

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98303; File No. 4-546)

September 6, 2023

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan to Add MEMX, LLC, as a Participant

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2023, MEMX, LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) an amendment to the Options Order Protection and Locked/Crossed Market Plan (“Plan”).<sup>3</sup> The amendment adds MEMX as a Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

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<sup>1</sup> 15 U.S.C. 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), The NASDAQ Stock Market LLC (“Nasdaq”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX, Inc. (“Phlx”), NYSE Amex, LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). See also Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010)(adding BATS Exchange, Inc. (“BATS”) as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010)(adding C2 Options Exchange, Incorporated (“C2”) as a Participant); 66969 (May 12, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC (“BOX Options”) as a Participant); 70763 (October 28, 2013), 78 FR 65740 (November 1, 2013) (adding Topaz Exchange, LLC (“Topaz”) as a Participant); 70762 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding MIAX International Securities Exchange, LLC (“MIAX”) as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. (“EDGX”) as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016)(adding ISE MERCURY, LLC (“ISE Mercury”) as a Participant); 79896 (January 30, 2017), 82 FR 9264 (February 3, 2017)(adding MIAX Pearl “Pearl”) as a Participant); 85229 (March 1, 2019), 84 FR 8347 (March 7, 2019) (adding MIAX Emerald, LLC (“Emerald”) as a Participant).

<sup>4</sup> The term “Participant” is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MEMX as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, Emerald, ISE, ISE Gemini, ISE Mercury, MIAX, Nasdaq, Pearl, Phlx, NYSE MKT, and NYSE Arca. MEMX has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an Eligible Exchange<sup>5</sup> may become a Participant in the Plan by: (i) executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.<sup>6</sup>

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new Participant's name in Section 3(a) of the

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<sup>5</sup> Section 2(6) of the Plan defines an "Eligible Exchange" as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a "Participant Exchange" in the Options Clearing Corporation ("OCC") (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority ("OPRA") Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MEMX has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023.

<sup>6</sup> MEMX has represented that it has executed a copy of the current Plan, amended to include MEMX as a Participant and has sent each current Participant a copy of the executed Plan. See letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023..

Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

## II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>7</sup> because it has been designated as involving solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder.

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](mailto:rule-comments@sec.gov). Please include file number 4-546 on the subject line.

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<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(a)(1).

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 4-546. 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 4-546 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.<sup>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(85).