, are deemed to be those of the Exchange for purposes of and subject to oversight pursuant to the Act. See MEMX Rule 2.11(b). Further, the Exchange must provide its routing services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. See MEMX Rule 21.9(e)(4).

⁷³ 17 CFR 240.15c3-5. See also MEMX Rule 21.9(f). The Exchange states that MEMX Rule 21.9(f) is substantively identical to Cboe BZX Rule 21.9(f). See Notice, supra note 3, at 28071. See also Amendment No. 1 at 33.

Risk Controls. Users of MEMX Options will have the ability to establish certain risk control parameters and limits that are intended to offer protection from entering orders outside of certain size and price parameters, as well as certain parameters based on order type and market conditions.⁷⁴ The proposed risk controls are based, in part, on those of Cboe BZX Options, with certain additions and differences described below.

Rule 21.16 sets forth a Risk Monitor Mechanism that will offer Users a choice between a “passive” risk counter⁷⁵ and an “active” risk counter.⁷⁶ Users may configure risk limits for various parameters, including number of contracts executed (“volume”), notional value of executions (“notional”), number of executions (“count”), number of contracts executed as a percentage of number of contracts outstanding within an Exchange-designated time period or during the trading day (“percentage”), and the number of times the limits on any of the foregoing parameters are reached (“risk trips”).⁷⁷ The System will track each of the parameters within an underlying for an EFID (“underlying limit”), across all underlyings for an EFID (“EFID limit”), across all underlyings for a group of EFIDs (“EFID Group limit”), and/or across a customized

⁷⁴ See MEMX Rules 21.16 and 21.17.

⁷⁵ See MEMX Rule 21.16(a). In a “passive” risk counter, the Exchange counts a specific metric (e.g., number of contracts executed) over a specific time interval and takes a specific action based on a User-configured parameter. For example, once a User executes its pre-defined limit of 10,000 contracts, the User might have instructed the Exchange to cancel or reject pending and additional orders.

⁷⁶ See MEMX Rule 21.16(b). In an “active” risk counter, the User can manage its risk limits by acknowledging its activity during the day. For example, if a User set a pre-defined limit of 10,000 contracts and then executes a series of trades exceeding 10,000 contracts, but with each execution the user submits an electronic instruction to the System acknowledging the execution and decrementing the counting program by a specific amount, then the System would decrement that value from the ongoing tally it maintains. In other words, only non-acknowledged trades would cause the pre-defined limit to be reached.

⁷⁷ See MEMX Rule 21.16(a).

group of orders designated by the User (“Custom Group Limit”), over a User-established time period (“interval”) and on an absolute basis for a trading day (“absolute limits”).⁷⁸

When the System determines that a specified parameter has reached the User’s pre-defined risk limit and instructions, the Risk Monitor Mechanism will effectuate a User’s pre-determined action from among the following options: (i) cancel or reject such User’s orders or quotes in all series of the applicable underlying(s) and cancel or reject any additional orders or quotes from the User in the applicable underlying(s) until the counting program is reset; or (ii) suspend all of a User’s resting orders or quotes in all series of the applicable underlying(s) and cancel or reject any additional orders or quotes from the User in the applicable underlying(s) until the Exchange is instructed to reinstate such bids and offers. A User may also engage the Risk Monitor Mechanism to cancel resting bids and offers, as well as subsequent orders as set forth in Rule 22.10 (“mass cancellation”) or to suspend all resting bids and offers until the Exchange is instructed to reinstate such bids and offers (“mass suspension”). When a User’s resting orders or quotes have been suspended and the User instructs the Exchange to reinstate all such bids and offers, each reinstated order or quote shall receive a new timestamp reflecting the time it was re-posted to the MEMX Options Book.⁷⁹

The Risk Monitor Mechanism’s “passive” functionality is substantially similar to that offered on Cboe BZX Options, except that Cboe BZX Options’ rule does not permit Users to designate a Custom Group Limit to track risk parameters across a customized group of orders, nor does Cboe BZX Options permit Users to choose to suspend, rather than cancel or reject,

⁷⁸ See MEMX Rule 21.16(a).

⁷⁹ See MEMX Rule 21.16(e)(1).

resting interest when a risk limit has been reached or to engage the Risk Monitor Mechanism for mass suspension as an alternative to mass cancellation.⁸⁰

Cboe BZX Options rules do not presently contain a similar version of MEMX Option's proposed "active" Risk Monitor Mechanism functionality. As described above, in the "active" version, the System will increment the active risk counter associated with a defined parameter when the relevant activity occurs, and the System will decrement the active risk counter upon positive confirmation from the User via an electronic instruction that the User has acknowledged a change in the active risk counter. The User will be able to specify the value by which each parameter increments and decrements in the active risk counter. The proposed active risk counter will therefore enable a User to interact with the Risk Monitor Mechanism dynamically such that the User may actively acknowledge executions and decrement the counting program by a specified amount as such executions occur (or at any time), rather than waiting until a risk limit is reached or the User otherwise sends a specific instruction to the Exchange to completely reset the counting program. In the filing, the Exchange provides several examples to demonstrate how both the passive and active risk counters will operate.⁸¹

In addition to the Risk Monitor Mechanism functionality, the Exchange also will offer additional price protection mechanisms and risk controls that relate to certain standard or Exchange-established parameters based on order type and market conditions.⁸² For example, MEMX Options will offer Market Order NBBO Width Protection, a Limit Order Fat Finger Check, a Buy Order Put Check, Drill-Through Price Protection, Protection for Market Orders in

⁸⁰ See Notice, supra note 3, at 28072. See also Amendment No. 1 at 35-36.

