





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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05 and related definition in Rule 16.1. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.<sup>4</sup>

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.

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

Anders Franzon  
General Counsel

Molly Hartley  
Counsel

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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(f)(6)(iii).

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

a. Purpose

The purpose of the proposed rule change is to amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05, and amend the definition of Short Term Option Series in Rule 16.1.

In August 2022, the Commission approved the Exchange's adoption of rules to govern the trading of options on the Exchange by MEMX Options<sup>5</sup>, which will be a facility of the Exchange. The rules adopted were substantially similar to those of other currently operating options exchanges, in particular, Cboe BZX Exchange, Inc. ("BZX Options"). Since that time, BZX Options and other options exchanges, including Cboe EDGX Exchange, Inc. ("EDGX Options"), have modified certain of those rules<sup>6</sup> and, as such, the Exchange wishes to propose the same modifications in order to conform to those rules at the time trading begins on MEMX Options.<sup>7</sup>

Specifically, the Exchange proposes to amend the Short Term Option Series Program to: (i) limit the number of Short Term Option Expiration Dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ Trust<sup>SM</sup>, Series 1 (QQQ), and iShares Russell 2000 ETF (IWM) from five to two expirations for Monday and

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

<sup>6</sup> See Securities Exchange Act Release Nos. 96313 (November 15, 2022), 87 FR 70869 (November 21, 2022) (SR-CboeBZX-2022-056); 96320 (November 15, 2022), 87 FR 70880 (November 21, 2022) (SR-CboeEDGX-2022-051); see also Securities Exchange Act Release No. 96281 (November 9, 2022), [87 FR 68769](#) (November 16, 2022) (SR-ISE-2022-18).

<sup>7</sup> Currently, the Exchange plans to launch MEMX Options in September 2023.

Wednesday expirations; and (ii) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations. The Exchange also proposes to amend the definition of Short Term Option Series in Rule 16.1.

#### Curtail Short Term Option Expiration Dates

Currently, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (“Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Short Term Option Expiration Dates not including any Monday or Wednesday SPY, QQQ, and IWM Expirations. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

Today, with respect to Wednesday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on SPY, QQQ, and IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations,” “Wednesday QQQ Expirations,” and “Wednesday IWM

Expirations”). With respect to Monday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY, QQQ, or IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire (“Monday SPY Expirations,” “Monday QQQ Expirations,” and “Monday IWM Expirations”), provided that Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and five consecutive Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations at one time; the Exchange may have no more than a total of five each of Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and a total of five each of Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations. Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations will be subject to the provisions of Rule 19.5, Interpretation and Policy .05.

#### Proposal

At this time, the Exchange proposes to curtail the number of Short Term Option Expiration Dates from five to two<sup>8</sup> for Monday and Wednesday Expirations in SPY, QQQ and IWM, as well as the proposed Tuesday and Thursday Expirations in SPY and QQQ (“Short Term Option Daily Expirations”). The Exchange proposes to create a new category of Short Term Option Expiration Dates called “Short Term Option Daily

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<sup>8</sup> The Exchange proposes to list the two front months for Short Term Option Daily Expirations.

Expirations,” which will only permit two Short Term Option Expiration Dates for each of the Monday, Tuesday, Wednesday, and Thursday expirations at any one time. The Exchange proposes to include a table, labelled “Table 1”, within Rule 19.5, Interpretation and Policy .05(h), which specifies each symbol which qualifies as a Short Term Option Daily Expiration. The table would note the number of expirations for each symbol as well as expiration days. The Exchange proposes to include Monday and Wednesday expirations for SPY, QQQ, and IWM and Tuesday and Thursday expirations for SPY and QQQ and list the number of expirations as “2” for these symbols. The Exchange’s proposal to permit Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is explained below in more detail. In the event Short Term Option Daily Expirations expire on the same day in the same class as a monthly options series or a Quarterly Options Series, the Exchange would skip that week’s listing and instead list the following week; the two weeks of Short Term Option Expiration Dates would therefore not be consecutive. Specifically, the Exchange proposes to state within Rule 19.5, Interpretation and Policy .05(h):

In addition to the above, the Exchange may open for trading series of options on the symbols provided in Table 1 below that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days on which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”). The Exchange may have no more than a total of two Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. Short Term Option Daily Expirations would be subject to this Interpretation and Policy .05.

