



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99252; File No. SR-MEMX-2023-37]

### **Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Rules to Accommodate the Listing of Options Series that Would Expire at the Close of Business on the Last Business Day of a Calendar Month ("Monthly Options Series")**

December 28, 2023.

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 December 20, 2023, MEMX LLC ("MEMX" or "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 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.

#### *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 amend its Rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month ("Monthly Options Series"). 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*

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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.

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 Exchange proposes to amend its Rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month (“Monthly Options Series”). Pursuant to proposed Rules 19.5, Interpretation and Policy .08(a) and 29.11(k)(1),<sup>5</sup> the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on exchange-traded funds (“ETFs”).<sup>6</sup> In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.<sup>7</sup> The Exchange may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not

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<sup>5</sup> The proposed rule change defines the term “Monthly Options series” in Rule 29.2(k) (and re-letters current paragraphs (k) through (o) to be (l) through (p)) as a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month.

<sup>6</sup> The Exchange proposes to amend Rule 19.5(a) and (b) to provide that proposed Rule 19.5, Interpretation and Policy .08 will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series and will govern the procedures for opening Monthly Options Series, respectively. The proposed change to Rule 19.5(a) is consistent with language in current Rule 19.5(a) for other Short Term Option Series and Quarterly Options Series. The proposed rule change also makes a non-substantive correction to pluralize the term “policy” (to become “policies”) to be consistent with the terminology in the Rules. Additionally, the proposed rule change adds to Rule 19.5(b) that Interpretation and Policies .04 and .05 will govern the procedures for opening Quarterly Options Series and Short Term Option Series, respectively (as well as adding exception language to the beginning of that paragraph). This is merely a clarification, as Rule 19.5, Interpretations and Policies .04 and .05 clearly govern the opening procedures for those options listing programs. This proposed change is also consistent with Cboe Exchange, Inc. (“Cboe Options”) Rule 4.5(b), which has similar options listing programs.

<sup>7</sup> The Securities and Exchange Commission (the “Commission”) recently approved a Cboe Options proposed rule change to adopt a substantively identical Monthly Options Series program. See Securities Exchange Act Release No. 98915 (November 13, 2023) (SR-CBOE-2023-049) (“Cboe Options Approval Order”).

be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.<sup>8</sup> Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.<sup>9</sup> Monthly Options Series will be P.M.-settled.<sup>10</sup>

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term “reasonably related to the current price of the underlying security or index value of the underlying index” means that the exercise price is within 30% of the current underlying security price or index value.<sup>11</sup> Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to

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<sup>8</sup> The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Options Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April, May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Options Series, for example, were counted, the Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may roll their exposures in the longer-dated options (e.g. January 2025) prior to the expiration of the nearer-dated option (e.g. January 2024).

<sup>9</sup> See proposed Rules 19.5, Interpretation and Policy .08(b) and 29.11(k)(2).

<sup>10</sup> See proposed Rules 19.5, Interpretation and Policy .08(c) and 29.11(k)(3).

<sup>11</sup> See proposed Rules 19.5, Interpretation and Policy .08(d) and 29.11(k)(4). The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in Rule 29.11(g)(3). While different than the initial strike listing provision for the Quarterly Options Series program in current Rule 19.5, Interpretation and Policy .04(b), the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of \$5 or greater. For consistency, the Exchange also proposes to amend Rule 19.5, Interpretation and Policy .04(b) to incorporate the same provision for initial series.

meet customer demand, or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.<sup>12</sup> The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.<sup>13</sup>

By definition, Monthly Options Series can never expire in the same week as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Option Series<sup>14</sup> or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Rules 19.5, Interpretation and Policy .05 (introductory paragraph), (b), and (h) and 29.11(h) (introductory paragraph) and (2) to provide the Exchange will not list a Short Term Option Series in a class on a date on which a Monthly Options Series or Quarterly Options Series

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<sup>12</sup> See proposed Rules 19.5, Interpretation and Policy .08(e) and 29.11(k)(5).

