

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99017; File No. SR-MEMX-2023-25)

November 24, 2023

Self-Regulatory Organizations; MEMX LLC; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend its Fee Schedule to Establish an Options Regulatory Fee

I. Introduction

On September 27, 2023, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 (file number SR-MEMX-2023-25) to adopt an Options Regulatory Fee (“ORF”).³ The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴ The proposed rule change was published for comment in the Federal Register on October 4, 2023.⁵

Pursuant to Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (1) temporarily suspending file number SR-MEMX-2023-25; and (2) instituting proceedings to determine whether to approve or disapprove file number SR-MEMX-2023-25.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (“Notice”).

⁴ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ See Notice, supra note 3.

⁶ 15 U.S.C. 78s(b)(3)(C).

II. Description of the Proposed Rule Change

The Exchange proposes to establish an ORF in the amount of \$0.0015 per contract side.⁷ The per-contract ORF will be collected by the Options Clearing Corporation (“OCC”) on behalf of the Exchange for each options transaction, cleared or ultimately cleared by an Exchange member in the “customer” range, regardless of the exchange on which the transaction occurs. The ORF is collected from either: (1) a Member that was the ultimate clearing firm for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm for the transaction.⁸

According to the Exchange, the amount of the proposed ORF fee is “based on historical industry volume, projected volumes on the Exchange, and projected Exchange regulatory costs.”⁹ The Exchange states that “revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, will cover a material portion, but not all, of the Exchange’s regulatory costs.”¹⁰ The Exchange notes that it will monitor the amount of ORF revenue it collects “to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs.”¹¹

The Exchange proposes that the ORF will automatically sunset on September 30, 2024, approximately one year after the operative date.¹² The Exchange believes this will allow it time

⁷ See Notice, supra note 3, at 68692.

⁸ Id.

⁹ Id. at 68693.

¹⁰ Id.

¹¹ Id.

¹² Id. at 68692 and 68695.

to “gather the necessary data, including its actual regulatory costs and revenues, as well as the cost of regulating executions that clear in a customer capacity and executions that occur on away markets, while also allowing it to adequately cover a portion of the projected costs associated with the regulation of its Members.”¹³ According to the Exchange, allowing the collection of ORF from the outset of its operations on September 27, 2023 until September 30, 2023, when the fee will automatically sunset, will allow the Exchange to fund its regulatory program and collect evidence to provide to the Commission and inform its approach to ORF after the sunset period.¹⁴

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,¹⁵ at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,¹⁶ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

¹³ Id. at 68695.

¹⁴ Id.

¹⁵ 15 U.S.C. 78s(b)(3)(C).

¹⁶ 15 U.S.C. 78s(b)(1).

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange’s present proposal, they are required to provide a statement supporting the proposal’s basis under the Act and the rules and regulations thereunder applicable to the exchange.¹⁷ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements”¹⁸

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;¹⁹ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;²⁰ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²¹

In justifying its proposal, the Exchange stated that establishing an ORF in the amount of \$0.0015 is reasonable because it “will serve to balance the Exchange’s regulatory revenue against the anticipated regulatory costs” and “is lower than the amount of ORF assessed on other exchanges.”²² According to the Exchange, its ORF is designed to “generate revenues that, when

¹⁷ See 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

¹⁸ Id.

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f(b)(8).

²² See Notice, supra note 3, at 68695-96. Several other exchanges have a lower ORF rate than that proposed by the Exchange. See, e.g., Nasdaq ISE, available at

combined with all of the Exchange’s other regulatory fees, will be less than 75% of the Exchange’s regulatory costs. . . .”²³

The Exchange also asserted that the ORF is equitably allocated and not unfairly discriminatory because “it is charged to all Members on all their transactions that clear as customer at the OCC” and is “directly based on the amount of customer options business they conduct.”²⁴ In addition, the Exchange stated that “[r]egulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive.”²⁵ Further, the Exchange stated that it has “broad regulatory responsibilities with respect to a Members’ activities, irrespective of where their transactions take place” and notes that it “will not be able to effectively surveil [its Members’] conduct without looking at and evaluating activity across all options markets.”²⁶ Consequently, the Exchange imposes the ORF on all customer-range transactions cleared by a Member, even if the transactions do not take place on the Exchange and regardless of whether the transaction was executed by a member.²⁷

<https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207> (\$0.0013); Nasdaq GEMX, available at [Rules | Nasdaq GEMX](#) (\$0.0012); CboeEDGX, available at [Cboe EDGX Options Exchange Fee Schedule](#) (\$0.0001); and MIAX Emerald, available at https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_10122023_3.pdf (\$0.0006).