SPY, QQQ, and IWM Friday expirations and other option symbols expiring on a Friday that are not noted in Table 1 will continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays on which monthly

options series or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”). These expirations would be referred to as “Short Term Option Weekly Expirations” to distinguish them from the proposed expirations that would be subject to Short Term Option Daily Expirations. The Exchange proposes to add rule text to Rule 19.5, Interpretation and Policy .05(h) which states that Monday Short Term Option Expiration Dates, Tuesday Short Term Option Expiration Dates, Wednesday Short Term Option Expiration Dates, and Thursday Short Term Option Expiration Dates, together with Friday Short Term Option Expiration Dates, are collectively “Short Term Option Expiration Dates.”<sup>9</sup>

#### Tuesday and Thursday Expirations

At this time, the Exchange proposes to expand the Short Term Option Series Program for Short Term Option Daily Expirations on Tuesday (“Tuesday Short Term Option Daily Expirations) and Short Term Option Daily Expirations on Thursday (“Thursday Short Term Option Daily Expirations”). No more than a total of two Tuesday Short Term Option Daily Expirations or Thursday Short Term Option Daily Expirations in SPY and QQQ will be listed at any one time beyond the current week. Tuesday and Thursday Short Term Option Daily Expirations would be subject to Rule 19.5, Interpretation and Policy .05.

A Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday, or Friday that is a business day and that expires

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<sup>9</sup> Defining the term “Short Term Option Expiration Dates” will make clear that this term includes expiration dates for each day Short Term Options are listed.

on the Monday, Wednesday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

The Exchange proposes to amend this definition in Rule 16.1 to accommodate the listing of options series that expire on Tuesdays and Thursdays. Specifically, the Exchange proposes to add Tuesday and Thursdays to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open for trading.

The Exchange also proposes corresponding changes within Rule 19.5, Interpretation and Policy .05, which sets forth the requirements for SPY and QQQ options that are listed pursuant to the Short Term Option Series Program as Short Term Option Daily Expirations, to accommodate the listing of options series that expire on Tuesdays and Thursdays.

Similar to Monday and Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 19.5, Interpretation and Policy .05, the Exchange proposes that it may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays beyond the current week that are business days and are not business days in which monthly options series or Quarterly Options Series expire (“Tuesday Short Term Option Expiration Date”).

Likewise, the Exchange proposes that it may open for trading on any Wednesday or Thursday that is a business day series of options on symbols provided in Table 1 that expire at the close of business on each of the next two Thursdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (“Thursday Short Term Option Expiration Date”).

In the event that options on SPY and QQQ expire on a Tuesday or Thursday and that Tuesday or Thursday is the same day that a monthly option series or Quarterly Options Series expires, the Exchange would skip that week’s listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series. Currently, there is no rule text provision that states that Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a monthly option series. Practically speaking, Monday and Wednesday Expirations in SPY, QQQ, and IWM would not expire on the same day as a monthly expiration.

The interval between strike prices for the proposed Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will be the same as those for the current Short Term Option Series for Monday, Wednesday, and Friday expirations applicable to the Short Term Option Series Program.<sup>10</sup> Specifically, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will have a \$0.50 strike interval minimum.<sup>11</sup> As is the

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<sup>10</sup> See Rule 19.5, Interpretation and Policy .05(e)

<sup>11</sup> See id.

case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to proposed Rule 19.5, Interpretation and Policy .05, with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series will expire on the first business day immediately prior to that Tuesday or Thursday, e.g., Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.<sup>12</sup> The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.<sup>13</sup> This thirty (30) series restriction would apply to Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY and QQQ options expiring on Tuesdays and Thursdays with a limit of two Tuesday Short Term Daily Expirations and two Thursday Short Term Daily Expirations beyond the current week.

Finally, the Exchange is amending Rule 19.5, Interpretation and Policy .05(b) to conform the rule text to the usage of the term “Short Term Option Daily Expirations.” Today, with the exception of Monday and Wednesday SPY Expirations, Monday and

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<sup>12</sup> See Rule 19.5, Interpretation and Policy .05(a).

<sup>13</sup> See id.

Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion. Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.<sup>14</sup> Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days on which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday Short Term Option Daily Expirations, as other Exchanges have already adopted identical rules, and the Exchange

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<sup>14</sup> While the Exchange proposes to add rule text within Rule 19.5, Interpretation and Policy .05 with respect to Monday Expirations, Tuesday Expirations, and Wednesday Expirations stating that those expirations would not expire on business days on which monthly options series expire, practically speaking this would not occur.

will have surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday and Wednesday for SPY, QQQ and IWM.

b. 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>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirements 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>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with the Act as the overall reduction offered by this proposal reduces the number of Short Term Option Expirations to be listed on the Exchange. This reduction would remove impediments to and perfect the mechanism of a free and open market by encouraging Market-Makers to continue to deploy capital more

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> Id.

efficiently and improve displayed market quality.<sup>18</sup> Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ and IWM Monday and Wednesday Short Term Daily Expirations), the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday expirations (proposed to be SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

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<sup>18</sup> Market-Makers are required to quote a specified time in their assigned options series. See Rule 22.6.

In particular, the Exchange believes the Short Term Option Series Program as implemented by other exchanges has been successful to date and that Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should create greater trading and hedging opportunities and flexibility and will provide customers with the ability to tailor their investment objectives more effectively.

Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange believes that permitting Short Term Option Daily Expirations to expire in the same week that standard monthly options expire on Fridays is consistent with the Act. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series

expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is consistent with the Act to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire similar to Monday and Wednesday SPY, QQQ, and IWM Expirations.

There are no material differences in the treatment of Wednesday SPY and QQQ expirations for Short Term Option Series as compared to the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations. Given the similarities between Wednesday SPY, QQQ and IWM Expirations and the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, the Exchange believes that applying the provisions in Rule 19.5, Interpretation and Policy .05 that will apply to Wednesday SPY, QQQ and IWM Expirations to Tuesday and Thursday SPY and QQQ Short Term Daily Expirations is justified.

The Exchange further represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series.

Finally, as previously noted, the proposed rule change is substantively the same as a rule change proposed by BZX Options and EDGX Options, which the Commission approved in 2022.<sup>19</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, rather, it should encourage Market-Makers to continue to deploy capital more efficiently and improve displayed market quality.<sup>20</sup> Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ and IWM Monday and Wednesday Expirations, the Exchange believes the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday Short Term Daily

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<sup>19</sup> See supra note 6.

<sup>20</sup> See supra note 18.

Expirations will allow market participants to purchase SPY and QQQ 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 proposal will impose any burden on intermarket competition, as other options exchanges have already adopted similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. Additionally, the Commission recently approved a substantively identical proposal of another exchange and other exchanges have filed to modify their rules in a similar fashion.<sup>21</sup> Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder<sup>23</sup> in that it effects a change

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<sup>21</sup> See Securities and Exchange Act Release No. 96281 (November 9, 2022) (SR-ISE-2022-18); See also Securities Exchange Act Release Nos. 96313 (November 15, 2022), 87 FR 70869 (November 21, 2022) (SR-CboeBZX-2022-056) and 96320 (November 15, 2022), 87 FR 70880 (November 21, 2022) (SR-CboeEDGX-2022-051).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii), by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>24</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest, because the proposal reduces the number of Short Term Option Expirations to be listed on the Exchange, which may encourage Market-Makers to deploy capital more efficiently and improve displayed market quality.<sup>25</sup> Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ and IWM Monday and Wednesday Short Term Daily Expirations), the

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<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> See supra note 18.

Exchange believes the proposed introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will protect investors because it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday expirations (proposed to be SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

The Exchange believes the proposed rule change will not impose any undue burden on competition, because it will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, but rather, it should encourage Market-Makers to deploy capital more efficiently and improve displayed market quality. Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Members will be able to expand hedging tools and tailor their investment and

hedging needs more effectively in SPY, QQQ, and IWM. The Exchange believes the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase SPY and QQQ 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 proposal will impose any burden on intermarket competition, as other options exchanges have already adopted similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. Additionally, as noted above, the Commission recently approved a substantively identical proposals of another exchange and other exchanges have filed to modify their rules in a similar fashion.<sup>26</sup> Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii),<sup>27</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests the Commission to waive the 30-day operative delay so that the proposal may become operative immediately. The Exchange intends to launch MEMX Options on

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<sup>26</sup> See supra note 21.

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(ii).