<sup>13</sup> See proposed Rules 19.5, Interpretation and Policy .08(f) and 29.11(k)(6); *see also* Rule 19.5(d), (f), (g) and Interpretations and Policies .01 – .03 and .06 (permissible strike prices for ETF classes) and Rule 29.11(c) (permissible strike prices for index options).

<sup>14</sup> The proposed rule change clarifies in Rule 29.11(a)(3) that index options have expiration months and weeks, which expirations may occur in consecutive weeks as specified in Rule 29.11(h). This is merely a clarification, as Rule 29.11(h) currently permits weekly expirations. This language is consistent with Cboe Options Rule 4.13(a)(2). Additionally, the proposed rule change adds to rule 29.11(a)(3) that index options may expire more than 12 months out as specified elsewhere in the Rule. This is consistent with current Rule 29.11(b), which permits long term index options to expire between 12 and 180 months after issuance, as well as proposed Rule 29.11(k)(2), as discussed above.

expires.<sup>15</sup> Similarly, proposed Rules 19.5, Interpretation and Policy .08(b) and 29.11(k)(2) provide that no Monthly Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index or ETF class. In other words, the Exchange will not list a Short Term Option Series on an index or ETF if a Monthly Options Series on that index or ETF were to expire on the same date, nor will the Exchange list a Monthly Options Series on an ETF or index if a Quarterly Options Series on that index or ETF were to expire on the same date to prevent the listing of series with concurrent expirations.<sup>16</sup>

With respect to Monthly Options Series added pursuant to proposed Rules 19.5, Interpretation and Policy .08(a) through (f) and 29.11(k)(1) through (6), the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding this delisting policy, customer requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will

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<sup>15</sup> The Exchange also proposes to make a non-substantive change to Rules 19.5, Interpretation and Policy .05 and 29.11(h) to change current references to “monthly options series” to “standard expiration options series” (i.e., series that expire on the third Friday of a month), to eliminate potential confusion. The current references to “monthly options series” are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations. The proposed rule change also adds a heading to Rule 19.5, Interpretation and Policy .05 for consistency with other Interpretations and Policies in that Rule.

<sup>16</sup> The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Option Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Option Series on that index and both of which expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is reasonable given these series would not be identical (unlike if they were both P.M.-settled). This could not occur with respect to ETFs, as all Short Term Option Series on ETFs are P.M.-settled.

work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Monthly Options Series.<sup>17</sup>

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange's and the Options Price Reporting Authority's ("OPRA's") quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange notes that Rules 18.7 and 29.5 through 29.7 regarding position limits will apply to Monthly Options Series. These Rules provide that the position limits fixed by MEMX Options<sup>18</sup> and Cboe Options<sup>19</sup> apply to options contracts traded on MEMX Options, which would include Monthly Options Series.<sup>20</sup> As noted above, Cboe Options recently received Commission approval to adopt a substantively identical Monthly Options Series Program as the one proposed in this rule filing.<sup>21</sup> Pursuant to those recently approved Cboe Options rules, Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.<sup>22</sup> This is consistent with how position (and exercise) limits are currently imposed on series

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<sup>17</sup> See proposed Rules 19.5, Interpretation and Policy .08(g) and 22.11(k)(7).

<sup>18</sup> See MEMX Rule 18.7.

<sup>19</sup> See MEMX Rule 29.5.

<sup>20</sup> The Exchange issued Regulatory Notice 23-12 on September 14, 2023 which clarified its specific position limits applicable to options on the Exchange are those calculated and disseminated by the Options Clearing Corporation ("OCC"). See: <https://info.memxtrading.com/wp-content/uploads/2023/09/RegNotice-23-12-Options-Position-Limits.pdf>

<sup>21</sup> See Cboe Options Approval Order.

<sup>22</sup> See *id.*; see also Cboe Options Rules 8.30, Interpretation and Policy .09 (regarding position limits for options on stocks and ETFs), 8.31(e) (regarding position limits for broad-based index options), 8.32(f) (regarding position limits for industry index options), 8.33(c) (regarding position limits for micro and narrow-based indexes), and 8.34(c) (regarding position limits for individual stock or ETF based volatility index options). Pursuant to Cboe Options Rule 8.42 (and Exchange Rules 18.9 and 29.9), exercise limits for impacted index and ETF classes would be equal to the applicable position limits.

with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options within a class of index or ETF options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of four calendar months (i.e., the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards — such as position and exercise limits (and the aggregation of options overlying the same index or ETF) and reporting requirements – would continue to apply.

