SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98528; File No. SR–PHLX–2023–40]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Amend Equity 4, Rules 3301A and 3301B To Establish New "Contra Midpoint Only" and "Contra Midpoint Only With Post-Only" Order Types and To Make Other Corresponding Changes to the Rulebook

September 26, 2023.

On August 28, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Equity 4, Rules 3301A and 3301B [3] to establish new ''Contra Midpoint Only'' and ''Contra Midpoint Only with Post-Only'' Order Types, and to make other corresponding changes to the Rulebook. The proposed rule change was published for comment in the **Federal Register** on September 8, 2023.[4] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23, 2023. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[6] the Commission designates December 7, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–PHLX–2023–40).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21619 Filed 9–29–23; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to Phlx Rules in the 3000 Series shall mean Rules in Phlx Equity 4.

[4] *See* Securities Exchange Act Release No. 98280 (September 1, 2023), 88 FR 62129.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98533; File No. SR–MEMX–2023–24]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

September 26, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] pursuant to Exchange Rules 15.1(a) and (c). Specifically, the Exchange proposes to adopt transaction fees (''Transaction Fees''), routing fees (''Routing Fees''), and definitions (''Definitions'') within the MEMX Options Fee Schedule (the ''Options Fee Schedule''). The Transaction Fees section of the Options Fee Schedule would establish transaction fees and rebates applicable to Options Members trading on the Exchange's options trading platform (such platform, ''MEMX Options'' and such Members, ''Options Members''). The Routing Fees section of the Options Fee Schedule would establish fees for Options Members who route their orders to away exchanges. The Definitions section of the Options Fee Schedule would define and clarify terms used in the Options Fee Schedule. The Exchange proposes to implement the changes to the Options Fee Schedule pursuant to this proposal on September 20, 2023. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to (i) establish transaction rebates and fees applicable to all Options Members trading on MEMX Options; (ii) establish routing fees applicable to all Options Members trading on MEMX Options who route orders to away exchanges; and (iii) define and clarify terms used in the Options Fee Schedule.

Transaction Fees

The proposed Transaction Fees section of the Options Fee Schedule sets forth transaction rebates and fees for executions on MEMX Options. MEMX Options will operate a ''Maker-Taker'' model whereby it provides rebates to Options Members that provide liquidity and charges fees to those that remove liquidity, as further described below. The proposed rebates and fees vary depending on whether a transaction was executed in a customer capacity (''Customer'') [4] or in a non-customer capacity (''Non-Customer'') [5], whether the underlying security of the applicable option is in the Penny Pilot Program

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] Customer capacity applies to any order for the account of a Priority Customer. ''Priority Customer'' means any person or entity that is neither a broker or dealer in securities nor a Professional. *See* Rule 16.1 of the MEMX Rulebook.

[5] Non-Customer capacity applies to any transaction that is not a Customer order.

(''Penny options'') or not in the Penny Pilot Program (''Non-Penny options''), and, finally, whether the transaction adds or removes liquidity from the MEMX Options Book.

The Exchange will provide fee qualifiers to distinguish between Customer transactions and Non-Customer transactions.[6] MEMX Options will provide Fee Codes to distinguish between transactions in Penny options and transactions in Non-Penny options.[7] MEMX Options will also provide Fee Codes to distinguish between transactions that add liquidity to the MEMX Options Book and transactions that remove liquidity from the MEMX Options Book.[8]

Options Members shall be assessed lower transaction fees and smaller rebates for order executions in Penny options than for order executions in Non-Penny options, for which Members will be assessed higher transaction fees and larger rebates. As noted above, Options Members shall be assessed fees for removing liquidity from the MEMX Options Book and provided rebates for adding liquidity to the MEMX Options Book. At this time, the Exchange will not differentiate between fees charged and rebates assessed for different types of Non-Customer transactions; instead, all Non-Customer transactions (*i.e.,* transactions for the accounts of market makers, professionals, firms, away market makers, or broker dealers) will be assessed the same fees and rebates.

The Fee Codes and fee qualifiers will be used to make clear to Members what rebates were provided to them and which fees were assessed.[9] The Exchange believes that designating the Fee Codes will make clear the different types of fees and rebates passed back to Members on execution reports and will be useful for the Exchange in considering potential pricing modifications as it continues to evaluate its pricing structure on an ongoing basis after the launch of MEMX Options. The Exchange's Fee Codes and fee qualifiers will assist the Exchange and Options Members with financial planning, tracking, and reconciliation of invoices generated by the Exchange.

Transactions for Customer accounts in Penny options that remove liquidity from the MEMX Book will be assessed a fee of $0.46 per contract. Transactions for Non-Customer accounts in Penny options that remove liquidity will be assessed a fee of $0.50 per contract. Transactions for Customer accounts in Non-Penny options that remove liquidity from the MEMX Book will be assessed a fee of $0.85 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that remove liquidity will be assessed a fee of $1.10 per contract. The purpose of the proposed transaction fees is to assess right-sized fees for orders that remove liquidity from the Exchange.