⁸¹ See Notice, supra note 3, at 28072. See also Amendment No. 1 at 37-39.

⁸² See MEMX Rule 21.17.

No-Bid Series, and a Bulk Message Fat Finger Check, each of which are described in the rule.⁸³

The Exchange explains that the additional price protection mechanisms and risk controls are substantially similar to those offered on Cboe BZX Options pursuant to Cboe BZX Rule 21.17, with slight modifications to align with the Exchange’s proposed market opening procedures and available order types and instructions on MEMX Options, except that the Exchange is proposing a simplified version of the drill-through price protection mechanism described in proposed Rule 21.17(d).⁸⁴ Whereas the drill-through price protection mechanism offered on Cboe BZX Options pursuant to Cboe BZX Rule 21.17(d) executes an incoming order to a determined “Drill-Through Price” and then displays the remainder of the order on Cboe BZX Options at that price for a brief period of time, the Exchange is proposing to simply cancel the remainder of an incoming order after executing the order to the Drill-Through Price.⁸⁵

One Second Exposure Period. Similar to other exchanges, MEMX Options will prohibit Options Members from executing, as principal, orders they represent as agent unless the agency order is first exposed on the Exchange for at least one second or the Options Member has been bidding or offering on MEMX Options at the execution price for at least one second prior to receiving the executable agency order.⁸⁶ During this one second exposure period, other Options Members will be able to enter orders to trade against the exposed order.

Options Order Protection and Locked/Crossed Market Plan Rules

The Exchange represents that it will participate in the Linkage Plan, and therefore will be

⁸³ See MEMX Rule 21.17(a)-(f).

⁸⁴ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 40.

⁸⁵ See MEMX Rule 21.17(d).

⁸⁶ See MEMX Rule 22.11. See also, e.g., MIAX Rule 520(b).

required to comply with the obligations of participants under the Plan.⁸⁷ The Plan applies price-protection provisions to the options markets that are similar to those applicable to equities under Regulation NMS. Similar to Regulation NMS, the Plan requires the Plan Participants to adopt rules reasonably designed to prevent trade-throughs while exempting ISOs from that prohibition.

The Exchange explains that Chapter 27 (Options Order Protection and Locked and Crossed Markets Rules) is designed to conform to the requirements of the Plan, and the rules in that chapter are substantively identical to the rules of Cboe BZX Options.⁸⁸ Rule 27.2 prohibits trade-throughs and exempts ISOs from that prohibition, and also contains additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or accommodate the unique aspects of the options market. Rule 27.3 sets forth the general prohibition against locking/crossing other eligible exchanges as well as certain enumerated exceptions that permit locked markets in limited circumstances.⁸⁹

Securities Traded on MEMX Options

General Listing Standards. The listing standards for options traded on MEMX Options are set forth in Chapter 19 (Securities Traded on MEMX Options), and the listing standards for index options are described in Chapter 29 (Index Rules). The Exchange explains that these rules

⁸⁷ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 41.

⁸⁸ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 42-43. See also MEMX Rules 27.1 (definitions), 27.2 (order protection), and 27.3 (locked and crossed markets).

⁸⁹ See MEMX Rule 27.3(b). Specifically, the exceptions to the general prohibition on locking and crossing occur when: (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a crossed market; or (3) the Options Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

are substantively identical to those of Cboe BZX Options.⁹⁰ The Exchange also represents that it will join the Options Listings Procedures Plan, will list and trade options already listed on other options exchanges, and will gradually phase-in trading of option classes upon initial launch, beginning with a selection of actively traded options. The Exchange states that, initially, it does not plan to develop new options products or listing standards.⁹¹

Conduct and Operational Rules for Options Members

The Exchange proposes to adopt operational and member conducts rules for MEMX Options that are substantively identical to the rules of Cboe BZX Options regarding: (i) exercises and deliveries;⁹² (ii) records, reports and audits;⁹³ (iii) minor rule violations;⁹⁴ (iv) doing business with the public;⁹⁵ and (v) margin.⁹⁶

National Market System

Before commencing operations, MEMX Options will become a member of the Options Price Reporting Authority (“OPRA”), the Options Linkage Authority (“OLA”), the Options Regulatory Surveillance Authority (“ORSA”), and the Options Listing Procedures Plan

⁹⁰ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 41-42. With respect to index options, the Exchange notes that it is not proposing to include references to any specific index options products or indices at this time and therefore has included a placeholder with the rule text “(Reserved.)” where such references would otherwise be. The Exchange represents that it would file a proposed rule change with the Commission with respect to such products if it decides to list and trade index options in the future. See id.

⁹¹ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 43.

⁹² See MEMX Rules, Chapter 23. See also Cboe BZX Rules, Chapter XXIII.

⁹³ See MEMX Rules, Chapter 24. See also Cboe BZX Rules, Chapter XXIV.

⁹⁴ See MEMX Rules, Chapter 25. See also Cboe BZX Rules, Chapter XXV.

⁹⁵ See MEMX Rules, Chapter 26. See also Cboe BZX Rules, Chapter XXVI.

⁹⁶ See MEMX Rules, Chapter 27. See also Cboe BZX Rules, Chapter XXVII.

