

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98339; File No. SR-MEMX-2023-18)

September 8, 2023

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 19.5

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 6, 2023, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend MEMX Rule 19.5. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Rule 19.5, Interpretation and Policy .05. Specifically, the Exchange proposes to amend Rule 19.5, Interpretation and Policy .05(f) to account for conflicts between different provisions within the Short Term Option Series Rules, extend current \$0.50 strike price intervals in equity options to short term options with strike prices less than \$100, and make other clarifying changes.

In August 2022, the Commission approved the Exchange’s adoption of rules to govern the trading of options on the Exchange by MEMX Options⁵, which will be a facility of the Exchange. The rules adopted were substantially similar to those of other currently operating options exchanges, in particular, Cboe BZX Exchange, Inc. (“BZX Options”). Since that time, BZX Options and other options exchanges, including Cboe EDGX Exchange, Inc. (“EDGX Options”), have modified certain of those rules⁶ and as such, the Exchange wishes to propose the same modifications in order to conform to those rules at the time trading begins on MEMX Options.⁷

Specifically, the Exchange’s current Rule 19.5, Interpretation and Policy .05 limits

⁵ See Securities Exchange Act Release No. 95445 (August 9, 2022), 87 FR 49884 (August 12, 2022) (SR-MEMX-2022-010).

⁶ See Securities Exchange Act Release Nos. 95406 (August 1, 2022), 87 FR 48051 (August 5, 2022) (SR-CboeBZX-2022-042); 95407 (August 1, 2022), 87 FR 48055 (August 5, 2022) (SR-CboeEDGX-2022-034).

⁷ Currently, the Exchange plans to launch MEMX Options in September 2023.

the intervals between strikes in equity options listed as part of the Short Term Option Series Program, excluding Exchange-Traded Fund Shares and ETNs, that have an expiration date more than twenty-one days from the listing date (“Strike Interval Proposal”). The Strike Interval Proposal paragraph (f) includes a table that specifies the applicable strike intervals that would supersede subparagraph (e)⁸ for Short Term Option Series in equity options, excluding options on exchange-traded fund shares and on exchange-traded notes, which have an expiration more than 21 days from the listing date. The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Option Series Program, by utilizing limitations for intervals between strikes that have an expiration date more than 21 days from the listing date.

The Exchange proposes to amend Rule 19.5, Interpretation and Policy .05 to clarify the current rule text and amend the application of the table to account for potential conflicts within the Short Term Option Series Rules. Currently, Rule 19.5, Interpretation and Policy .05(f) provides that notwithstanding subparagraph (e),⁹ when Short Term Option Series in equity options (excluding options on ETFs and ETNs) have an expiration more than 21 days from the listing date, the strike interval for each option class will be based on the following table, and also states: *“to the extent there is conflict between applying subparagraph (e) above and the below table, the greater interval would apply.”* The existing table is as

⁸ Rule 19.5, Interpretation and Policy .05(e) states if a class does not trade in \$1 strike price intervals, the strike price interval for Short Term Option Series may be (i) \$0.50 or greater where the strike price is less than \$75; (ii) \$1.00 or greater where the strike price is between \$75 and \$150; or (iii) \$2.50 or greater for strike prices greater than \$150.

⁹ The proposed rule change makes a nonsubstantive change to correct the term “subparagraph” to “paragraph” in the introductory paragraph of Rule 19.5, Interpretation and Policy .05(f) as well as subparagraph (f)(3).

follows:

Tier	Average Daily Volume	Share Price ¹				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	\$1.00	\$1.00	\$1.00	\$5.00	\$10.00
3	0 to 1,000	\$2.50	\$5.00	\$5.00	\$5.00	\$10.00
<p>¹ The Share Price is the closing price on the primary market on the last day of the calendar quarter. In the event of a corporate action, the Share Price of the surviving company is utilized. The Average Daily Volume is the total number of option contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume is calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar quarter, the Average Daily Volume is calculated using the quarter prior to the last trading calendar quarter. <u>See</u> Rule 19.5, Interpretation and Policy .05(f)(1) and (2).</p>						

First, the Exchange proposes to add the phrase “which specifies the applicable interval for listing” to the end of the first sentence of paragraph (f). The table within that paragraph provides for the listing of intervals based on certain parameters (average daily volume and share price). The Exchange proposes to add the phrase “which specifies the applicable interval for listing” to clarify that the only permitted intervals are as specified in the table within paragraph (f), as proposed to be amended.

