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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-90159; File No. SR-MEMX-2020-12]**

**Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 11.16 and Amend Rule 11.16(b)(2) Concerning the Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt**

October 13, 2020

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2020, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4.

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: (i) extend the pilot related to the market-wide circuit breaker in Rule 11.16 and (ii) amend Rule 11.16(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt. 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 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

**Extend the Market-Wide Circuit Breaker Pilot**

The Exchange proposes to extend the effectiveness of the Exchange's current rule applicable to market-wide circuit breakers ("MWCB") to the close of business on October 18, 2021. Portions of Rule 11.16, explained in further detail below, are currently operating as a pilot program which is currently set to expire at the close of business on October 18, 2020.<sup>5</sup>

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<sup>5</sup> See Exchange Rule 11.16.

Rule 11.16 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (i.e., market-wide circuit breakers). The MWCB mechanism adopted by other national securities exchanges was originally approved by the Commission to operate on a pilot basis,<sup>6</sup> the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),<sup>7</sup> including any extensions to the pilot period for the LULD Plan.<sup>8</sup> In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.<sup>9</sup> In light of the proposal to make the LULD Plan permanent, all U.S. equity exchanges and the Financial Industry Regulatory Authority, Inc. (“FINRA”) amended their rules to untie the pilot’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.<sup>10</sup> The pilot’s effectiveness was subsequently extended for an additional year to the close of business on October 18,

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<sup>6</sup> See, e.g., Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NYSE-2011-48).

<sup>7</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NYSE-2011-48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR-NYSE-2013-10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of a Rule Change to NYSE Rule 80B).

<sup>9</sup> See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR-NYSE-2019-19).

2020.<sup>11</sup> On May 4, 2020, the Commission approved MEMX’s Form 1 Application to register as a national securities exchange with rules including, on a pilot basis expiring on October 18, 2020, certain portions of MEMX Rule 11.16.<sup>12</sup>

The Exchange now proposes to amend Rule 11.16 to extend the pilot to the close of business on October 18, 2021. This filing does not propose any substantive or additional changes to Rule 11.16 other than the proposed change to Rule 11.16(b)(2) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt as further described below.

The market-wide circuit breaker under Rule 11.16 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges and FINRA adopted uniform rules on a pilot basis relating to market-wide circuit breakers in 2012, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity.<sup>13</sup> Market-wide circuit breakers provide for trading halts in all equities and options markets during a

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<sup>11</sup> See, e.g., Securities Exchange Act Release No. 87016 (September 19, 2019), 84 FR 50502 (September 25, 2019) (SR-NYSE-2019-51).

<sup>12</sup> See Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

<sup>13</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129) (“MWCB Approval Order”).

severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 11.16, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day’s closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. Under current Rule 11.16, a market decline that triggers a Level 3 halt, at any time during the trading day, would halt market-wide trading until the primary listing market opens the next trading day.<sup>14</sup>

Since the MWCB pilot was last extended in October 2019, the MWCB mechanism has proven itself to be an effective tool for protecting markets through turbulent times. In the Spring of 2020, at the outset of the worldwide COVID-19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, the previously-convened MWCB Taskforce (“Taskforce”) reviewed the March 2020 halts and considered whether any immediate changes to the MWCB mechanism should be made. The Taskforce, consisting of representatives from equities exchanges, futures exchanges, FINRA, broker-dealers, and other market participants, had been assembled in early 2020 to consider more generally

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<sup>14</sup> As described in further detail below, the Exchange proposes to amend this aspect of Rule 11.16 to conform to the rules of other exchanges.

potential changes to the MWCB mechanism. The Taskforce held ten meetings in the Spring and Summer of 2020 that were attended by Commission staff to consider, among other things: (1) whether to retain the S&P 500 Index as the standard for measuring market declines; (2) whether halts that occur shortly after the 9:30 a.m. market open cause more harm than good; and (3) what additional testing of the MWCB mechanism should be done.

After considering data and anecdotal reports of market participants' experiences during the March 2020 MWCB events, the Taskforce did not recommend immediate changes be made to the use of the S&P 500 Index as the reference price against which market declines are measured, or to the current MWCB mechanism which permits halts even shortly after the 9:30 a.m. market open. The Taskforce recommended creating a process for a backup reference price in the event that the S&P 500 Index becomes unavailable, and enhancing functional MWCB testing. The Taskforce also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%.

On September 17, 2020, the Director of the Division of Trading and Markets requested that the equities exchanges and FINRA prepare a more complete study of the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

In addition to the work of the Taskforce, the equities exchanges also moved forward in 2019 and 2020 with a plan to normalize their Day 2 opening procedures after a Level 3 MWCB halt, such that all exchanges would reopen on Day 2 with a standard opening auction. Other exchanges filed rule changes to that effect in March 2020,<sup>15</sup> and successfully tested the implementation of those changes on September 12, 2020. The Exchange proposes to adopt these changes as part of this proposal, as further described below.

#### **Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt**

Today, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day, which time may currently vary depending on the primary listing market. For example, if the primary listing market is the New York Stock Exchange (“NYSE”), NYSE would resume trading in its listed securities at 9:30 a.m. ET on the next trading day, and the Exchange would not be able to resume trading during the Exchange’s Pre-Market Session.<sup>16</sup> Alternatively, if the primary listing market is the Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, and therefore, the Exchange would resume trading at the commencement of the Pre-Market Session.