(“OLPP”).⁹⁷

Regulation

The Exchange represents that it will leverage many of the structures it established to operate a national securities exchange for trading equities in compliance with Section 6 of the Act.⁹⁸ Specifically, the Exchange represents that there will be three elements of that regulation: (i) the Exchange will join the existing options industry agreements pursuant to Section 17(d) of the Act prior to commencing operations;⁹⁹ (ii) the Exchange’s Regulatory Services Agreement with FINRA will be amended as necessary prior to MEMX Options commencing operations and will govern many aspects of the regulation and discipline of members that participate in options trading, just as it does for equities regulation;¹⁰⁰ and (iii) the Exchange will perform options listing regulation, as well as authorize Options Members to trade on MEMX Options, and conduct surveillance of options trading as it does today for equities.¹⁰¹

Consistent with the Exchange’s existing regulatory structure, the Exchange’s Chief Regulatory Officer will have general supervision of the regulatory operations of MEMX

⁹⁷ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 42.

⁹⁸ 15 U.S.C. 78f. See Notice, supra note 3, at 28074. See also Amendment No. 1 at 44.

⁹⁹ 15 U.S.C. 78q(d). The Exchange also explains that it is party to a bilateral Rule 17d-2 with FINRA, which will require minor modifications to accommodate the proposed launch of MEMX Options. The Exchange represents that it will seek to have the Commission declare effective those amendments to the bilateral Rule 17d-2 agreement prior to commencing operations for MEMX Options. See also Amendment No. 1 at 46.

¹⁰⁰ The Exchange represents that it has entered into a Regulatory Services Agreement with FINRA, pursuant to which FINRA personnel operate as agents for the Exchange in performing certain functions. As is the case with the Exchange’s equities market, the Exchange represents that it will supervise FINRA personnel acting as agent and continue to bear ultimate regulatory responsibility for the MEMX Options Exchange. See Notice, supra note 3, at 28074. See also Amendment No. 1 at 46-47.

¹⁰¹ See Notice, supra note 3, at 28074. See also Amendment No. 1 at 44-45.

Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to MEMX Options.¹⁰² Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MEMX Options.¹⁰³

The Exchange's existing rules governing members will apply to Options Members and their associated persons. The Exchange's existing rules provide that members, a term that includes Options Members, agree to be regulated by the Exchange as a condition of effecting securities transactions on the Exchange's trading facilities.¹⁰⁴ The Exchange's rules also permit it to sanction members, including Options Members, for violations of its rules and governing documents and of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.¹⁰⁵

As it does with equities trading, the Exchange will perform automated surveillance of trading on MEMX Options for the purpose of maintaining a fair and orderly market at all times, and it will monitor MEMX Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation.¹⁰⁶

Additionally, the Exchange will oversee the process for determining and implementing

¹⁰² See Notice, supra note 3, at 28074. See also Amendment No. 1 at 47.

¹⁰³ See Notice, supra note 3, at 28074. See also Amendment No. 1 at 47.

¹⁰⁴ See MEMX Rule 2.2. See also Second Amended and Restated Limited Liability Company Agreement of MEMX LLC (May 19, 2020), Section 17.2 (providing the Exchange with disciplinary jurisdiction over its members).

¹⁰⁵ See MEMX Rule 2.2.

¹⁰⁶ See Notice, supra note 3, at 28074. See also Amendment No. 1 at 47.

trade halts, identifying and responding to unusual market conditions, and administering the Exchange’s process for identifying and remediating “obvious errors” by and among its Options Members.¹⁰⁷ The Exchange explains that Chapter 20 (Regulation of Trading on MEMX Options) regarding halts, unusual market conditions, extraordinary market volatility, obvious errors, audit trail, and rules regarding prohibited and permissible transfers of options positions off the Exchange are substantively identical to the rules of Cboe BZX Options.¹⁰⁸

Minor Rule Violation Plan

The Commission approved the Exchange’s Minor Rule Violation Plan (“MRVP”) in 2020.¹⁰⁹ The Exchange’s MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Act¹¹⁰ requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.¹¹¹ The Exchange’s MRVP includes the policies and procedures included in Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and in Rule 8.15, Interpretation and Policy .01.

¹⁰⁷ See Notice, supra note 3, at 28074. See also Amendment No. 1 at 47-48.

¹⁰⁸ See also Amendment No. 1 at 47-48.

¹⁰⁹ See Securities Exchange Act Release No. 89836 (September 11, 2020), 85 FR 58081 (September 17, 2020) (Order Declaring Effective a Minor Rule Violation Plan) (“MRVP Order”).

¹¹⁰ 17 CFR 240.19d-1(c)(1).

¹¹¹ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered “final” for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

In connection with MEMX Options, the Exchange is amending its MRVP and Exchange Rule 8.15, Interpretation and Policy .01, to include Rule 25.3 (Penalty for Minor Rule Violations). Rule 25.3 contains provisions addressing the following: (i) position limit and exercise limit violations; (ii) violations regarding the failure to accurately report position and account information; (iii) Market Maker quoting obligations; (iv) violations regarding expiring exercise declarations; (v) violations relating to the failure to respond to the Exchange's requests for the submission of trade data; and (vi) violations relating to noncompliance with the Consolidated Audit Trail Compliance Rule requirements. The Exchange further states that the rules included in proposed Rule 25.3 are the same as the rules included in the MRVPs of other options exchanges.¹¹²

The Exchange represents that, upon implementation, it will include the enumerated options trading rule violations in the Exchange's standard quarterly report of actions taken on minor rule violations under the MRVP.¹¹³ The Exchange asserts that its amended MRVP is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.¹¹⁴ In addition, the Exchange states that it will provide a fair procedure for the disciplining of members and associated persons,

¹¹² See Notice, supra note 3, at 28075. See also Amendment No. 1 at 49.