Second, the Exchange proposes to delete the final sentence of paragraph (f) which

indicates that in the event of a conflict between applying subparagraph (e) and the below table, the greater interval would apply, and amend the table in paragraph (f) to address situations in which there is a conflict between applying the intervals in paragraph (e) and the table in paragraph (f). Today, there are instances where a conflict is presented as between the application of the table within paragraph (f) and the rule text within paragraph (e) with respect to the correct interval. To address these potential conflicts, the Exchange included the final sentence in paragraph (f) that indicates to the extent there is a conflict between applying the current table within paragraph (f) and the rule text within paragraph (e), the greater interval would apply. However, in order to more clearly reflect this within the Rules and maintain consistency with other exchanges¹⁰, the Exchange proposes to amend the table in paragraph (f) to specify what the greater interval would be, and thus the interval the Exchange would apply, in the event of any possible conflict between the two rule provisions. While the substance of the rule does not change by this proposed modification, the Exchange believes that the amended table provides a simpler reference for Options Members. Specifically, the proposed rule change amends the table as follows:

Tier	Average Daily Volume	Share Price				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50 for strikes less than \$100 in Short Term Option Series Program classes and classes that trade in \$1 increments in non-Short Term Option Series \$1.00 for strikes between \$100 and \$150 for	\$1.00 for strikes less than \$150 \$2.50 for strikes greater than \$150	\$1.00 for strikes less than \$150 \$2.50 for strikes greater than \$150	\$5.00	\$5.00

¹⁰ See supra note 6.

		classes that do not otherwise trade in \$1.00 increments in non-Short Term Option Series \$2.50 for strikes greater than \$150				
2	Greater than 1,000 to 5,000	\$1.00 for strikes less than \$150 \$2.50 for strikes greater than \$150	\$1.00 for strikes less than \$150 \$2.50 for strikes greater than \$150	\$1.00 for strikes less than \$150 \$2.50 for strikes greater than \$150	\$5.00	\$10.00
3	0 to 1,000	\$2.50	\$5.00	\$5.00	\$5.00	\$10.00

Below are some examples to demonstrate the application of the proposed table:

Example 1: Assume a Tier 1 stock that closed on the last day of Q1 with a quarterly share price higher than \$75 but less than \$150. Therefore, utilizing the current table within paragraph (f), the interval would be \$1.00 for strikes added during Q2 even for strikes above \$150. However, paragraph (e) provides that the Exchange may list a Short Term Option Series at \$2.50 intervals where the strike price is above \$150. In other words, there is a potential conflict between the permitted strike intervals above \$150 during Q2. In this example, current paragraph (f) would specify a \$1.00 interval whereas current paragraph (e) would specify a \$2.50 interval. Consistent with selecting the greater interval (from current paragraph (e)), the permissible strike interval in this scenario would be \$2.50 as set forth in the proposed table. Therefore, during Q2, the following strikes would be eligible to list: \$152.50 and \$157.50. For strikes less than \$150, the following strikes would be eligible to list during Q2: \$149 and \$148 because Short Term Option Series with expiration dates more than 21 days from the listing date as well as Short Term Option Series with expiration dates less than 21 days from the listing date would both be eligible to list \$1 intervals pursuant to both paragraphs (e) and (f).

Example 2: Assume a Tier 2 stock that closed on the last day of Q1 with a quarterly share price less than \$25. Therefore, utilizing the current table within paragraph (f), the interval would be \$1.00 for strikes added during Q2 even for strikes above \$25. However, paragraph (e), as proposed to be amended, provides that the Exchange may list a Short Term Option Series at \$0.50 intervals where the strike is less than \$100, at \$1.00 intervals where the strike price is between \$100 and \$150, and at \$2.50 intervals where the strike price is above \$150. In other words, there is a potential conflict between the permitted strike intervals below \$100 and above \$150 during Q2. In this example, current paragraph (f) would specify a \$1.00 interval for strikes below \$100 whereas amended paragraph (e) would specify a \$0.50 interval. Consistent with selecting the greater interval (from current paragraph (f)), the permissible strike interval in this scenario for strikes below \$100 would be \$1.00 as set forth in the proposed table. For strikes between \$100 and \$150, there is no conflict, as both provisions would provide \$1.00 intervals for those strikes. For strikes above \$150, current paragraph (f) would specify a \$1.00 interval for strikes above \$150 whereas current paragraph (e) would specify a \$2.50 interval. Consistent with selecting the greater interval (from current paragraph (e)), the permissible strike interval in this scenario for strikes above \$150 would be \$2.50 as set forth in the proposed table.

Example 3: Assume a Tier 3 stock that closed on the last day of Q1 with a quarterly share price less than \$25. Therefore, utilizing the current table within paragraph (f), the interval would be \$2.50 for all strikes added during Q2. However, paragraph (e), as proposed to be amended, provides that the Exchange may list a Short Term Option Series at \$0.50 intervals where the strike price is less than \$100, \$1.00 intervals where the strike price is between \$100 and \$150, and \$2.50 intervals where the strike price is above \$150. In

other words, there is a potential conflict between the permitted strike intervals below \$150 during Q2 (there is no conflict for strikes above \$150, as both provisions provide for a \$2.50 strike interval). Consistent with selecting the greater interval (from current paragraph (f)), the permissible strike interval in this scenario for strikes below \$150 would be \$2.50 as set forth in the proposed table.¹¹

Finally, the Exchange proposes to amend Rule 19.5, Interpretation and Policy .05(e) to extend \$0.50 strike price intervals in equity options to short-term options with strike prices less than \$100 instead of the current \$75. This proposed change is intended to conform this provision of the Short Term Option Series Program to that of other options exchanges.¹² With this proposed change, for short term options in equity option classes that do not trade in \$1 strike price intervals, the strike price interval for Short Term Option Series may be (i) \$0.50 or greater where the strike price is less than \$100; (ii) \$1.00 or greater where the strike price is between \$100 and \$150; or (iii) \$2.50 or greater for strike prices greater than \$150.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with

¹¹ The Exchange made similar corresponding changes to the table for tier 1 and tier 2 stocks with prices \$25 to less than \$75 and \$75 to less than \$150, with all potential conflicts between current paragraphs (e) and (f) resolved to apply the greater interval.