Earlier this year, other exchanges adopted rule changes to standardize their Day 2

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<sup>15</sup> See, e.g., Securities Exchange Act Release Nos. 88342 (March 6, 2020), 85 FR 14513 (March 12, 2020) (SR-NASDAQ-2020-003); 88420 (March 18, 2020), 85 FR 16696 (March 24, 2020) (SR-CboeEDGX-2020-012); 88402 (March 17, 2020), 85 FR 16436 (March 23, 2020) (SR-NYSE-2020-20).

<sup>16</sup> See Exchange Rule 1.5(x).

opening procedures following a Level 3 MWCB halt.<sup>17</sup> The Exchange proposes to adopt the standardized approach for resuming trading in all NMS Stocks following a Level 3 halt. The proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants.<sup>18</sup> As proposed, a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day. In other words, an exchange could resume trading in any security when it first begins trading under its rules and would not need to wait for the primary listing market to reopen trading in a security before it could start trading such security. Accordingly, under the proposal, the Exchange could begin trading all securities at the beginning of the Exchange’s Pre-Market Session.

To effect this change, the Exchange proposes to delete the language in Rule 11.16(b)(2) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day.<sup>19</sup> The proposed rule change would therefore allow each exchange to resume trading in all securities the next trading day following a Level 3 halt at whatever time such exchange normally begins trading under

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<sup>17</sup> See supra note 15.

<sup>18</sup> Of note, the U.S. futures markets, which have similar rules for coordinated MWCB halts, normally begin their “next day” trading session at 6:00 p.m. ET (for CFE and CME) or at 8:00 p.m. ET (for ICE).

<sup>19</sup> Presently, the Exchange’s equities trading day ends at 5:00 p.m. ET. See Exchange Rule 1.5(w).

its rules, which for the Exchange would be at the beginning of the Pre-Market Session at 7:00 a.m. ET under its current rules. The Exchange notes that the primary listing exchanges have already made and tested changes to facilitate this change by sending resume messages to the applicable securities information processor (“SIP”) to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

Having a consistent approach for all securities will make the opening process the day after a Level 3 halt more uniform and reduce complexity, which the Exchange believes is important after a significant market event. Based on industry feedback, the Exchange believes that opening in the normal course in all equity securities will be beneficial to the marketplace. By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. While the Exchange recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, the Exchange nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. Moreover, allowing the resumption of trading to occur on the Exchange at the beginning of the Pre-Market Session in all NMS Stocks will allow for

price formation to occur earlier in the trading day, which in turn allows market participants to react to news that has developed. As such, trading at the beginning of regular hours may be more orderly.

## 2. Statutory Basis

### **Extend the Market-Wide Circuit Breaker Pilot**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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. The market-wide circuit breaker mechanism under Rule 11.16 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional year would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020. Based on the results of that study, the Exchange expects to work with the Commission, FINRA, the other exchanges, and market participants to determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants.

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<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.16 should continue on a pilot basis because the MWCB will promote fair and orderly markets, and protect investors and the public interest.

#### **Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt**

The Exchange believes that the proposed change to Rule 11.16(b)(2) promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility, and how the markets will resume trading following a Level 3 market decline. As described above, the Exchange is seeking to adopt a standardized approach related to resuming trading in NMS Stocks after a Level 3 MWCB halt; this approach has already been adopted and tested by other national securities exchanges and FINRA.<sup>22</sup> In this regard, the Exchange believes that the proposal to resume trading in all securities following a Level 3 halt in the same manner that securities would open trading on a regular trading day (i.e., with continuous trading on the Exchange at the beginning of the Pre-Market Session at 7 a.m. ET) will benefit investors, the national market system, Exchange members, and the Exchange market by promoting a fair and orderly market and reducing confusion during a significant cross-market event.

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<sup>22</sup> See supra note 15.

By allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule changes would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks. Based on the foregoing, the Exchange believes the benefits to market participants from the MWCB under Rule 11.16 with the proposed standardized process for resuming trading in all securities following a Level 3 halt will promote fair and orderly markets, and protect investors and the public interest.

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 not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Exchange and the other SROs study the design and operation of the MWCB mechanism and the LULD Plan during the period of volatility in the Spring of 2020.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

The Exchange also does not believe that the proposed change to Rule 11.16(b)(2) will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed Level 3 rule change described above would standardize the opening process for all securities on the Exchange, which would make the opening process the day after a Level 3 halt more uniform and reduce complexity.

Further, the proposal is based on filings of other markets that have already adopted the proposed Level 3 rule change.<sup>23</sup>

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>24</sup> of the Act and Rule 19b-4(f)(6)<sup>25</sup> thereunder. Because the 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 Act and Rule 19b-4(f)(6) thereunder.<sup>26</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>27</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>28</sup>

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<sup>23</sup> See id.

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

<sup>27</sup> Id.

<sup>28</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 upon filing. Extending the pilot for an additional year will allow the uninterrupted operation of the existing pilot while the Exchange, FINRA, and the other exchanges conduct a study of the MWCB mechanism in consultation with market participants and determine if any additional changes to the MWCB mechanism should be made, including consideration of rules and procedures for the periodic testing of the MWCB mechanism with industry participants. With respect to the proposed change relating to the resumption of trading after a Level 3 halt, the Commission notes that it approved a substantively similar proposed rule change submitted by Nasdaq, and waiver of the operative delay will ensure consistency across the market centers and the timely implementation of the proposed rule change. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.<sup>29</sup>

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

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<sup>29</sup> 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).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2020-12 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-2020-12. This file number should be included on the subject line if e-mail 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 (<http://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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-MEMX-2020-12 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>30</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>30</sup> 17 CFR 200.30-3(a)(12).