September 13, 2023. Waiver of the 30-day operative delay would allow the Exchange to implement the proposed change to amend its rules as set forth above prior to launch, thus ensuring consistency of strike rules between the Exchange and other options exchanges. Waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest. As noted above, the Exchange does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission, and thus, the Exchange believes waiver of the operative delay is appropriate in this instance.

For the foregoing reasons, this rule qualifies as “non-controversial” under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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

The proposal is not novel and does not raise any unique issues, as it is substantively identical to BZX Options and EDGX Options’ proposals approved by the Commission.<sup>28</sup>

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<sup>28</sup> See supra note 21.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5. Text of Proposed Fee Schedule.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-19]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of a Proposed Rule Change to Amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05 and a Related Definition in Rule 16.1

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 [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 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 proposes to amend the Short Term Option Series Program in MEMX Rule 19.5, Interpretation and Policy .05 and a related definition in Rule 16.1. 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)(iii).

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

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 purpose of the proposed rule change is to amend the Short Term Option Series Program in Rule 19.5, Interpretation and Policy .05, and amend the definition of Short Term Option Series in Rule 16.1.

In August 2022, the Commission approved the Exchange's adoption of rules to govern the trading of options on the Exchange by MEMX Options<sup>5</sup>, which will be a facility of the Exchange. The rules adopted were substantially similar to those of other currently operating options exchanges, in particular, Cboe BZX Exchange, Inc. ("BZX Options"). Since that time, BZX Options and other options exchanges, including Cboe EDGX Exchange, Inc. ("EDGX Options"), have modified certain of those rules<sup>6</sup> and, as such, the Exchange wishes to propose the same modifications in order to conform to those rules at the time trading begins on MEMX Options.<sup>7</sup>

Specifically, the Exchange proposes to amend the Short Term Option Series

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

<sup>6</sup> See Securities Exchange Act Release Nos. 96313 (November 15, 2022), 87 FR 70869 (November 21, 2022) (SR-CboeBZX-2022-056); 96320 (November 15, 2022), 87 FR 70880 (November 21, 2022) (SR-CboeEDGX-2022-051); see also Securities Exchange Act Release No. 96281 (November 9, 2022), [87 FR 68769](#) (November 16, 2022) (SR-ISE-2022-18).

<sup>7</sup> Currently, the Exchange plans to launch MEMX Options in September 2023.

Program to: (i) limit the number of Short Term Option Expiration Dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ Trust<sup>SM</sup>, Series 1 (QQQ), and iShares Russell 2000 ETF (IWM) from five to two expirations for Monday and Wednesday expirations; and (ii) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations. The Exchange also proposes to amend the definition of Short Term Option Series in Rule 16.1.

#### Curtail Short Term Option Expiration Dates

Currently, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (“Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Short Term Option Expiration Dates not including any Monday or Wednesday SPY, QQQ, and IWM Expirations. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

Today, with respect to Wednesday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day

series of options on SPY, QQQ, and IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (“Wednesday SPY Expirations,” “Wednesday QQQ Expirations,” and “Wednesday IWM Expirations”). With respect to Monday SPY, QQQ, and IWM Expirations, the Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPY, QQQ, or IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire (“Monday SPY Expirations,” “Monday QQQ Expirations,” and “Monday IWM Expirations”), provided that Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. The Exchange may list up to five consecutive Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and five consecutive Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations at one time; the Exchange may have no more than a total of five each of Wednesday SPY Expirations, Wednesday QQQ Expirations, and Wednesday IWM Expirations and a total of five each of Monday SPY Expirations, Monday QQQ Expirations, and Monday IWM Expirations. Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations will be subject to the provisions of Rule 19.5, Interpretation and Policy .05.

#### Proposal

At this time, the Exchange proposes to curtail the number of Short Term Option Expiration Dates from five to two<sup>8</sup> for Monday and Wednesday Expirations in SPY,

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<sup>8</sup> The Exchange proposes to list the two front months for Short Term Option Daily Expirations.