²³ See Notice, supra note 3, at 68696.

²⁴ Id.

²⁵ Id.

²⁶ Id. at 68693 and 68696.

²⁷ Id. The Exchange also states that its proposed collection method which is similar to that utilized by other options exchanges “was originally instituted for the benefit of clearing firms that desired to have the ORF be collected from the clearing firm that ultimately clears the transaction.” Id. at 68696.

Furthermore, the Exchange notes that implementing the proposed ORF with a sunset date of approximately one year after the operative date is reasonable because “it will give the Exchange adequate time to collect and analyze pertinent data while ensuring the Exchange, as a new entrant into equity options trading, is able to adequately fund its regulatory program to the same extent as its competitors.”²⁸

In temporarily suspending the Exchange’s proposed rule change, the Commission intends to further consider whether the proposal to establish an ORF in the amount of \$0.0015 is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange’s rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁹

Therefore, the Commission finds that it is necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.³⁰

²⁸ Id. at 68697.

²⁹ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

³⁰ For purposes of temporarily suspending the 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).

IV. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)³¹ and 19(b)(2)(B) of the Act³² to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³³ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(4) of the Act, which requires 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”³⁴ (emphasis added);

³¹ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

³² 15 U.S.C. 78s(b)(2)(B).

³³ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See id.

³⁴ 15 U.S.C. 78f(b)(4).

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers”³⁵ (emphasis added); and
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”³⁶

As noted above, the Exchange proposes to establish an ORF in the amount of \$0.0015 per contract side “based on historical industry volume, projected volumes on the Exchange, and projected Exchange regulatory costs.”³⁷ The Exchange also states that “revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange’s regulatory costs.”³⁸ However, those and other statements in support of its proposed establishment of an ORF are general in nature and lack sufficient detail and specificity.

For example, the Exchange does not elaborate on the “material portion” of options regulatory expenses that it seeks to recover from the ORF and why the threshold it selected (i.e., that ORF will “not exceed more than 75% of total annual regulatory costs”) correlates to the

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78f(b)(8).

³⁷ See Notice, supra note 3, at 68692.

³⁸ Id. at 68693.

degree of regulatory responsibility and expenses borne by the Exchange as it relates to the regulation of customer options transactions.³⁹ Further, the Exchange has not provided any quantifiable information to support its assertion that regulating customer trading activity is “much more labor-intensive” and therefore, more costly. The Exchange does not claim in its filing that its regulation of customer activity will consume 75% of total regulatory costs nor does it assert that customer activity will require a level of effort that will occupy 75% of the regulatory department’s attention. Further, the Exchange does not sufficiently analyze how funding 75% of its total regulatory costs (including direct and indirect expenses) from ORF constitutes an equitable allocation of reasonable fees among members, and it does not provide sufficient detail to allow the Commission and commenters to consider those issues.

Further, the Exchange has not provided specific or detailed information regarding the anticipated regulatory cost associated with regulating, monitoring, and surveilling on-exchange activity compared to activity that takes place on other exchanges (which exchanges assess their own ORF on those trades). In particular, the Exchange proposes to collect ORF on executions that do not occur on the Exchange. The proposed ORF rate is the same for on-exchange and off-exchange activity, so the proposal will result in the Exchange at least initially funding a very significant portion of its total regulatory costs from a fee charged on contracts that execute away from the Exchange. The Exchange does not provide a sufficiently detailed analysis or present specific facts to show the level of regulatory effort and regulatory costs it would expend on contracts that execute on other exchanges. Without more information in the filing on the

³⁹ See Notice, supra note 3, at 68693.