¹¹³ See Notice, supra note 3, at 28075. See also Amendment No. 1 at 49-50. The Exchange states that the quarterly report currently includes: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition. See id.

¹¹⁴ 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6). See also Notice, supra note 3, at 28075. See also Amendment No. 1 at 49-50.

consistent with Section 6(b)(7) of the Act,¹¹⁵ because amended Rule 8.15 will offer procedural rights to a person sanctioned for a violation listed in Rule 25.3.¹¹⁶ The Exchange represents that it will continue to conduct surveillance with due diligence and make a determination based on its finding, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.¹¹⁷

Amendments to Existing Exchange Rules

In addition to the new rules for MEMX Options, the Exchange also proposes to amend certain of its existing rules in order to reflect the Exchange's proposed operation of MEMX Options. First, the Exchange is amending paragraph (d) of Interpretations and Policies .01 to Rule 2.5 (Restrictions), which generally requires each member to register at least two Principals with the Exchange subject to certain exceptions described therein, to provide that such paragraph (d) shall not apply to a member that solely conducts business on the Exchange as an Options Member, however, Options Members must comply with the registration requirements set forth in proposed Rule 17.2(g).¹¹⁸ In connection with this change, the Exchange also is amending paragraph (i) of Interpretations and Policies .01 to Rule 2.5 to include Options Principal as a registration category and to set forth the Exchange's qualification requirements for an Options Principal, which the Exchange states are the same as those for an Options Principal on Cboe

¹¹⁵ 15 U.S.C. 78f(b)(7).

¹¹⁶ See Notice, supra note 3, at 28075. See also Amendment No. 1 at 50.

¹¹⁷ See Notice, supra note 3, at 28075. See also Amendment No. 1 at 50.

¹¹⁸ The Exchange notes that proposed MEMX Rule 17.2(g), which provides that every Options Member shall have at least one Options Principal and sets forth the Exchange's Options Principal registration requirements, is identical to Cboe BZX Rule 17.2(g). See Notice, supra note 3, at 28075. See also Amendment No. 1 at 53.

BZX Options.¹¹⁹

The Exchange also is deleting the word “equities” in the first sentence of Rule 2.7 (Revocation of Membership or Association with a Member), which currently provides that members or associated persons of members may effect approved equities securities transactions on the Exchange’s trading facilities only so long as they possess all the qualifications set forth in the Exchange Rules.

The Exchange proposes to modify Rule 2.11(a)(6), which states that MEMX Execution Services shall maintain an error account for the purpose of addressing positions that are the result of an execution or executions that are not clearly erroneous under Rule 11.15 and result from a technical or systems issue at MEMX Execution Services, the Exchange, a routing destination, or a non-affiliate third-party routing broker that affects one or more orders (“Error Positions”). The proposed change to Rule 2.11(a)(6) adds a reference to the comparable provision in Rule 20.6 that governs review and resolution of options transactions that may qualify as obvious errors.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹²⁰ In particular, the Commission finds that the proposed rule change is consistent with, among others, Sections 6(b)(1),¹²¹ 6(b)(5),¹²² and 6(b)(8)¹²³ of the Act. Section

¹¹⁹ See Notice, supra note 3, at 28075. See also Amendment No. 1 at 53.

¹²⁰ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹²¹ 15 U.S.C. 78f(b)(1).

¹²² 15 U.S.C. 78f(b)(5).

¹²³ 15 U.S.C. 78f(b)(8).

6(b)(1) of the Act requires that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As detailed above, MEMX Options' proposed rules are substantially similar to those of other exchanges, especially Cboe BZX, though the Exchange is not proposing to adopt certain optional features offered by other exchanges so that its trading platform at launch will, as the Exchange described it, have "a simplified suite of conventional order types and functionality that is designed to provide for an efficient, robust, and transparent order matching process."¹²⁴ While some of these features may be available on other option exchanges, such as price improvement auctions, directed market makers, facilitation mechanisms, and price-sliding mechanisms, those features are optional and supplementary to the core exchange matching engine functionality, and they are not necessary for the Commission to find that the rules governing MEMX Options are consistent with the Act.

Exchange Members

¹²⁴ See Notice, supra note 3, at 28064. See also Amendment No. 1 at 4.

As described above, only Options Members, and their Sponsored Participants,¹²⁵ will be permitted to transact on the System. The Exchange also proposes to adopt rules governing member operations and member conduct, all of which are substantively identical to the rules of other exchanges, including Cboe BZX. Those rules include recordkeeping and reporting requirements,¹²⁶ discipline,¹²⁷ margin requirements,¹²⁸ and requirements applicable to doing business with the public.¹²⁹

The Commission finds that the rules applicable to qualification, registration, member operations, and use of MEMX Options, which are substantially similar to those of other options exchanges, are consistent with the Act, including Sections 6(b)(1), (2), and (6) thereof, in that they provide the Exchange with the capacity to regulate access to and conduct on MEMX Options and enforce the federal securities laws among persons using its facilities, provide that registered broker-dealers can become members and have access to MEMX Options, and ensure that Options Members and their associated persons can be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and Exchange rules.