QQQ and IWM, as well as the proposed Tuesday and Thursday Expirations in SPY and QQQ (“Short Term Option Daily Expirations”). The Exchange proposes to create a new category of Short Term Option Expiration Dates called “Short Term Option Daily Expirations,” which will only permit two Short Term Option Expiration Dates for each of the Monday, Tuesday, Wednesday, and Thursday expirations at any one time. The Exchange proposes to include a table, labelled “Table 1”, within Rule 19.5, Interpretation and Policy .05(h), which specifies each symbol which qualifies as a Short Term Option Daily Expiration. The table would note the number of expirations for each symbol as well as expiration days. The Exchange proposes to include Monday and Wednesday expirations for SPY, QQQ, and IWM and Tuesday and Thursday expirations for SPY and QQQ and list the number of expirations as “2” for these symbols. The Exchange’s proposal to permit Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program is explained below in more detail. In the event Short Term Option Daily Expirations expire on the same day in the same class as a monthly options series or a Quarterly Options Series, the Exchange would skip that week’s listing and instead list the following week; the two weeks of Short Term Option Expiration Dates would therefore not be consecutive. Specifically, the Exchange proposes to state within Rule 19.5, Interpretation and Policy .05(h):

In addition to the above, the Exchange may open for trading series of options on the symbols provided in Table 1 below that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days on which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”). The Exchange may have no more than a total of two Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. Short Term Option Daily Expirations would be subject to this Interpretation and Policy .05.

SPY, QQQ, and IWM Friday expirations and other option symbols expiring on a Friday that are not noted in Table 1 will continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays on which monthly options series or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”). These expirations would be referred to as “Short Term Option Weekly Expirations” to distinguish them from the proposed expirations that would be subject to Short Term Option Daily Expirations. The Exchange proposes to add rule text to Rule 19.5, Interpretation and Policy .05(h) which states that Monday Short Term Option Expiration Dates, Tuesday Short Term Option Expiration Dates, Wednesday Short Term Option Expiration Dates, and Thursday Short Term Option Expiration Dates, together with Friday Short Term Option Expiration Dates, are collectively “Short Term Option Expiration Dates.”<sup>9</sup>

#### Tuesday and Thursday Expirations

At this time, the Exchange proposes to expand the Short Term Option Series Program for Short Term Option Daily Expirations on Tuesday (“Tuesday Short Term Option Daily Expirations”) and Short Term Option Daily Expirations on Thursday (“Thursday Short Term Option Daily Expirations”). No more than a total of two Tuesday Short Term Option Daily Expirations or Thursday Short Term Option Daily Expirations in SPY and QQQ will be listed at any one time beyond the current week. Tuesday and Thursday Short Term Option Daily Expirations would be subject to Rule 19.5, Interpretation and Policy .05.

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<sup>9</sup> Defining the term “Short Term Option Expiration Dates” will make clear that this term includes expiration dates for each day Short Term Options are listed.

A Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday, or Friday that is a business day and that expires on the Monday, Wednesday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

The Exchange proposes to amend this definition in Rule 16.1 to accommodate the listing of options series that expire on Tuesdays and Thursdays. Specifically, the Exchange proposes to add Tuesday and Thursdays to the permitted expiration days, which currently include Monday, Wednesday, and Friday, that it may open for trading.

The Exchange also proposes corresponding changes within Rule 19.5, Interpretation and Policy .05, which sets forth the requirements for SPY and QQQ options that are listed pursuant to the Short Term Option Series Program as Short Term Option Daily Expirations, to accommodate the listing of options series that expire on Tuesdays and Thursdays.

Similar to Monday and Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 19.5, Interpretation and Policy .05, the Exchange proposes that it may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays beyond the current week that are business days and are not business days in

which monthly options series or Quarterly Options Series expire (“Tuesday Short Term Option Expiration Date”).

Likewise, the Exchange proposes that it may open for trading on any Wednesday or Thursday that is a business day series of options on symbols provided in Table 1 that expire at the close of business on each of the next two Thursdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (“Thursday Short Term Option Expiration Date”).

In the event that options on SPY and QQQ expire on a Tuesday or Thursday and that Tuesday or Thursday is the same day that a monthly option series or Quarterly Options Series expires, the Exchange would skip that week’s listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series. Currently, there is no rule text provision that states that Monday and Wednesday Expirations in SPY, QQQ, and IWM skip the weekly listing in the event the weekly listing expires on the same day in the same class as a monthly option series. Practically speaking, Monday and Wednesday Expirations in SPY, QQQ, and IWM would not expire on the same day as a monthly expiration.

