

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99211; File No. SR-MEMX-2023-35)

December 20, 2023

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange’s Short Term Option Series Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 15, 2023, MEMX LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to expand the Exchange’s Short Term Option Series Program as set forth in Rule 19.5, Interpretation and Policy .05, to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (“USO”), United States Natural Gas Fund, LP (“UNG”), SPDR Gold Shares (“GLD”), iShares Silver Trust (“SLV”), and iShares 20+ Year Treasury Bond ETF (“TLT”) (collectively “Exchange Traded Products” or “ETPs”). The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Rule 19.5, Interpretation and Policy .05. Specifically, the Exchange proposes to expand the Short Term Option Series Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (“USO”), United States Natural Gas Fund, LP (“UNG”), SPDR Gold Shares (“GLD”), iShares Silver Trust (“SLV”), and iShares 20+ Year Treasury Bond ETF (“TLT”) (collectively “Exchange Traded Products” or “ETPs”). This is a competitive filing that is based on a proposal submitted from Nasdaq ISE, LLC (“Nasdaq ISE”) and recently approved by the Commission.³

Currently, as set forth in Rule 19.5, Interpretation and Policy .05, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire at the close of business on each of the next five Fridays that are

³ See Securities Exchange Act Release No. 98905 (November 13, 2023) (SR-ISE-2023-11) (Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products) (“Nasdaq ISE Approval”).

business days and are not Fridays on which monthly options series or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (“Short Term Options Weekly Expirations”). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Options Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday that the Short Term Options Weekly Expirations are set to expire, the Short Term Option Expiration Date for Short Term Options Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 19.5, Interpretation and Policy .05(h) that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time. In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Rule 19.5,

Interpretation and Policy .05(h), which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday QQQ and IWM Short Term Option Daily Expirations set forth in Rule 19.5, Interpretation and Policy .05,⁴ such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday USO Expirations,” “Wednesday UNG Expirations,” “Wednesday GLD Expirations,” “Wednesday SLV Expirations,” and “Wednesday TLT Expirations”) (collectively, “Wednesday ETP Expirations”).⁵ In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week’s listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in QQQ and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”).

⁴ The Exchange’s rules also provide for Wednesday expirations in SPY. As of the date of this filing SPY is not listed for trading on the Exchange.

⁵ While the relevant rule text in Rule 19.5, Interpretation and Policy .05(h) also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

Similar to Wednesday QQQ and IWM Short Term Option Daily Expirations within Rule 19.5, Interpretation and Policy .05(h), the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.⁶ Specifically, the Wednesday ETP Expirations will have a strike interval of \$0.50 or greater for strike prices below \$100, \$1 or greater for strike prices between \$100 and \$150, and \$2.50 or greater for strike prices above \$150.⁷ As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.- settled.

Pursuant to Rule 19.5, Interpretation and Policy .05(h), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, e.g., Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.⁸ The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional

⁶ See Rule 19.5, Interpretation and Policy .05(e).

⁷ See id.

⁸ See Rule 19.5, Interpretation and Policy .05(a).

series that are listed by other options exchanges.⁹ With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday QQQ and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday QQQ and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed

⁹ See id.

Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for QQQ and IWM.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is 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.

Similar to Wednesday expirations in QQQ and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

in the current Short Term Option Series for Wednesday QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity providers because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday QQQ and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as

needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday QQQ and IWM Expirations.¹²

The Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Rule 19.5, Interpretation and Policy .05(h) that currently apply to Wednesday QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly ETP expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission,¹³ as well as to competitive filings submitted by Cboe EDGX Exchange Inc.

¹² See Rule 19.5, Interpretation and Policy .05(h).

¹³ See supra note 1 [sic].

(“EDGX”),¹⁴ Cboe BZX Exchange Inc. (“BZX”)¹⁵ and BOX Exchange LLC (“BOX”)¹⁶ in which each respective exchange indicates that the filings were submitted as competitive responses to the Nasdaq ISE filing.

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not

¹⁴ See Exchange Act Release No. 99037 (November 29, 2023), 88 FR 84370 (December 5, 2023) (SR-CboeEDGX-2023-071).

¹⁵ See Exchange Act Release No. 99036 (November 29, 2023), 88 FR 84383 (December 5, 2023) (SR-CboeBZX-2023-096).

¹⁶ See Exchange Act Release No. 98997 (November 21, 2023), 88 FR 82929 (November 27, 2023) (SR-BOX-2023-27).

believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiver of the 30-day operative delay would ensure fair competition among the exchanges by allowing the Exchange to permit the listing of two

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

Wednesday expirations for options on the ETPs. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues.²¹ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 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-2023-35 on the subject line.

Paper Comments:

²¹ See *supra* note 3.

²² 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).

- 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-2023-35. 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-2023-35 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.²³

Christina Z. Milnor,

Assistant Secretary.

²³ 17 CFR 200.30-3(a)(12), (59).