With respect to Market Maker members, the Commission finds that the proposed Market Maker qualification requirements, which also are substantially similar to those of other options exchanges, are consistent with the Act. The Commission further finds that the Options Market Maker participation requirements are consistent with the Act. Market makers receive certain

¹²⁵ See MEMX Rule 1.5(dd) (defining “Sponsored Participant” to mean “a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3”).

¹²⁶ See MEMX Chapter 24 (Records, Reports and Audits).

¹²⁷ See MEMX Chapter 25 (Discipline and Summary Suspensions).

¹²⁸ See MEMX Chapter 28 (Margin Requirements).

¹²⁹ See MEMX Chapter 26 (Doing Business with the Public).

benefits for carrying out their responsibilities. For example, a broker-dealer or other lender may extend “good faith” credit to a member of a national securities exchange or registered broker-dealer to finance its activities as a market maker or specialist.¹³⁰ In addition, market makers are exempted from the prohibition in Section 11(a) of the Act.¹³¹ The Commission believes that a market maker must have sufficient affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify this favorable treatment. The Commission believes that the MEMX Options Market Maker participation requirements are consistent with the Act and are substantially similar to the participation requirements of other options exchanges that the Commission has previously approved.

MEMX Options Market Structure and Trading Operations

The functionalities and features of MEMX Options’ market structure and trading system are based on functionalities and features currently used and previously approved for other options exchanges. Among other things, the rules are reasonably designed to provide for a simple, orderly opening process for an exchange that only trades multiply listed options, as well as an orderly re-opening process following the conclusion of a trading halt. Further, the rules provide for the electronic display and execution of orders in traditional price/time priority. MEMX Options will utilize only two order types (limit orders and market orders) and offer a limited suite of order handling instructions, all of which are well-established in both the equities and options markets. These proposed execution priority rules and order types are consistent with the Act, in particular Section 6(b)(5) of the Act, in that, among other things, they are designed to

¹³⁰ See 12 CFR 221.5 and 12 CFR 220.7; see also 17 CFR 240.15c3-1(a)(6) (capital requirements for market makers).

¹³¹ 15 U.S.C. 78k(a)(1).

promote just and equitable principles of trade and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

MEMX also is requiring a one-second exposure period in order to execute as principal orders represented as agent, which is the same standard required by other exchanges. This exposure requirement should facilitate the prompt execution of orders while continuing to provide members with an opportunity to compete for exposed bids and offers.

MEMX listing standards for options traded on MEMX Options are substantively identical to those currently utilized by other exchanges. MEMX will join the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. The Commission finds that the Exchange's proposed listing standards are consistent with the Act, including Section 6(b)(5), in that they are designed to protect investors and the public interest and promote just and equitable principles of trade. As explained below, MEMX's operation of MEMX Options is conditioned on MEMX joining and participating in the OLPP. The Exchange has represented that it will join the OLPP and will become an exchange member of OCC.

Further, MEMX proposes operational rules that are substantively identical to the rules of other options exchanges, such as Cboe BZX, including rules applicable to exercise and deliveries.¹³² Those rules adopt the standard requirements applicable to exercise notices and applicable cut-off times for submission of exercise-related notices, the assignment of exercise notices, and delivery and payment requirements. The Commission finds that these rules are consistent with the Act, including Section 6(b)(5), in that they promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

¹³² See MEMX Chapter 23 (Exercises and Deliveries).

securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

And, as described above, in those cases where MEMX Options' proposed rules vary from current functionality on other options exchanges, many of those variations are because MEMX proposes a more streamlined system and is not proposing to introduce those optional features.

As such, the Commission finds that the proposed functionalities and features of MEMX Options' overall structure and trading operations are consistent with the Act, and in particular, with Section 6(b)(5) of the Act, which requires an exchange's rules, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Options Order Protection, Locked/Crossed Market Plan, and Outbound Routing

The MEMX Options rules are designed to comply with applicable federal securities laws and regulations and the obligations of the Linkage Plan. Specifically, the rules are designed to ensure that an order is not executed at a price that would trade through another options exchange. In this regard, the Commission notes that MEMX Options is required under Rule 608(c) of Regulation NMS¹³³ to comply with and enforce compliance by its members with the Linkage Plan, including the requirement to avoid trading through better prices available on other markets. Any order designated by an Options Member as routable will be routed by MEMX in compliance with applicable trade-through restrictions, and any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the price adjust

¹³³ See 17 CFR 242.608(c).

process in Rule 21.1(i) will be cancelled. The Commission finds these order protection rules to be consistent with the Act. Further, in light of the protections discussed above that apply to the optional use of outbound routing services offered through MEMX Execution Services, which currently apply to the Exchange's equities trading facility, as well as the back-up optional routing services through an unaffiliated routing broker, the Commission finds the routing rules to be consistent with the Act.

Before commencing operations, MEMX represents that it will become a participant in the Linkage Plan.¹³⁴ To meet their regulatory responsibilities under the Linkage Plan, including the requirement to avoid trading through better-priced protected quotations available on other markets, other options exchanges that are Linkage Plan participants must have sufficient notice of new protected quotations, as well as all necessary information (such as final technical specifications). Therefore, the Commission believes that it would be a reasonable policy and procedure under the Linkage Plan for industry participants to begin treating MEMX Options' best bid and best offer as a protected quotation within the later of 60 days after the date of this order or such date as MEMX Options begins operation.