## 2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>23</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>24</sup> requirements

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<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>25</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index and ETF options listed pursuant to the proposed rule change based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at months' ends in the same way the Quarterly Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Option Series, which allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should

create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.<sup>26</sup> Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes.<sup>27</sup> As is the case with Quarterly Options Series, no Short Term Option Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investor confusion and thus protect investors and the public interest. Given that Quarterly Options Series the Exchange currently lists are essentially Monthly Options Series that can expire at the end of only certain calendar months, the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange's and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

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<sup>26</sup> Compare proposed Rules 19.5, Interpretation and Policy .08 and 29.11(k) to Rules 19.5, Interpretation and Policy .04 and 29.11(g), respectively.

<sup>27</sup> The Exchange notes the proposed maximum number of expirations is consistent with the maximum number of expirations permitted for end-of-month series in index classes. See Rule 29.11(j)(2) (which references Rule 29.11(a)(3), which permits up to 12 standard monthly expirations on the majority of index options currently listed on the Exchange).

The Exchange further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same ETF or index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series and Quarterly Options Series).<sup>28</sup> Therefore, options positions within ETF or index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently trades Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of four calendar months (i.e., the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique

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<sup>28</sup> See Cboe Options Approval Order; *see also* Cboe Options Rules 8.30, Interpretation and Policy .09 (regarding position limits for options on stocks and ETFs), 8.31(e) (regarding position limits for broad-based index options), 8.32(f) (regarding position limits for industry index options), 8.33(c) (regarding position limits for micro narrow-based indexes), and 8.34(c) (regarding position limits for individual stock or ETF based volatility index options). Pursuant to Cboe Options Rule 8.42 (and Exchange Rules 18.9 and 29.9), exercise limits for impacted index and ETF classes would be equal to the applicable position limits.

regulatory concerns because existing safeguards — such as position and exercise limits (and the aggregation of options overlying the same ETF or index) and reporting requirements – would continue to apply.

*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. The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.<sup>29</sup> Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index and ETF options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes.<sup>30</sup> Monthly Options Series will trade on the Exchange in the same manner as other options in the same class.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from

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<sup>29</sup> See Rules 19.5, Interpretation and Policy .04 and 29.11(g).

<sup>30</sup> See *supra* note 27.

proposing similar rules.<sup>31</sup> As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index or ETF options, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Option Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposed rule change regarding aggregation of positions for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Option Series and Quarterly Options Series). Therefore, positions in options in a class of ETF or index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market

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<sup>31</sup> As noted above, at least one other options exchange recently adopted a substantively identical Monthly Options Series program. *See* Cboe Options Approval Order.

impacts surrounding the use of options.

*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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>32</sup> and Rule 19b-4(f)(6) thereunder.<sup>33</sup> 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 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)(iii) of the Act<sup>34</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>35</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>36</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>37</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may list Monthly Options Series immediately, which the Exchange believes will benefit investors by promoting competition in Monthly Options Series. The Exchange notes that its proposal is substantively identical to the proposal submitted by Cboe Exchange, Inc. for its Monthly Options Series program.<sup>38</sup> The

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<sup>32</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>33</sup> 17 CFR 240.19b-4(f)(6).

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>35</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

<sup>36</sup> 17 CFR 240.19b-4(f)(6).

<sup>37</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>38</sup> See Cboe Monthly Approval Order, *supra* note 7.

Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>39</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 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](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2023-37 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-2023-37. This file number should be included on the subject line if email is used. To help the Commission process and

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<sup>39</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).

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-2023-37 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>40</sup>

**Christina Z. Milnor,**

*Assistant Secretary.*

[FR Doc. 2023-28950 Filed: 1/3/2024 8:45 am; Publication Date: 1/4/2024]

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<sup>40</sup> 17 CFR 200.30-3(a)(12), (59).