1. Text of the Proposed Rule Change

(a) MEMX LLC ("MEMX" or the "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission (the "Commission") a proposal to amend Rule 21.7 related to the Exchange's opening procedures on MEMX Options. Specifically, the Exchange proposes to open options, other than index options, for trading after the System's observation after 9:30 a.m. Eastern Time of both: (i) the first disseminated transaction on the primary listing market in the securities underlying the options, and (ii) the Limit Up-Limit Down ("LULD") price bands applicable to the securities underlying the options as disseminated by the applicable Securities Information Processor ("SIP"). The Exchange currently opens options, other than index options, for trading following the first print disseminated pursuant to an effective national market system plan. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.[4]

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4(f)(6)(iii).

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the "Board"). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Anders Franzon General Counsel MEMX LLC (551) 370-1003	Molly Hartley Counsel MEMX LLC (551) 370-1089

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

a. Purpose

The Exchange proposes to amend Exchange Rule 21.7 regarding its opening process on MEMX Options. Currently, Rule 21.7(a) states that the System shall open options, other than index options, for trading based on the first transaction after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan.[5] Effectively, this means that the Exchange opens options for trading after the System observes any transaction in the underlying security, regardless of where that transaction occurs.

The Exchange proposes to amend this rule such that the System shall open options, other than index options, for trading after the System's observation after 9:30

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5 Rule 21.7(b) also states: "*In the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern Time, the Exchange shall determine the cause of the delay. The beginning of trading of options contracts in such class shall be delayed until the market for the underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts*." The Exchange is not proposing to modify this portion of the rule.

a.m. Eastern Time of both: (i) the first disseminated transaction *on the primary listing market* (emphasis added) in the securities underlying the options, and (ii) the LULD price bands applicable to the securities underlying the options as disseminated by the applicable SIP.[6]

The purpose of requiring that the "triggering transaction" occur on the primary listing market is to provide a more conservative opening process on the Exchange. The primary listing market conducts an opening auction in its listed securities which determines an official opening price for dissemination to the consolidated tape.[7] This opening auction assists in the price discovery process and helps ensure fair and orderly markets by determining the official opening price for the security, which in most cases is used by investors to inform their trading strategies for the trading day. Therefore, waiting for the opening print from the primary listing exchange before opening related options would provide the Exchange's customers additional confidence in submitting options orders to the Exchange, as this print provides more accurate pricing data in forming decisions related to overlying options orders. Further, the Exchange believes that this modified process would serve to avoid a possible scenario where the Exchange could open options based on its observation of a pre-market trade that occurred just prior to 9:30 a.m. but, due to processing latencies, did not print on the consolidated tape until after 9:30 a.m. The proposed change to the Exchange's opening process will thus be more conservative than the current opening process.

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6 LULD price bands are disseminated by the applicable SIP during Regular Trading Hours. See Sections I(S) and V(A)(1) of the LULD Plan.

7 See, e.g., Nasdaq Rule 4752, available at: https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules/, Cboe BZX Exchange Rule 11.23(b), available at: https://cdn.cboe.com/resources/regulation/rule_book/BZX_Exchange_Rulebook.pdf, and NYSE Rule 7.35, available at: https://nyseguide.srorules.com/rules .

The Exchange notes that other options exchanges require, among other data points, a quote or trade from the primary market for the underlying security prior to initiating options openings.[8] While those exchanges conduct a more complex opening auction process, the Exchange believes that this rule change nevertheless is more consistent with the triggering events required for other options exchanges to begin their opening processes in that the Exchange's revised opening process will also await a trade from the primary market for the underlying security.

The purpose of requiring the System's observation of LULD price bands prior to opening options is also to provide a more conservative opening process. The price bands are based on a reference price for each NMS stock, and the first reference price for a trading day is the opening price on the primary listing exchange, which in most cases results from the opening auction.[9] Accordingly, the SIPs disseminate the price bands promptly after receipt of the reference price from the primary listing exchange. This second data point will provide additional confidence to market participants that at the time options are opened on the Exchange, fulsome pricing information related to the