Risk Monitoring and Protection

As discussed above, MEMX Options will offer Users an optional mechanism to establish certain risk control parameters and limits. The "passive" functionality is substantially similar to that offered on Cboe BZX Options, except that MEMX Options will permit Users to track risk parameters across a customized group of orders and will permit Users to choose to suspend, rather than cancel or reject, resting interest when a risk limit has been reached.¹³⁵ The proposed

¹³⁴ See Notice, supra note 3, at 28073. See also Amendment No. 1 at 41.

¹³⁵ See Notice, supra note 3, at 28072. See also Amendment No. 1 at 34-36.

“active” functionality is novel, as Cboe BZX Options rules do presently offer similar functionality. As described above, in the “active” version, a User can effectively interact with the Risk Monitor Mechanism to decrement the counting program as executions occur.

In addition to the Risk Monitor Mechanism, the Exchange will offer additional price protection mechanisms and risk controls. These controls are substantially similar to those offered on Cboe BZX, with slight modifications to align with the Exchange’s proposed streamlined market opening procedures and fewer available order types and instructions on MEMX Options. Also, whereas the drill-through price protection mechanism offered on Cboe BZX executes an incoming order to a determined “Drill-Through Price” and then displays the remainder of the order on Cboe BZX Options at that price for a brief period of time, the Exchange proposes to cancel the remainder of an incoming order after executing the order.

The Commission believes that the proposed risk protections for MEMX Options are reasonably designed to provide liquidity providers with protections to help them manage risk and efficiently use capital when trading options. These protections are in addition to, and do not take the place of, members’ required market access controls, vigilant oversight of trading and algorithms, and overall risk management. For example, these mechanisms are intended to provide market makers and other liquidity providers with optional supplemental tools as an additional layer of protection to assist them in managing risk and utilizing available capital in leveraged options securities. To the extent they achieve that intended objective, liquidity providers should be able to provide additional liquidity to the market at potentially improved prices, thus benefitting investors.

While most of these protections are substantively similar to those available on other options markets, some of the differences discussed above are designed to offer market

participants additional flexibility when using the Risk Monitor Mechanism in a manner consistent with the functionality and scope of protections that the Risk Monitor Mechanism provides. Accordingly, the Commission finds that the proposed risk controls for MEMX Options are consistent with the Act in that they are designed to, among other things, promote just and equitable principles of trade and protect investors and the public interest.

Participation in Multiparty Options-Related Plans

The Exchange represents that it will become a participant in the various applicable multiparty plans for options trading. Specifically, the Exchange represents that MEMX Options will become a member of OPRA, OLA, ORSA, and OLPP before commencing operations. Doing so will integrate MEMX Options into the national market system for standardized listed options.

Regulation

The Exchange represents that it will leverage the structures it currently maintains to operate and oversee its equities trading facility, which involve the following three elements: (i) the Exchange will join the existing options industry agreements pursuant to Section 17(d) of the Act,¹³⁶ as it did with respect to equities; (ii) the Exchange's Regulatory Services Agreement with FINRA will be amended to govern many aspects of the regulation and discipline of Options Members, just as it does for equities;¹³⁷ and (iii) the Exchange will perform options listing

¹³⁶ See 15 U.S.C. 78q(d) and 17 CFR 240.17d-2. There are three 17d-2 plans that apply to options: the Options-Related Sales Practice Plan (File No. S7-966), the Options-Related Market Surveillance Plan (File No. 4-551), and the Regulation NMS Plan (File No. 4-566). MEMX already is a member of the Regulation NMS Plan.

¹³⁷ Importantly, the Commission notes that unless relieved by the Commission of its responsibility pursuant to Rule 17d-2, the Exchange bears the responsibility for its self-regulatory obligations and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. See Section 17(d)(1)

regulation, as well as authorize Options Members to trade on MEMX Options, and conduct surveillance of options trading as it does today for equities. Furthermore, MEMX proposes to amend its Minor Rule Violation Plan to encompass MEMX Options in a manner that is substantially similar to and consistent with the analogous rules and plans on other options exchanges.

Also, as explained above, consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer will have general supervision of the regulatory operations of MEMX Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to MEMX Options. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization responsibilities, including those applicable to MEMX Options.

As it does with equities, the Exchange will perform automated surveillance of trading on MEMX Options for the purpose of maintaining a fair and orderly market at all times. As it does with its equities trading facility, the Exchange will monitor MEMX Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory

of the Act and Rule 17d-2 thereunder (15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2). In performing these functions as agent for MEMX, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of the Exchange to perform its regulatory functions. Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for the Exchange relating to the operation of MEMX Options, FINRA also may have secondary liability if, for example, the Commission finds the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by the Exchange. See, e.g., Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) ("Nasdaq Exchange Registration Order").

investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating "obvious errors" by and among its Options Members. The proposed rules in Chapter 20 (Regulation of Trading on MEMX Options) regarding halts, unusual market conditions, extraordinary market volatility, obvious errors, and audit trail are substantively identical to the rules of Cboe BZX Options.

