





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 adopt a rule codifying its current practice of conducting fingerprint-based background checks of prospective and current partners, directors, officers, and employees of the Exchange. The proposed rule would bring the Exchange's rule in line with the rules of other exchanges, including the New York Stock Exchange (“NYSE”) and its affiliates,<sup>3</sup> with respect to fingerprinting of prospective and current partners, directors, officers, and employees of the Exchange. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.<sup>5</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

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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> See NYSE Rule 28, Fingerprint-Based Background Checks of Exchange Employees and Others. See also NYSE Arca, Inc. (“NYSE Arca”) Rule 3.11, NYSE National, Inc. (“NYSE National”) Rule 3.11, NYSE Texas, Inc. (“NYSE Texas”) Rule 3.11, and NYSE American, LLC (“NYSE American”) Rule 3.11E, which are all substantively identical to NYSE Rule 28.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

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:

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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 Exchange proposes a new Rule 13.9 codifying the current practice of conducting fingerprint-based background checks of prospective and current partners, directors, officers and employees of the Exchange. The proposed rule would be in line with the rules of NYSE and its affiliates<sup>6</sup> with respect to fingerprinting current and prospective and current partners, directors, officers, and employees of the Exchange. A number of other securities markets have also adopted a similar rule, permitting them to obtain fingerprints from certain enumerated parties.<sup>7</sup> The proposed rule is also consistent with those rules.

Section 17(f)(2) of the Securities Exchange Act of 1934 (the “Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-

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<sup>6</sup> See supra note 3.

<sup>7</sup> See, e.g., Cboe Rule 7.10; BOX Exchange LLC (“BOX”) Rule 10080; Nasdaq Stock Market (“Nasdaq”) General 2, Section 13.

Frank Act”),<sup>8</sup> provides that every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processors, national securities exchanges and national securities associations shall require each of its partners, directors, officers and employees of to be fingerprinted and submit those fingerprints (or cause the fingerprints to be submitted) to the Attorney General of the United States (“Attorney General”) for identification. Section 17(f)(2) explicitly directs the Attorney General to provide self-regulatory organizations (“SROs”) designated by the Commission with access to criminal history record information. Further, Section 17(f)(2) authorizes SROs to store criminal record information received from the Federal Bureau of Investigation (“FBI”), which maintains on behalf of the Attorney General a database of fingerprint-based criminal history records.<sup>9</sup>

Consistent with these requirements, proposed Rule 13.9 would require the Exchange to obtain fingerprints of prospective and current partners, directors, officers and employees of the Exchange; submit those fingerprints to the Attorney General or his or her designee for identification and processing; and receive criminal history record information from the Attorney General for evaluation and use, in accordance with applicable law, in enhancing the security of the facilities, systems, data, and/or records of the Exchange.<sup>10</sup> Additionally, pursuant to the proposed rule, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with

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<sup>8</sup> See 15 U.S.C. 78q(f)(2); Dodd-Frank Act Sect. 929S.

<sup>9</sup> See 17 CFR 240.17f-2(d).

<sup>10</sup> As seen in proposed Rule 13.9(a), the facilities, systems, data and/or records of the Exchange and its affiliates are collectively termed "facilities and records".

respect to, a person due that person's limited, supervised, or restricted access to facilities and records; or the nature or location of his or her work or services.<sup>11</sup>

The Exchange would utilize a Live-Scan<sup>12</sup> electronic system to capture and transmit fingerprints directly to the FBI. The capture and transmittal function, and corresponding receipt of criminal history information from the FBI, would be handled directly by Exchange personnel and/or an FBI-approved “Channel Partner”<sup>13</sup> who would maintain and operate, on behalf of the Exchange, a Live-Scan and/or other electronic system(s) for the submission of fingerprints to the FBI; receive and maintain criminal history record information from the FBI; and disseminate such information, through secure systems, to a limited set of approved reviewing officials within the Exchange and its affiliates.

Fingerprint-based background checks would enhance the ability to screen employees and non-employees adequately to determine better, in accordance with applicable law, whether there are unacceptable risks associated with granting such persons access to facilities and records. Through access to state-of-the-art information systems administered and maintained by the FBI, the Exchange would receive centrally-

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<sup>11</sup> Specifically, the Exchange has not conducted fingerprint-based background checks of certain directors given that they do not have any unsupervised access to the Exchange's facilities and records.

<sup>12</sup> Live-Scan refers to the process of capturing fingerprints directly into a digitized format as opposed to traditional ink and paper methods. Live-Scan technology captures and transfers images to a central location and/or interface for identification processing.