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8 See, e.g., Cboe BZX Exchange Rule 21.7(d)(1), which notes: "…*For equity options, the System initiates the opening rotation after a time period (which the Exchange determines for all classes) upon the earlier of: (A) the passage of two minutes (or such shorter time as determined by the Exchange) after the System's observation after 9:30 a.m. of either the first disseminated transaction or the first disseminated quote on the primary listing market in the security underlying an equity option; or (B) the System's observation after 9:30 a.m. of both the first disseminated transaction and the first disseminated quote on the primary listing market in the security underlying an equity option*. See also NYSE American Rule 925NY (b), which states: "…*At or after 9:30 a.m. Eastern Time, once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote, the related option series will be opened automatically based on the following principles and procedures:…"*

9 See Section (B) of the LULD Plan. The LULD Plan further provides that if a primary listing exchange opens with quotations, the "opening price" shall mean the closing price of the NMS Stock on the primary listing exchange on the previous trading day, or if no such closing price exists, the last sale on the primary listing exchange. See Section (1)(I) of the LULD Plan.

underlying has been disseminated and applicable safety mechanisms based on such pricing information are in place for the underlying.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and Section 6(b)(5),[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.

In particular, the Exchange believes that the proposal to modify Rule 21.7(a) to require a trade in the underlying security from the primary listing market and LULD price bands prior to opening options on that security will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors because this modification will provide market participants with a more conservative opening process and provide additional confidence that the options trading environment is open based on valid underlying pricing information and that applicable safety mechanisms based on such pricing information are in place for the underlying.

The Exchange also believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system,

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(5).

because it is more consistent with other options exchanges that require a quote or trade in the underlying from the primary listing market prior to opening options on their markets. While these other exchanges have more complex opening processes, the triggering event to initiate the opening process, whether that be a quote or a trade, originates from the primary listing market. Given that the primary listing market for the underlying conducts an opening auction that determines the official opening price for the security on the trading day, which is also utilized by the SIPs in calculating the applicable LULD price bands, the Exchange believes that waiting for that trade to occur and for such price bands to be disseminated prior to opening options on that security is a prudent measure to ensure there is more accurate pricing data available in the market when the Exchange commences trading of options overlying such security and that the underlying security is trading within the applicable price bands.

4. 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 proposed rule change would require that the triggering trade on an underlying security occur on the primary listing market, rather than any market center, and that applicable LULD price bands for the underlying security have been disseminated, ensuring that the triggering events result from the opening auction, which involves a robust price discovery process and ultimately determines the official opening price for the underlying symbol and contributes to the formation of the LULD price bands. Further, other options exchanges similarly require that their triggering events stem

from the primary listing market, as such, this change is ultimately more consistent with the opening processes of other options exchanges.[12]

The Exchange believes that the proposed rule change would not burden intramarket competition because the opening process is applicable to all Members. The Exchange also believes that the proposed rule change would not burden, but rather increase, intermarket competition as the Exchange believes that a more conservative opening process would ultimately make the Exchange a more attractive marketplace at the opening given the increased confidence that options would not open until the primary listing market published a trade and received LULD price bands.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[13] of the Act and Rule 19b-4(f)(6) thereunder[14] in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the

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12 See supra note 8.

13 15 U.S.C. 78s(b)(3)(A)(iii).

14 17 CFR 240.19b-4(f)(6).

Commission may designate if consistent with the protection of investors and the public interest.

Furthermore, Rule 19b-4(f)(6)(iii)[15] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

As noted above, the proposed change is intended to provide a more conservative opening process on the Exchange, whereby the triggering opening event would consist of a trade from the primary listing market of the underlying security, which is consistent with other options exchanges and thus does not raise any new issues that have not been previously considered by the Commission.[16] Therefore, this rule filing qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change merely seeks to modify the System's functionality such that it would not open options until it observed a trade in the underlying on the primary listing market, rather than any market center, as well as the applicable LULD price bands. This proposed modification will provide customer confidence that options pricing models align with the accurate opening price of the underlying security and that the underlying security is trading within the applicable

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15 17 CFR 240.19b-4(f)(6)(iii).

16 See supra note 8.

LULD price bands. The Exchange has scheduled the release of the proposed change for February 10, 2025, subject to applicable regulatory approvals. Thus, waiver of the operative delay will allow the Exchange to implement this process on February 10, 2025, rather than a later date due to the operative delay, thereby benefitting investors by sooner offering functionality that provides more confidence that options decisions are based on accurate pricing information for the underlying security and that the underlying security is trading within the applicable price bands. For these reasons, the Exchange respectfully requests that the Commission waive the 30-day operative delay.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Rule Change.