Based on the foregoing, the Commission finds that the Exchange's proposed rules and regulatory structure with respect to MEMX Options are consistent with the requirements of the Act, in particular with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder, and the rules of the Exchange, and with Sections 6(b)(6) and 6(b)(7) of the Act, which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members. The Commission further believes that it is consistent with the Act to allow the Exchange to contract with FINRA to perform functions relating to the regulation and discipline of members and the regulation of MEMX Options.¹³⁸

These functions are fundamental elements to a regulatory program and constitute core self-

¹³⁸ See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998). See also, e.g., Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004-32) (approving rule that allowed Amex to contract with another SRO for regulatory services).

regulatory functions. The Commission believes that FINRA has the expertise and experience to perform these functions on behalf of the Exchange.¹³⁹

The Commission finds that the amended MRVP is consistent with Sections 6(b)(1), 6(b)(5), and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Exchange and the federal securities laws. As existing MEMX Rule 8.15 will continue to offer procedural rights to a person sanctioned for a violation listed in proposed MEMX Options Rule 25.3, the Commission believes that the Exchange's rules provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.¹⁴⁰ The Commission also finds that the MRVP changes are consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁴¹ because they should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving the proposed change to the Exchange's MRVP, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to the imposition of fines under the Exchange's MRVP. The Commission believes that the violation of any SRO rules, as well as the federal securities laws, is a serious matter. However, the Exchange's MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing flexibility in handling

¹³⁹ The Commission notes that the RSA is not before the Commission and, therefore, the Commission is not acting on it.

¹⁴⁰ 15 U.S.C. 78f(b)(7).

¹⁴¹ 17 CFR 240.19d-1(c)(2).

certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the Exchange’s MRVP or whether a violation requires a formal disciplinary action.

Section 11(a) of the Act

Section 11(a)(1) of the Act¹⁴² prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Act,¹⁴³ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;¹⁴⁴ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

¹⁴² 15 U.S.C. 78k(a)(1).

¹⁴³ 17 CFR 240.11a2-2(T).

¹⁴⁴ This prohibition also applies to associated persons. The member may, however, participate in clearing and settling the transaction.

In a letter to the Commission, the Exchange requests that the Commission concur with the Exchange's conclusion that Options Members that enter orders into the System satisfy the requirements of Rule 11a2-2(T).¹⁴⁵ For the reasons set forth below, the Commission believes that Options Members entering orders into the System could satisfy the requirements of Rule 11a2-2(T).

The Rule's first requirement is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.¹⁴⁶ MEMX has represented that MEMX Options does not have a physical trading floor, and the MEMX Options trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.¹⁴⁷ The Commission believes that the MEMX Options trading system satisfies this off-floor transmission requirement.

¹⁴⁵ See Letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 8, 2022 ("MEMX 11(a) Letter").

¹⁴⁶ See, e.g., Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (registration of Long-Term Stock Exchange); 75760 (August 7, 2015) 80 FR 48600 (August 13, 2015) (SR-EDGX-2015-18); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10-131) (granting the exchange registration of Nasdaq Stock Market, Inc.); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

¹⁴⁷ See MEMX 11(a) Letter, *supra* note 145, at 5-6.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. MEMX represented that at no time following the submission of an order is an Options Member or an associated person of the Options Member able to acquire control or influence over the result or timing of the order's execution.¹⁴⁸ According to the Exchange, the execution of a member's order is determined solely by what quotes and orders are present in the System at the time the member submits the order, and the order priority based on the MEMX Options rules.¹⁴⁹ Accordingly, the Commission believes that an Options Member and its associated persons do not participate in the execution of an order submitted to the MEMX Options System.¹⁵⁰

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this

¹⁴⁸ See MEMX 11(a) Letter, supra note 145, at 6-7. MEMX notes that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. See id. at 6. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

¹⁴⁹ See MEMX 11(a) Letter, supra note 145, at 2. The Commission notes that MEMX proposes rules for the registration, obligations, and operation of market makers on MEMX Options. MEMX has represented that market makers, if any, will submit quotes in the form of orders in their assigned symbols. See id. at n. 4.

¹⁵⁰ See, e.g., Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498, 49505 (August 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange) ("Bats Order") and 61698 (March 12, 2010), 75 FR 13151, 13164 (March 18, 2010) (File Nos. 10-194 and 10-196) (order approving DirectEdge exchanges) ("DirectEdge Order").

requirement is satisfied when automated exchange facilities, such as the MEMX Options trading system are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.¹⁵¹ The Exchange has represented that the design of the MEMX Options trading system ensures that no Options Member has any special or unique trading advantages in the handling of its orders after transmitting its orders to the Exchange.¹⁵² Based on the Exchange's representation, the Commission believes that the MEMX Options trading system satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.¹⁵³ MEMX Options Members trading for covered accounts over

¹⁵¹ See, e.g., Bats Order, supra note 150, at 49505 and DirectEdge Order, supra note 150, at 13164. In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 146.

¹⁵² See MEMX 11(a) Letter, supra note 145, at 7.

¹⁵³ See Bats Order, supra note 150, at 49505 and DirectEdge Order, supra note 150, at 13164. In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation

which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.¹⁵⁴

IV. Exemption from Section 19(b) of the Act with Regard to Cboe, NYSE, and FINRA Rules Incorporated by Reference

The Exchange proposes to incorporate by reference as MEMX Options Rules certain rules of Cboe Exchange ("Cboe"), the New York Stock Exchange ("NYSE"), and FINRA.¹⁵⁵

Thus, for certain MEMX Options rules, Exchange members will comply with a MEMX Options rule by complying with the Cboe, NYSE, or FINRA rule referenced. In connection with its proposal to incorporate Cboe, NYSE, and FINRA rules by reference, the Exchange requests, pursuant to Rule 240.0-12 under the Act,¹⁵⁶ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those MEMX Options rules that are effected solely by virtue of a change to a cross-referenced Cboe, NYSE, or FINRA

retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 148 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

¹⁵⁴ See MEMX 11(a) Letter, supra note 145, at 3. The Exchange represented that it will advise its membership through the issuance of a Regulatory Circular that those members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. See id.