Exchange’s projected regulatory revenues, regulatory costs, and regulatory activities to supervise and regulate members, specifically, e.g., customer versus non-customer activity and on-exchange versus off-exchange activity, the proposal lacks specific information that can speak to whether the proposed ORF is reasonable, equitably allocated, and not unfairly discriminatory, particularly given that the ORF is assessed only on transactions that clear in the “customer” range and regardless of the exchange on which the transaction occurs.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”⁴⁰ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁴¹ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁴²

As explained above, the Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity. The Commission cannot unquestionably rely on an exchange’s statements and representations.⁴³ Instead, the Commission needs sufficient information to support independent findings that a proposal is consistent with the

⁴⁰ 17 CFR 201.700(b)(3).

⁴¹ See id.

⁴² See id.

⁴³ See *Susquehanna Int’l Grp., LLP v. SEC*, 866 F.3d 442, 447 (August 8, 2017).

requirements of the Act.⁴⁴ Here, such an analysis includes, among other things, whether the proposed ORF is an equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, as well as whether the proposed ORF is equitable and not unfairly discriminatory.

The Commission needs additional information from the Exchange to demonstrate how the proposal meets those and other applicable requirements of the Act, to assess whether the Exchange has established a sufficient nexus between the proposed ORF and the Exchange's regulation of customer trading activity both on and off exchange. While the Commission broadly solicits comment from all interested parties on the proposal, the Commission believes that the Exchange alone has access to much of the specific detail necessary to fully address these questions and concerns because these matters involve qualitative and quantitative information about the Exchange's operations. Specifically, among other things, the Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal contained in the Notice.⁴⁵ In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. Information on the Exchange's Projected Regulatory Costs and Revenues. The Exchange states that its proposed ORF rate is reasonable based on historical industry volume, projected volumes on the Exchange, and projected Exchange regulatory costs. The Exchange notes that its regulatory costs would include direct regulatory

⁴⁴ See id.

⁴⁵ See Notice, supra note 3.

expenses and certain indirect expenses for work “allocated in support of the regulatory function.”⁴⁶ According to the Exchange, indirect regulatory expenses (including, among other things, human resources, legal, information technology, facilities and accounting, as well as certain shared expenses necessary to operate the Exchange and carry out its regulatory function) are anticipated to be approximately 24% of the Exchange’s total regulatory costs for 2023 and 2024 and direct regulatory expenses are anticipated to be approximately 76% of the Exchange’s total regulatory costs for 2023 and 2024.⁴⁷ Do commenters believe the Exchange has provided adequate detail regarding these metrics? If not, what additional information should be provided to demonstrate how the proposal is consistent with the Act?

2. Information on the Exchange’s Imposition of ORF on Customer Orders. The Exchange states that it will ensure that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.⁴⁸ Do commenters believe that the Exchange has sufficiently analyzed and justified its proposal to fund 75% of its total regulatory expenses from a fee imposed only on options transactions clearing in the customer-range, where those expenses include the regulation of transactions that clear in the non-customer-range (e.g., broker-dealer and market maker trades)? In addition, explaining that the proposed ORF would be charged to “all Members on all their transactions that clear as customer at the OCC,” the Exchange states that such

⁴⁶ See Notice, supra note 3, at 68693.

⁴⁷ Id.

⁴⁸ See id.

methodology “ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct”⁴⁹ The Exchange further asserts that “[r]egulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive.”⁵⁰ According to the Exchange, “the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program.”⁵¹ Do commenters believe that the Exchange has provided sufficiently detailed quantitative and qualitative evidence in support of this aspect of its proposal? Specifically, examples of information that would be helpful to demonstrate how the assessment of ORF only on orders that clear in the customer-range correlates to the level of effort and costs the Exchange expends to regulate customer options transactions include: (a) the percentage of volume expected to clear in the customer-range both on and off the Exchange compared to the percentage of volume expected to clear in a range other than customer both on and off the Exchange; (b) the percentage of the Exchange’s regulatory budget that would be attributable to the regulation of orders that are expected to clear in the customer-range compared to the percentage of the Exchange’s

⁴⁹ Id. at 68696.