The interval between strike prices for the proposed Tuesday and Thursday SPY and QQQ Short Term Option Daily Expirations will be the same as those for the current Short Term Option Series for Monday, Wednesday, and Friday expirations applicable to the Short Term Option Series Program.<sup>10</sup> Specifically, the Tuesday and Thursday SPY and QQQ

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<sup>10</sup> See Rule 19.5, Interpretation and Policy .05(e)

Short Term Option Daily Expirations will have a \$0.50 strike interval minimum.<sup>11</sup> As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to proposed Rule 19.5, Interpretation and Policy .05, with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series will expire on the first business day immediately prior to that Tuesday or Thursday, e.g., Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.<sup>12</sup> The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.<sup>13</sup> This thirty (30) series restriction would apply to Tuesday and Thursday SPY and QQQ Short Term Option Daily Expiration series as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list SPY and QQQ options expiring on Tuesdays and Thursdays with a limit of two Tuesday Short Term Daily Expirations and two Thursday Short Term Daily Expirations beyond the current week.

Finally, the Exchange is amending Rule 19.5, Interpretation and Policy .05(b) to conform the rule text to the usage of the term “Short Term Option Daily Expirations.”

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<sup>11</sup> See id.

<sup>12</sup> See Rule 19.5, Interpretation and Policy .05(a).

<sup>13</sup> See id.

Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion. Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.<sup>14</sup> Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days on which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire.

The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday Short Term Option Daily Expirations, as other Exchanges have already adopted identical rules, and the Exchange

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<sup>14</sup> While the Exchange proposes to add rule text within Rule 19.5, Interpretation and Policy .05 with respect to Monday Expirations, Tuesday Expirations, and Wednesday Expirations stating that those expirations would not expire on business days on which monthly options series expire, practically speaking this would not occur.

will have surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Monday and Wednesday for SPY, QQQ and IWM.

## 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>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirements 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>17</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with the Act as the overall reduction offered by this proposal reduces the number of Short Term Option Expirations to be listed on the Exchange. This reduction would remove impediments to and perfect the mechanism of a free and open market by encouraging Market-Makers to continue to deploy capital more

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> Id.

efficiently and improve displayed market quality.<sup>18</sup> Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ and IWM Monday and Wednesday Short Term Daily Expirations), the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday expirations (proposed to be SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

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<sup>18</sup> Market-Makers are required to quote a specified time in their assigned options series. See Rule 22.6.

In particular, the Exchange believes the Short Term Option Series Program as implemented by other exchanges has been successful to date and that Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday SPY and QQQ Short Term Daily Expirations should create greater trading and hedging opportunities and flexibility and will provide customers with the ability to tailor their investment objectives more effectively.

Today, with the exception of Monday and Wednesday SPY Expirations, Monday and Wednesday QQQ Expirations, and Monday and Wednesday IWM Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire. With this proposal, Tuesday and Thursday SPY Expirations and Tuesday and Thursday QQQ Expirations would be treated similarly to existing Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange believes that permitting Short Term Option Daily Expirations to expire in the same week that standard monthly options expire on Fridays is consistent with the Act. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Monday and Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of

business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is consistent with the Act to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire similar to Monday and Wednesday SPY, QQQ, and IWM Expirations.

There are no material differences in the treatment of Wednesday SPY and QQQ expirations for Short Term Option Series as compared to the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations. Given the similarities between Wednesday SPY, QQQ and IWM Expirations and the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, the Exchange believes that applying the provisions in Rule 19.5, Interpretation and Policy .05 that will apply to Wednesday SPY, QQQ and IWM Expirations to Tuesday and Thursday SPY and QQQ Short Term Daily Expirations is justified.

The Exchange further represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday SPY and QQQ Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Monday and Wednesday SPY, QQQ, and IWM Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series.

Finally, as previously noted, the proposed rule change is substantively the same as a rule change proposed by BZX Options and EDGX Options, which the Commission

approved in 2022.<sup>19</sup>

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 proposal will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, rather, it should encourage Market-Makers to continue to deploy capital more efficiently and improve displayed market quality.<sup>20</sup> Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ and IWM Monday and Wednesday Expirations, the Exchange believes the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more

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<sup>19</sup> See supra note 6.