¹⁵⁵ Specifically, MEMX Rule 26.16 proposes to incorporate by reference the applicable rules of FINRA with respect to Communications with Public Customers; MEMX Rule 28.3 proposes to incorporate by reference initial and maintenance margin requirements of either Cboe or NYSE; MEMX Rule 29.5 proposes to incorporate by reference the applicable rules of Cboe with respect to position limits for broad based index options; and MEMX Rule 29.7 proposes to incorporate by reference the applicable rules of Cboe with respect to position limits for narrow-based and micro-narrow based index options traded on MEMX Options and also on Cboe.

¹⁵⁶ 17 CFR 240.0-12.

rule.¹⁵⁷ The Exchange proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. The Exchange agrees to provide written notice to Options Member prior to the launch of MEMX Options of the specific Cboe, NYSE, and FINRA rules that it is incorporating by reference.¹⁵⁸ In addition, the Exchange will notify Options Members whenever Cboe, NYSE, or FINRA proposes a change to a cross-referenced Cboe, NYSE, or FINRA rule.¹⁵⁹

Using its authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.¹⁶⁰ Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (e.g., margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules

¹⁵⁷ See Amendment No. 1 at 51-53.

¹⁵⁸ See Amendment No. 1 at 52.

¹⁵⁹ The Exchange represents that it will provide such notice through a posting on the same website location where the Exchange will post its own rule filings pursuant to Rule 19b-4(l) under Act, within the time frame required by that rule. The website posting will include a link to the location on the Cboe, NYSE, or FINRA website where the proposed rule change is posted. See id. at n. 38.

¹⁶⁰ See Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (granting application for exemptions pursuant to Section 36(a) under the Act by the American Stock Exchange LLC, the International Securities Exchange, Inc., the Municipal Securities Rulemaking Board, the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Boston Stock Exchange, Inc.). See also, e.g., Securities Exchange Act Release Nos.); 75760 (August 7, 2015) 80 FR 48600 (August 13, 2015) (SR-EDGX-2015-18) (approving the operations of EDGX Options Exchange, which included exemptive relief pursuant to Section 36(a) under the Act); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080, which included exemptive relief pursuant to Section 36(a) under the Act) and 53128 (January 13, 2006).

(i.e., did not “cherry-pick” certain individual rules within a category). Each exempt SRO had procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting the Exchange’s request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that the Exchange proposes to incorporate by reference into MEMX Options Rules. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. Consequently, the Commission grants the Exchange’s exemption request for MEMX Options. This exemption is conditioned upon the Exchange providing written notice to Options Members whenever Cboe, NYSE, or FINRA proposes to change a rule that MEMX Options has incorporated by reference.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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 e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-10 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-2022-10. This file number should be included on the subject line if e-mail 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 this filing will also 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-MEMX-2022-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change

The Commission finds good cause to approve the proposed rule change prior to the 30th day after the date of publication of Amendment No. 1 in the Federal Register. Amendment No.1 does not include any material changes to the proposed rules for MEMX Options or the descriptions of those rules in the original filing. In Amendment No. 1, the Exchange, among

other items, provides additional detail about how some of the proposed MEMX Options rules will function, revises other existing MEMX rules to reference and accommodate MEMX Options, provides representations about how MEMX will inform Users about certain parameters or variables set forth in the MEMX Options Rules, requests exemptive relief under Section 36 of the Act from Section 19 of the Act for rules incorporated by reference, and makes other minor technical changes to the filing.

The Commission finds that Amendment No.1 raises no novel regulatory issues and is reasonably designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory, or impose an unnecessary or inappropriate burden on competition. The Amendment makes minor and non-material clarifying and conforming changes and makes additional representations that each provide more clarity on the application of the MEMX Options rules and the commencement of operation of MEMX Options. Accordingly, pursuant to Section 19(b)(2) of the Act,¹⁶¹ the Commission finds good cause to approve the proposed rule change on an accelerated basis.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶² that the proposed rule change (SR-MEMX-2022-10), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of MEMX Options is conditioned on the satisfaction of the requirements below:

¹⁶¹ 15 U.S.C. 78s(b)(2).

¹⁶² Id.

- A. Participation in Plans Relating to Options Trading. MEMX must join: (i) the OPRA Plan; (ii) the OLPP; (iii) the Linkage Plan; and (iv) the Plan of the Options Regulatory Surveillance Authority.
- B. RSA and Rule 17d-2 Agreements. MEMX must ensure that all necessary changes are made to its Regulatory Services Agreement and bilateral Rule 17d-2 agreement with FINRA, and it must be a party to the multiparty Rule 17d-2 agreements concerning options-related sales practice matters and options-related market surveillance.
- C. Participation in the Options Clearing Corporation. MEMX must join the Options Clearing Corporation.
- D. Participation in the Intermarket Surveillance Group. MEMX must be a member of the Intermarket Surveillance Group.

It is further ordered, pursuant to Section 36 of the Act,¹⁶³ that MEMX shall be exempted from the rule filing requirements of Section 19(b) of the Act¹⁶⁴ with respect to the Cboe, FINRA, and NYSE rules that MEMX proposes to incorporate by reference in MEMX Rules 26.16, 28.3, 29.5, and 29.7, subject to the conditions specified in this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶⁵

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁶³ See 15 U.S.C. 78mm.

¹⁶⁴ 15 U.S.C. 78s(b)

¹⁶⁵ 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(76).