<sup>13</sup> FBI-approved Channel Partners receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI Criminal Justice Information Services Division (“CJIS”) for a national Criminal History Summary check, and receive the electronic summary check result for dissemination to the authorized employer entity. See Securities Exchange Act Release No. 71066 (December 12, 2013), [78 FR 76667](#) (December 18, 2013) (SR-ISE-2013-66). The Exchange would retain ultimate legal responsibility for the fulfillment of its statutory and self-regulatory obligations under the Act, including compliance with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act.

maintained “criminal history record information,” which includes arrest-based data and derivative information, and may include personal descriptive data; FBI number; conviction status; sentencing, probation and parole information; and such other information as the FBI may make available. This information is supplied to the FBI by various local, state, federal and/or international criminal justice agencies. The information obtained through fingerprint-based background checks would thus provide a more exhaustive and reliable profile of a candidate's criminal record, and thereby better facilitate risk assessment, than a physical review of court records based on information provided by the candidate.

The proposed access to criminal history information is consistent with federal law. As noted, Section 17(f)(2) was amended by the Dodd-Frank Act to also require partners, directors, officers and employees of registered securities information processors, national securities exchanges and national securities associations to be fingerprinted. Although Section 17(f)(2) does not require the fingerprinting of contractors or other temporary personnel, the statute specifically permits SROs designated by the SEC to have access to “all criminal history record information.” As such, in order to still safeguard the security of the facilities, systems, data and information of the Exchange, it is also proposing to adopt Rule 13.9, Interpretation and Policy .01, which provides that the Exchange will engage a third party to conduct a background screening of all prospective and current temporary personnel, independent contractors and service providers who may or may be permitted to have unsupervised access to facilities and records and the Exchange shall utilize the information obtained from such screenings in

making employment decisions.<sup>14</sup> The Exchange believes such a practice further enhances its ability to assess whether there are unacceptable risks associated with granting such persons unsupervised access to facilities and records.

Based on the foregoing, the Exchange believes that fingerprint-based background checks of partners, directors, officers and employees would promote the objectives of investor protection, business continuity and workplace safety by providing the Exchange with an effective tool for identifying and excluding persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records.

The Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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> in general, and furthers the objectives of Section 6(b)(5)<sup>16</sup>, in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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<sup>14</sup> The background screening shall include, among other things, education verification, a criminal background check, and drug screening panel.

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

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

In particular, the Exchange believes fingerprint-based background checks of partners, directors, officers, and employees is consistent with the Section 6(b)(5) 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 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 that they would help identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations and helping to protect investors and the public interest. The proposed rule brings the Exchange's rule in line with the rules of NYSE and its affiliated exchanges,<sup>17</sup> and the fingerprinting rules of other SROs.<sup>18</sup> The proposed amendment would also conform the Exchange's fingerprinting practices with Section 17(f)(2) of the Act.

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 proposed rule change is not intended to address competitive issues but rather to enhance the security and continuity of the Exchange's facilities and records by adopting a fingerprinting rule that codifies the Exchange's current practice in compliance with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act. As discussed above,

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<sup>17</sup> See supra note 3.

<sup>18</sup> See supra note 7.

the Exchange notes that the proposed rule change is based on the fingerprinting rules of other SROs.

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 proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder. The Exchange has designated this proposal as one that effects a change that rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that the proposed rule change raises no novel issues and is

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

therefore non-controversial. The Exchange believes that the proposed rule change would not significantly affect investors or the public interest, nor would it impose any significant burden on competition because it is substantially similar to fingerprinting rules of other SROs. The proposed rule change would help the Exchange identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations.

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change 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 this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved. The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change is being submitted merely to codify the Exchange's current procedures.

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

As discussed above, the proposed rule is substantially similar to the rules of other exchanges.<sup>21</sup>

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 Rule Change.

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<sup>21</sup> See supra note 3.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2026-06]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposal to Adopt a Rule Codifying the Exchange's Fingerprint-Based Background Check Process

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 is filing with the Commission a proposal to adopt a rule codifying its current practice of conducting fingerprint-based background checks of prospective and current partners, directors, officers, and employees of the Exchange. The proposed rule would bring the Exchange's rule in line with the rules of other exchanges, including the

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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.

New York Stock Exchange ("NYSE") and its affiliates,<sup>5</sup> with respect to fingerprinting of prospective and current partners, directors, officers, and employees of the Exchange. The text of the proposed rule change is provided in Exhibit 5 and is available on the Exchange's website at <https://info.memxtrading.com/regulation/rules-and-filings/>.