<sup>20</sup> See supra note 18.

effectively. The Exchange does not believe the proposal will impose any burden on intermarket competition, as other options exchanges have already adopted similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. Additionally, the Commission recently approved a substantively identical proposal of another exchange and other exchanges have filed to modify their rules in a similar fashion.<sup>21</sup> Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder<sup>23</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii), by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

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<sup>21</sup> See Securities and Exchange Act Release No. 96281 (November 9, 2022) (SR-ISE-2022-18); See also Securities Exchange Act Release Nos. 96313 (November 15, 2022), 87 FR 70869 (November 21, 2022) (SR-CboeBZX-2022-056) and 96320 (November 15, 2022), 87 FR 70880 (November 21, 2022) (SR-CboeEDGX-2022-051).

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

interest.

Furthermore, Rule 19b-4(f)(6)(iii)<sup>24</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest, because the proposal reduces the number of Short Term Option Expirations to be listed on the Exchange, which may encourage Market-Makers to deploy capital more efficiently and improve displayed market quality.<sup>25</sup> Also, the Exchange's proposal curtails the number of Monday, Tuesday, Wednesday, and Thursday expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.

Similar to SPY, QQQ, and IWM Monday and Wednesday Expirations (proposed to be SPY, QQQ and IWM Monday and Wednesday Short Term Daily Expirations), the Exchange believes the proposed introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will protect investors because it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY and QQQ Tuesday

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<sup>24</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>25</sup> See supra note 18.

and Thursday expirations (proposed to be SPY and QQQ Tuesday and Thursday Short Term Daily Expirations) will allow market participants to purchase SPY and QQQ options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure.

The Exchange believes the proposed rule change will not impose any undue burden on competition, because it will provide an overall reduction in the number of Short Term Option Expirations to be listed on the Exchange. The Exchange believes this reduction will not impose an undue burden on competition, but rather, it should encourage Market-Makers to deploy capital more efficiently and improve displayed market quality. Also, the Exchange's proposal curtails the number of weekly expirations in SPY, QQQ, and IWM without reducing the classes of options available for trading on the Exchange. The Exchange believes that despite the proposed curtailment of weekly expirations, Members will be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM. The Exchange believes the introduction of SPY and QQQ Tuesday and Thursday Short Term Daily Expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that SPY

and QQQ Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase SPY and QQQ 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 proposal will impose any burden on intermarket competition, as other options exchanges have already adopted similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. Additionally, as noted above, the Commission recently approved a substantively identical proposals of another exchange and other exchanges have filed to modify their rules in a similar fashion.<sup>26</sup> Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii),<sup>27</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests the Commission to waive the 30-day operative delay so that the proposal may become operative immediately. The Exchange intends to launch MEMX Options on September 13, 2023. Waiver of the 30-day operative delay would allow the Exchange to implement the proposed change to amend its rules as set forth above prior to launch, thus ensuring consistency of strike rules between the Exchange and other options exchanges. Waiver of the operative delay is, therefore, consistent with the protection of investors and

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<sup>26</sup> See supra note 21.

<sup>27</sup> 17 CFR 240.19b-4(f)(6)(ii).

the public interest. As noted above, the Exchange does not believe that the proposal raises any new or novel issues that have not been previously considered by the Commission, and thus, the Exchange believes waiver of the operative delay is appropriate in this instance.

For the foregoing reasons, this rule qualifies as “non-controversial” under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2023-19 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-2023-19. 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 (<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-19 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.<sup>28</sup>

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<sup>28</sup>

17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

**Exhibit 5**

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

\* \* \* \* \*

**Rule 16.1 Definitions**

With respect to the Rules contained in Chapters 16 to 29 below, relating to the trading of options contracts on the Exchange, the following terms shall have the meanings specified in this Rule. A term defined elsewhere in the Exchange Rules shall have the same meaning with respect to this Chapter 16, unless otherwise defined below.

\* \* \* \* \*

**Short Term Option Series**

The term “Short Term Option Series” means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday or Friday of the next business week, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday, respectively. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

\* \* \* \* \*

**Rule 19.5 Series of Options Contracts Open for Trading**

\* \* \* \* \*

*Interpretations and Policies*

\* \* \* \* \*

.05 After an option class has been approved for listing and trading on MEMX Options, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire on each of the next five (5) Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (“Friday Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (“Short Term Options Weekly Expirations”)[, not including any Monday or Wednesday SPY, IWM and QQQ Expirations as provided in paragraph (h) below.] If MEMX Options is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Weekly

Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if MEMX Options is not open for business on the Friday that the options are set to expire, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday. Regarding Short Term Option Series:

(a) No change.

