

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 19.3 (Criteria for Underlying Securities) to permit an underlying security having a market capitalization of at least \$3 billion based upon the price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act³ 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

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.

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

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

a. Purpose

In August 2022, the Commission approved the Exchange's adoption of rules to govern the trading of options on the Exchange by MEMX Options⁵, which will be a facility of the Exchange. The Exchange plans to launch MEMX Options in September 2023, and in advance of that launch, the Exchange is proposing a listings rule change applicable to options that is substantially similar in all material respects to the proposal approved from NYSE American LLC ("NYSE American").⁶ Specifically, the Exchange proposes to amend Rule 19.3 (Criteria for Underlying Securities) to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day. This is a competitive filing that is based on a proposal recently submitted by NYSE American and approved by the Commission.⁷

The purpose of the proposed rule change is to amend Rule 19.3 (Criteria for Underlying Securities) (the "Rule") as set forth below. Following discussions with other

⁵ See Securities Exchange Act Release No. 95445 (August 9, 2022), 87 FR 49884 (August 12, 2022) (SR-MEMX-2022-010).

⁶ See Securities Exchange Act Release No. 98013 (July 27, 2013) (Order Approving SR-NYSEAMER-2023-27).

⁷ Id.

exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (“LOMSWG”) (collectively, the “Industry Working Group”), the Exchange proposes to modify the standard set forth in the Rule for the listing and trading of options on “covered securities” to reduce the time to market.

Rule 19.3(b)(5)(A) sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are “covered securities,” as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”).⁸ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on the underlying security (the “three-day lookback period”).⁹ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO’d security would then be eligible for trading on the Exchange on Friday (i.e., within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing

⁸ Rule 19.3(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See MEMX Rule 19.3(a)(1) and (2).

⁹ See MEMX Rule 19.3(b)(5)(A). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security”. See MEMX Rule 19.3(b)(5)(B).

time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. In this regard, the Industry Working Group has recently identified proposed changes to Rule 19.3(b)(5)(A) that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier.¹⁰ The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.¹¹ The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO'd securities.

Accordingly, the Exchange proposes to modify Rule 19.3 to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (i.e., not inclusive of the day of the IPO).¹²

¹⁰ See proposed Rule 19.3(b)(5)(A)(2). The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (1) and (2) of paragraph (5)(A). See proposed Rule 19.3(b)(5)(A).

¹¹ While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its surveillance technologies and procedures adequately address potential violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

¹² The Exchange acknowledges that the Options Listing Procedures Plan (or "OLPP") requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3., available here: <https://www.theocc.com/getmedia/198bfc93-5d51-443c->

NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and stated that it is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement. Specifically, NYSE American determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the \$3 billion market capitalization/IPO offering price threshold. Options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, i.e., none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading. As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO'd security could then be eligible for trading on the Exchange on Wednesday (i.e., starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days. The Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all

[9e5bfd575a0a7d0f/options_listing_procedures_plan.pdf](#). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹³ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹⁴ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation Date

The Exchange will announce the effective date of the proposed change by Notice distributed to all Members.¹⁵ The Exchange will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and Section 6(b)(5)¹⁷, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹³ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a Regulatory Services Agreement. The Exchange is responsible for FINRA's performance under this Regulatory Services Agreement.

¹⁴ See *supra* note 11.

¹⁵ The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. See Rule 1.5(p).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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 the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. As noted above, NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and it is unaware of an IPO'd security with a market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement. The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by

mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁸

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁹ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the \$3.00/share threshold for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential concerns regarding possible manipulation or price stability.

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

¹⁸ See supra note 11.

¹⁹ See supra note 13.

of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE American that was recently approved by the Commission.²⁰ The Exchange anticipates that the other options exchanges will adopt substantively similar proposals²¹, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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)

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its

²⁰ See *supra* note 6.

²¹ BOX Exchange LLC ("BOX") recently filed a similar proposal. See Securities Exchange Act Release No. 98073 (August 7, 2023) (SR-BOX-2023-21).

intent to file the proposed rule change, along with a brief description and text of the proposed rule change, prior to the date of filing the proposed rule change as required by Rule 19b-4(f)(6).²² The proposed rule change is substantially similar in all material respects to a proposal submitted by NYSE American that was recently approved by the Commission.²³ The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those raised in the NYSE American filing. The Exchange requests that the Commission waive the pre-filing period and the 30 day operative delay period. Waiver of the pre-filing period and the operative delay is consistent with the protection of investors and the public interest because it will ensure fair competition among the exchanges by allowing the Exchange to allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 of the Act.

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

As discussed above, the Exchange believes that the proposed rule change is substantially similar in all material respects to a proposal submitted by NYSE American that was recently approved by the Commission.²⁴

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

²² 17 CFR 240.19b-4(f)(6).

²³ See supra note 6.

²⁴ Id.