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

The Exchange proposes a new Rule 13.9 codifying the current practice of conducting fingerprint-based background checks of prospective and current partners, directors, officers and employees of the Exchange. The proposed rule would be in line with the rules of NYSE and its affiliates<sup>6</sup> with respect to fingerprinting current and prospective and current partners, directors, officers, and employees of the Exchange. A number of other securities markets have also adopted a similar rule, permitting them to

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<sup>5</sup> See NYSE Rule 28, Fingerprint-Based Background Checks of Exchange Employees and Others. See also NYSE Arca, Inc. ("NYSE Arca") Rule 3.11, NYSE National, Inc. ("NYSE National") Rule 3.11, NYSE Texas, Inc. ("NYSE Texas") Rule 3.11, and NYSE American, LLC ("NYSE American") Rule 3.11E, which are all substantively identical to NYSE Rule 28.

<sup>6</sup> See *supra* note 3.

obtain fingerprints from certain enumerated parties.<sup>7</sup> The proposed rule is also consistent with those rules.

Section 17(f)(2) of the Securities Exchange Act of 1934 (the “Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”),<sup>8</sup> provides that every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processors, national securities exchanges and national securities associations shall require each of its partners, directors, officers and employees of to be fingerprinted and submit those fingerprints (or cause the fingerprints to be submitted) to the Attorney General of the United States (“Attorney General”) for identification. Section 17(f)(2) explicitly directs the Attorney General to provide self-regulatory organizations (“SROs”) designated by the Commission with access to criminal history record information. Further, Section 17(f)(2) authorizes SROs to store criminal record information received from the Federal Bureau of Investigation (“FBI”), which maintains on behalf of the Attorney General a database of fingerprint-based criminal history records.<sup>9</sup>

Consistent with these requirements, proposed Rule 13.9 would require the Exchange to obtain fingerprints of prospective and current partners, directors, officers and employees of the Exchange; submit those fingerprints to the Attorney General or his or her designee for identification and processing; and receive criminal history record information from the Attorney General for evaluation and use, in accordance with

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<sup>7</sup> See, e.g., Cboe Rule 7.10; BOX Exchange LLC (“BOX”) Rule 10080; Nasdaq Stock Market (“Nasdaq”) General 2, Section 13.

<sup>8</sup> See 15 U.S.C. 78q(f)(2); Dodd-Frank Act Sect. 929S.

<sup>9</sup> See 17 CFR 240.17f-2(d).

applicable law, in enhancing the security of the facilities, systems, data, and/or records of the Exchange.<sup>10</sup> Additionally, pursuant to the proposed rule, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due that person's limited, supervised, or restricted access to facilities and records; or the nature or location of his or her work or services.<sup>11</sup>

The Exchange would utilize a Live-Scan<sup>12</sup> electronic system to capture and transmit fingerprints directly to the FBI. The capture and transmittal function, and corresponding receipt of criminal history information from the FBI, would be handled directly by Exchange personnel and/or an FBI-approved "Channel Partner"<sup>13</sup> who would maintain and operate, on behalf of the Exchange, a Live-Scan and/or other electronic system(s) for the submission of fingerprints to the FBI; receive and maintain criminal history record information from the FBI; and disseminate such information, through secure systems, to a limited set of approved reviewing officials within the Exchange and its affiliates.

Fingerprint-based background checks would enhance the ability to screen

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<sup>10</sup> As seen in proposed Rule 13.9(a), the facilities, systems, data and/or records of the Exchange and its affiliates are collectively termed "facilities and records".

<sup>11</sup> Specifically, the Exchange has not conducted fingerprint-based background checks of certain directors given that they do not have any unsupervised access to the Exchange's facilities and records.

<sup>12</sup> Live-Scan refers to the process of capturing fingerprints directly into a digitized format as opposed to traditional ink and paper methods. Live-Scan technology captures and transfers images to a central location and/or interface for identification processing.

<sup>13</sup> FBI-approved Channel Partners receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI Criminal Justice Information Services Division ("CJIS") for a national Criminal History Summary check, and receive the electronic summary check result for dissemination to the authorized employer entity. See Securities Exchange Act Release No. 71066 (December 12, 2013), [78 FR 76667](#) (December 18, 2013) (SR-ISE-2013-66). The Exchange would retain ultimate legal responsibility for the fulfillment of its statutory and self-regulatory obligations under the Act, including compliance with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act.

employees and non-employees adequately to determine better, in accordance with applicable law, whether there are unacceptable risks associated with granting such persons access to facilities and records. Through access to state-of-the-art information systems administered and maintained by the FBI, the Exchange would receive centrally-maintained “criminal history record information,” which includes arrest-based data and derivative information, and may include personal descriptive data; FBI number; conviction status; sentencing, probation and parole information; and such other information as the FBI may make available. This information is supplied to the FBI by various local, state, federal and/or international criminal justice agencies. The information obtained through fingerprint-based background checks would thus provide a more exhaustive and reliable profile of a candidate's criminal record, and thereby better facilitate risk assessment, than a physical review of court records based on information provided by the candidate.