¹² See, e.g., EDGX Rule 19.6, Interpretation and Policy .05(e).

¹³ 15 U.S.C. 78f(b).

the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the Strike Proposal continues to limit the intervals between strikes listed in the Short Term Option Series Program that have an expiration date more than twenty-one days.

In particular, the Exchange's proposed addition to the first sentence of Rule 19.5, Interpretation and Policy .05(f) is consistent with the Act because it clarifies that the only permitted intervals are as specified in the table within that subparagraph, as amended. The Exchange believes this proposed rule change will bring greater transparency to the rule. The proposed rule change to delete the final sentence of the introductory paragraph and amend the table within Rule 19.5, Interpretation and Policy .05(f) to address potential conflicts between that paragraph and paragraph (e) with respect to the correct strike interval is consistent with the Act because it protects investors and the public interest by adding transparency to the manner in which the Exchange implements its listing rules and

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

removes potential uncertainty. The proposed rule text specifies the applicable intervals when there is a conflict between the rule text within paragraphs (e) and (f), thereby providing certainty as to the outcome.

The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the Short Term Option Series Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date. The Exchange's proposal intends to continue to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs,¹⁶ rendering these strikes less useful. Also, the Strike Interval Proposal continues to reduce the number of strikes listed on the Exchange, allowing Market-Makers to expend their capital in the options market in a more efficient manner, thereby improving overall market quality on the Exchange.

Additionally, by providing more clarity as to which interval would apply between the current rule text within Rule 19.5, Interpretation and Policy .05(e) and (f), the Exchange is reducing the number of strikes listed in a manner consistent with the intent of the Strike Interval Proposal, which was to reduce strikes which were farther out in time. The result of this clarification is to select wider strike intervals for Short Term Option Series in equity options which have an expiration date more than twenty-one days from the listing date. This rule change would harmonize strike intervals as between inner weeklies (those having less than twenty-one days from the listing date) and outer

¹⁶ For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the-money.

weeklies (those having more than twenty-one days from the listing date) so that strike intervals are not widening as the listing date approaches.

The proposed rule change to extend current \$0.50 strike price intervals in equity options to short term options with strike prices less than \$100 will remove impediments to and perfect the mechanism of a free and open market and a national market system, because it will conform this portion of the Short Term Option Series Program to that of other options exchanges.¹⁷

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Strike Interval Proposal continues to limit the number of Short Term Option Series Program strike intervals available for quoting and trading on the Exchange for all Options Members.

The Exchange believes adding clarifying language to the first sentence of Rule 19.5, Interpretation and Policy .05(f) regarding which parameter the table within that provision amends within the Short Term Option Series Program will bring greater transparency to the rules. Amending the table within paragraph (f) to address potential conflicts as between the rule text of Rule 19.5, Interpretation and Policy .05(e) and (f) will bring greater transparency to and reduce potential confusion regarding the manner in which the Exchange implements its listing rules. Deleting the last sentence of the first paragraph of the introductory paragraph of Rule 19.5, Interpretation and Policy .05(f) does not impose an undue burden on competition and will avoid potential confusion

¹⁷ See, e.g., EDGX Rule 19.6, Interpretation and Policy .05(e).

because the table within paragraph (f) clarifies which strike intervals will apply in all scenarios. Extending current \$0.50 strike price intervals in equity options to short term options with strike prices less than \$100 will not impose an undue burden on competition, because it is consistent with the rules of other options exchanges.¹⁸

While this proposal continues to limit the intervals of strikes listed on the Exchange, the Exchange continues to balance the needs of market participants by continuing to offer a number of strikes to meet a market participant's investment objective. The Exchange's Strike Interval Proposal does not impose an undue burden on intermarket competition as this Strike Interval Proposal does not impact the listings available at another self-regulatory organization.

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

¹⁸ Id.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The proposed rule change is substantially similar to those of other currently operating options exchanges.²³ The Exchange states that it intends to launch MEMX Options on September 13, 2023 and that waiver of the 30-day operative delay would allow the Exchange to implement the proposed change to amend its rules as set forth above prior to launch, thus ensuring consistency of strike rules between the Exchange and other options exchanges. For these reasons, and because the proposed rule change does not raise any novel legal or regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ See supra note 6.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2023-18 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-2023-18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-MEMX-2023-18 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12), (59).