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.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-17]
[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of a Proposed Rule Change to Amend Rule 19.3 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPOs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 proposes to amend MEMX Rule 19.3 (Criteria for Underlying Securities) to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

In August 2022, the Commission approved the Exchange’s adoption of rules to govern the trading of options on the Exchange by MEMX Options⁵, which will be a facility of the Exchange. The Exchange plans to launch MEMX Options in September 2023, and in advance of that launch, the Exchange is proposing a listings rule change applicable to options that is substantially similar in all material respects to the proposal approved from NYSE American LLC (“NYSE American”).⁶ Specifically, the Exchange proposes to amend Rule 19.3 (Criteria for Underlying Securities) to permit an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, to be listed and traded starting on or after the second business day following the initial public offering day. This is a competitive filing that is based on a proposal recently submitted by NYSE American and approved by the Commission.⁷

⁵ See Securities Exchange Act Release No. 95445 (August 9, 2022), 87 FR 49884 (August 12, 2022) (SR-MEMX-2022-010).

⁶ See Securities Exchange Act Release No. 98013 (July 27, 2013) (Order Approving SR-NYSEAMER-2023-27).

⁷ Id.

The purpose of the proposed rule change is to amend Rule 19.3 (Criteria for Underlying Securities) (the “Rule”) as set forth below. Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group (“LOMSWG”) (collectively, the “Industry Working Group”), the Exchange proposes to modify the standard set forth in the Rule for the listing and trading of options on “covered securities” to reduce the time to market.

Rule 19.3(b)(5)(A) sets forth the guidelines to be considered in evaluating for option transactions underlying securities that are “covered securities,” as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”).⁸ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on the underlying security (the “three-day lookback period”).⁹ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO’d security would then be eligible for trading on the Exchange on Friday (i.e., within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).

⁸ Rule 19.3(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See MEMX Rule 19.3(a)(1) and (2).

⁹ See MEMX Rule 19.3(b)(5)(A). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security”. See MEMX Rule 19.3(b)(5)(B).

The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. In this regard, the Industry Working Group has recently identified proposed changes to Rule 19.3(b)(5)(A) that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier.¹⁰ The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.¹¹ The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO'd securities.

Accordingly, the Exchange proposes to modify Rule 19.3 to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day

¹⁰ See proposed Rule 19.3(b)(5)(A)(2). The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (1) and (2) of paragraph (5)(A). See proposed Rule 19.3(b)(5)(A).

¹¹ While the Exchange acknowledges that market participants may utilize options for speculative purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its surveillance technologies and procedures adequately address potential violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

following the initial public offering day (i.e., not inclusive of the day of the IPO).¹²

NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and stated that it is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement. Specifically, NYSE American determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the \$3 billion market capitalization/IPO offering price threshold. Options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, i.e., none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading. As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO'd security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO'd security could then be eligible for trading on the Exchange on Wednesday (i.e., starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO'd securities by two days. The Exchange believes the proposed change

¹² The Exchange acknowledges that the Options Listing Procedures Plan (or "OLPP") requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3., available here: https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5bfd575a0a7d0f/options_listing_procedures_plan.pdf. The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

would allow options on IPO'd securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹³ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹⁴ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation Date

The Exchange will announce the effective date of the proposed change by Notice distributed to all Members.¹⁵ The Exchange will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

¹³ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a Regulatory Services Agreement. The Exchange is responsible for FINRA's performance under this Regulatory Services Agreement.

¹⁴ See supra note 11.

¹⁵ The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. See Rule 1.5(p).

Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative 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 the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities -- well above the \$3.00 per share threshold -- that would obviate the need for the three-day lookback period. As noted above, NYSE American has reviewed trading data for IPO'd securities dating back to 2017 and it is unaware of an IPO'd security with a market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement. The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁸

Further, as noted herein, the Exchange believes the proposed change would allow options on IPO'd securities to come to market sooner (i.e., at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities -- like all other securities traded on the Exchange -- is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁹ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the \$3.00/share threshold for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential

¹⁸ See supra note 11.

¹⁹ See supra note 13.

concerns regarding possible manipulation or price stability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSE American that was recently approved by the Commission.²⁰ The Exchange anticipates that the other options exchanges will adopt substantively similar proposals²¹, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed,

²⁰ See *supra* note 6.

²¹ BOX Exchange LLC ("BOX") recently filed a similar proposal. See Securities Exchange Act Release No. 98073 (August 7, 2023) (SR-BOX-2023-21).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)²³ thereunder.

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2023-17 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-2023-17. This file

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4.

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 (<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, 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; Proposed deletions are in [brackets].

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CHAPTER 19. SECURITIES TRADED ON MEMX OPTIONS

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Rule 19.3. Criteria for Underlying Securities

- (a) No change.
- (b) No change.
 - (1) – (4) No change.
 - (5) Either:

(A) if the underlying security is a “covered security” as defined under Section 18(b)(1)(A) of the Securities Act of 1933: ~~[(1)]~~ (1) the market price per share of the underlying security has been at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; however, (2) the requirements set forth in (5)(A)(1) will be waived during the three days following its initial public offering day for an underlying security having a market capitalization of at least \$3 billion based upon the offering price of its initial public offering, and may be listed and traded starting on or after the second business day following the initial public offering day; or

(B) if the underlying security is not a “covered security,” the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

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