The proposed access to criminal history information is consistent with federal law. As noted, Section 17(f)(2) was amended by the Dodd-Frank Act to also require partners, directors, officers and employees of registered securities information processors, national securities exchanges and national securities associations to be fingerprinted. Although Section 17(f)(2) does not require the fingerprinting of contractors or other temporary personnel, the statute specifically permits SROs designated by the SEC to have access to “all criminal history record information.” As such, in order to still safeguard the security of the facilities, systems, data and information of the Exchange, it is also proposing to adopt Rule 13.9, Interpretation and Policy .01, which provides that the Exchange will engage a third party to conduct a background screening of all

prospective and current temporary personnel, independent contractors and service providers who may or may be permitted to have unsupervised access to facilities and records and the Exchange shall utilize the information obtained from such screenings in making employment decisions.<sup>14</sup> The Exchange believes such a practice further enhances its ability to assess whether there are unacceptable risks associated with granting such persons unsupervised access to facilities and records.

Based on the foregoing, the Exchange believes that fingerprint-based background checks of partners, directors, officers and employees would promote the objectives of investor protection, business continuity and workplace safety by providing the Exchange with an effective tool for identifying and excluding persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records.

The Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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> in general, and furthers the objectives of Section 6(b)(5)<sup>16</sup>, in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove

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<sup>14</sup> The background screening shall include, among other things, education verification, a criminal background check, and drug screening panel.

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

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

impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes fingerprint-based background checks of partners, directors, officers, and employees is consistent with the Section 6(b)(5) 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 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 that they would help identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations and helping to protect investors and the public interest. The proposed rule brings the Exchange's rule in line with the rules of NYSE and its affiliated exchanges,<sup>17</sup> and the fingerprinting rules of other SROs.<sup>18</sup> The proposed amendment would also conform the Exchange's fingerprinting practices with Section 17(f)(2) of the Act.

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 proposed rule change is not intended to address competitive issues but rather to enhance the security and continuity of the Exchange's facilities and records by

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<sup>17</sup> See supra note 3.

<sup>18</sup> See supra note 7.

adopting a fingerprinting rule that codifies the Exchange's current practice in compliance with Section 17(f)(2) of the Act as amended by the Dodd-Frank Act. As discussed above, the Exchange notes that the proposed rule change is based on the fingerprinting rules of other SROs.

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 proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder. The Exchange has designated this proposal as one that effects a change that rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that the proposed rule change raises no novel issues and is therefore non-controversial. The Exchange believes that the proposed rule change would

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

not significantly affect investors or the public interest, nor would it impose any significant burden on competition because it is substantially similar to fingerprinting rules of other SROs. The proposed rule change would help the Exchange identify and exclude persons with felony or misdemeanor conviction records that may pose a threat to the safety of Exchange personnel or the security of facilities and records, thereby enhancing business continuity, workplace safety and the security of the Exchange's operations.

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change 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 this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved. The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. The proposed rule change is being submitted merely to codify the Exchange's current procedures.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2026-06 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-2026-06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2026-06 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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<sup>21</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].

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**CHAPTER 13. MISCELLANEOUS PROVISIONS**

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**Rule 13.9. Fingerprint-Based Background Checks of Exchange Partners, Directors, Officers and Employees**

(a) In order to enhance the security of the respective facilities, systems, data, and/or records of the Exchange and its affiliates (collectively, "facilities and records"), the Exchange shall obtain fingerprints from, and conduct a fingerprint-based background check of, all prospective and current partners, directors, officers and employees of the Exchange. However, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due to that person's limited, supervised, or restricted access to facilities and records; or the nature or location of his or her work or services. The Exchange shall apply this rule in all circumstances where permitted by applicable law.

(b) The Exchange shall submit fingerprints obtained pursuant to this rule to the Attorney General of the United States or his or her designee for identification and processing. The Exchange shall at all times maintain the security of all fingerprints provided to, and all criminal history record information received from, the Attorney General or his or her designee. The Exchange shall not disseminate fingerprints or information to the extent prohibited by applicable law.

(c) The Exchange shall evaluate information received from the Attorney General or his or her designee and otherwise administer this rule in accordance with Exchange fingerprint procedures as in effect from time to time and the provisions of applicable law. Fingerprint-based background information, such as a felony or serious misdemeanor conviction, will be a factor in making employment decisions; or permitting any fingerprinted person access to facilities and records.

**Interpretations and Policies**

.01 The Exchange shall engage a third party to conduct a background screening of all prospective and current temporary personnel, independent contractors and service providers who have or may be permitted to have unsupervised access to facilities and records and shall utilize the information obtained from such screenings in making employment decisions.

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