⁵⁰ Id.

⁵¹ Id.

regulatory budget that would be attributable to orders that are expected to clear in a range other than customer; (c) the anticipated percentage of the Exchange's regulatory level of effort that would be attributable to the regulation of orders that are expected to clear in the customer-range compared to the anticipated percentage of the Exchange's regulatory level effort that would be attributable to orders that are expected to clear in a range other than customer; and (d) the proportion of the Exchange's revenues, as reported in the most recent annual financials it submitted on Form 1, that would be represented by expected ORF revenues if those revenues had been included in the most recent annual financials.

3. Information on the Exchange's Assessment of ORF on Away-Market Activity. The Exchange states that it has "broad regulatory responsibilities with respect to a Member's activities, irrespective of where their transactions take place. . . ." ⁵² The Exchange therefore believes that it is appropriate to impose the ORF even where the transaction does not take place on the Exchange. ⁵³ Do commenters believe that the Exchange has provided sufficiently detailed quantitative and qualitative evidence in support of how the assessment of ORF on away-market transactions correlates to the effort it will expend on regulating away-market transactions compared to the level of effort the Exchange will invest in regulating transactions on Exchange? Specifically, examples of information that would be helpful to assess the application of the ORF to executions that do not occur on the Exchange include: (a) the projected percentage of

⁵² See id. at 68694.

⁵³ See id.

the Exchange's overall regulatory budget that is expected to be attributable to regulating away-market transactions compared to the projected percentage of the Exchange's overall regulatory budget that is expected to be attributable to regulating on-Exchange transactions; (b) the projected percentage of the Exchange's regulatory level of effort that is expected to be attributable to the regulation of away-market transactions compared to the projected percentage of the Exchange's regulatory level of effort that is expected to be attributable to the regulation of orders that execute on the Exchange; (c) the anticipated percentage of ORF revenue that is expected to be derived from away-market transactions compared to the anticipated percentage of ORF revenue that is expected to be derived from executions on the Exchange; and (d) more detail on the regulatory activities the exchange expects to perform for trades that do not occur on the Exchange.

4. Information on the Exchange's Regulatory Program Concerning Clearing Brokers.

The Exchange states that ORF is collected on "customer range" options transactions cleared or ultimately cleared by an Exchange member regardless of the exchange on which the transaction occurs.⁵⁴ The Exchange also will collect ORF from a non-Member clearing broker where a member was the executing firm and a non-Member was the ultimate clearing firm. Do commenters believe that the Exchange has provided sufficiently detailed quantitative and qualitative evidence in support of this aspect of its proposal? Specifically, examples of information that would be helpful to

⁵⁴ See id. at 68692.

provide context for the collection of ORF from member and non-member clearing brokers and determine whether a sufficient nexus exists between the ORF and the Exchange's regulation of clearing activity, include: (a) the percentage of the Exchange's regulatory expenses and level of regulatory activity that is expected to pertain to clearance and settlement activity and the percentage this is expected to account for with respect to the Exchange's overall regulatory costs and regulatory activity, and if that differs depending on whether the ultimate clearing firm is an Exchange member or not and whether the contract executes on the Exchange or not; (b) the number of "ultimate clearing firms" that are Exchange members compared to the number of "ultimate clearing firms" that are non-Members from which ORF is expected to be collected on behalf of the Exchange; and (c) the percentage of ORF revenues that is expected to be collected from Member clearing firms compared to the percentage of ORF revenue that is expected to be collected from non-Member clearing firms.

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with the requirements that exchange fees be reasonable, equitably allocated, and not unfairly discriminatory.⁵⁵

⁵⁵ See 15 U.S.C. 78f(b)(4), (5), and (8).

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register]. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵⁶

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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-2023-25 on the subject line.

⁵⁶ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2023-25. 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-2023-25 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,⁵⁷ that file number SR-MEMX-2023-25, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Christina Z. Milnor,

Assistant Secretary.

⁵⁷ 15 U.S.C. 78s(b)(3)(C).

⁵⁸ 17 CFR 200.30-3(a)(57) and (58).