(b) With the exception of [Monday and Wednesday SPY, IWM and QQQ]Short Term Option Daily Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same class.

\* \* \* \* \*

(h) [Monday and Wednesday SPY, IWM and QQQ Expirations. The Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPDR S&P 500 ETF Trust (“SPY”), the iShares Russell 2000 ETF (“IWM”) and the Invesco QQQ Trust (“QQQ”) to expire on any Monday of the month that is a business day and is not a Monday on which Quarterly Options Series expire (“Monday SPY Expirations”, “Monday IWM Expirations” and “Monday QQQ Expirations”), provided that any Friday on which the Exchange opens for trading a Monday SPY, IWM and QQQ Expiration is one business week and one business day prior to expiration. The Exchange may also open for trading on any Tuesday or Wednesday that is a business day series of SPY options, IWM options and QQQ options to expire on any Wednesday of the month that is a business day and is not a Wednesday on which Quarterly Options Series expire (“Wednesday SPY Expirations”, “Wednesday IWM Expirations” and “Wednesday QQQ Expirations”). The Exchange may list up to five consecutive series of each Monday SPY, IWM and QQQ Expirations and up to five consecutive series of each Wednesday SPY, IWM and QQQ Expirations at one time; the Exchange may have no more than a total of five of each Monday SPY, IWM and QQQ Expirations and no more than a total of five of each Wednesday SPY, IWM and QQQ Expirations. Monday and Wednesday SPY, IWM and QQQ Expirations will be subject to the provisions of this Rule.]

*Short Term Option Daily Expirations.*

In addition to the above, the Exchange may open for trading series of options on the symbols provided in Table 1 below that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days on which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”). The Exchange may have no more than a total of two Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time. Short Term Option Daily Expirations would be subject to this Interpretation and Policy .05.

Table 1

<b>Symbol</b>	<b>Number of Expirations</b>			
	<b>Monday</b>	<b>Tuesday</b>	<b>Wednesday</b>	<b>Thursday</b>
<u>SPY</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>
<u>IWM</u>	<u>2</u>	<u>0</u>	<u>2</u>	<u>0</u>
<u>QQQ</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>

With respect to Monday expirations for symbols defined in Table 1 above (“Monday Expirations”), the Exchange may open for trading on any Friday or Monday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Mondays that are business days and are not business days on which monthly options series or Quarterly Options Series expire (“Monday Short Term Option Expiration Date”), provided that Monday Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration.

With respect to Tuesday expirations for symbols defined in Table 1 above (“Tuesday Expirations”), the Exchange may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Tuesdays that are business days and are not business days on which monthly options series or Quarterly Options Series expire (“Tuesday Short Term Option Expiration Date”).

With respect to Wednesday expirations for symbols defined in Table 1 above (“Wednesday Expirations”), the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Wednesdays that are business days and are not business days on which monthly options series or Quarterly Options Series expire (“Wednesday Short Term Option Expiration Date”).

With respect to Thursday expirations for symbols defined in Table 1 above (“Thursday Expirations”), the Exchange may open for trading on any Wednesday or Thursday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Thursdays that are business days and are not business days on which monthly options series or Quarterly Options Series expire (“Thursday Short Term Option Expiration Date”).

Monday Short Term Option Expiration Dates, Tuesday Short Term Option Expiration Dates, Wednesday Short Term Option Expiration Dates, and Thursday Short Term Option Expiration Dates, together with Friday Short Term Option Expiration Dates, are collectively “Short Term Option Expiration Dates.”

If the Exchange is not open for business on a Monday, the Monday Short Term Option Expiration Date will be the business day immediately following that Monday. If the Exchange is

not open for business on a Tuesday, Wednesday, or Thursday, the Tuesday Short Term Option Expiration Date, Wednesday Short Term Option Expiration Date, and Thursday Short Term Option Expiration Date, respectively, will be the first business day immediately prior to that Tuesday, Wednesday, or Thursday, respectively.

\* \* \* \* \*