Transactions for Customer accounts in Penny options that add liquidity to the MEMX Options Book will receive a rebate of $0.49 per contract. Transactions for Non-Customer accounts in Penny options that add liquidity will receive a rebate of $0.45 per contract. Transactions for Customer accounts in Non-Penny options that add liquidity to the MEMX Options Book will receive a rebate of $1.04 per contract. Finally, transactions for Non-Customer accounts in Non-Penny options that add liquidity will receive a rebate of $0.80 per contract. The purpose of the proposed transaction rebates is to provide right-sized incentives for Options Members to trade on the Exchange and to incentivize order flow to be directed to the Exchange.

The Exchange does not initially propose to charge tiered fees or provide tiered rebates according to the volume of orders submitted to MEMX Options. Accordingly, all fees and rebates described above are applicable to all Options Members regardless of the overall volume of an Options Member's activities on MEMX Options.

Routing Fees

The Exchange proposes to assess Routing Fees on orders routed to other options exchanges. The amount of the applicable fee will be based on whether the order is for a Penny or Non-Penny option. At this time, the Exchange will not charge different routing fees according to the capacity of the order. The Exchange will charge a fee of $0.60 for Penny options routed to another options exchange and $1.20 for Non-Penny options routed to another options exchange.

The purpose of the proposed Routing Fees is to recoup costs incurred by the Exchange when routing orders to other options exchanges on behalf of Options Members. In determining its proposed Routing Fees, the Exchange took into account transaction fees assessed by other options exchanges, the Exchange's projected clearing costs, and the projected administrative, regulatory, and technical costs associated with routing orders to other options exchanges. The Exchange will use its affiliated broker-dealer, MEMX Execution Services, to route orders to other options exchanges or to other broker-dealers that will route such orders to other options exchanges. Routing services offered by the Exchange and its affiliated broker-dealer are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers. The proposed structure for routing fees is similar to the fee structure in place for routing at various other exchanges.[10] The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets after taking into account the other costs associated with routing orders to other options exchanges.

Definitions

The Exchange has included a Definitions section within the Options Fee Schedule. The purpose of the Definitions section is to streamline the Options Fee Schedule by placing many of the defined terms used in the Options Fee Schedule in one location. The Definitions section defines the terms ''Penny Program Securities'', ''Away Market Maker'', ''Broker Dealer'', ''Customer'', ''Firm'', ''Market Maker'', and ''Professional''. Many of the defined terms are also defined in the Exchange Rules, particularly in Exchange Rule 16.1. The Exchange notes that other exchanges have Definitions sections in

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[6] MEMX Options will provide fee qualifier ''c'' for Customer transactions. MEMX Options will provide fee qualifier ''m'' for market maker transactions, fee qualifier ''p'' for professional transactions, fee qualifier ''f'' for firm transactions, fee qualifier ''a'' for away market maker transactions, and fee qualifier ''b'' for broker-dealer transactions. Each of market maker transactions, professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions shall be referred to as ''Non-Customer'' transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

[7] MEMX Options will provide Fee Code ''P'' for transactions in Penny options and Fee Code ''N'' for transactions in Non-Penny options. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

[8] MEMX Options will provide Fee Code ''D'' for transactions which add liquidity to the MEMX Options Book, and Fee Code ''R'' for transactions that remove liquidity from the MEMX Options Book. Fee Codes will be provided by the Exchange on the monthly invoices provided to Options Members.

[9] For example, for a Customer order in a Penny option that removes liquidity from the MEMX Book, the Exchange would pass back the Fee Code RcP. As another example, for a Non-Customer Away Market Maker order in a Non-Penny option that adds liquidity to the MEMX Book, the Exchange would pass back the Fee Code DaN.

[10] *See* Exchange Act Release Nos. 97896 (July 13, 2023), 88 FR 46313 (July 19, 2023) (SR–PEARL–2023–30); 97901 (July 13, 2023), 88 FR 46202 (July 19, 2023) (SR–EMERALD–2023–15); 85591 (April 10, 2019), 84 FR 15645 (April 16, 2019) (SR–CboeBZX–2019–024); 91677 (April 26, 2021), 86 FR 22989 (April 30, 2021) (SR–NASDAQ–2021–021); and 97234 (March 31, 2023), 88 FR 20589 (April 6, 2023) (SR–NYSEARCA–2023–28).

their respective fee schedules,[11] and the Exchange believes that including such section makes the Options Fee Schedule more readable and user-friendly.

2. Statutory Basis

The Exchange believes that its proposal to amend its Options Fee Schedule is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Options Members and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Upon its launch, MEMX Options will operate in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.46 for orders for Customer accounts that remove liquidity in Penny options, because it is comparable to the transaction fees charged by other exchanges for Customer transactions that remove liquidity in Penny options.[15] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.50 for orders for Non-Customer accounts in Penny options that remove liquidity because it is comparable to the transaction fee charged by other exchanges for Non-Customer transactions in Penny options that remove liquidity.[16] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $0.85 for orders for Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Customer transactions in Non-Penny options that remove liquidity.[17] The Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge $1.10 for orders in Non-Customer accounts in Non-Penny options that remove liquidity because it is comparable to the transaction fees charged by other exchanges for Non-Customer transactions in Non-Penny options that remove liquidity.[18] The Exchange

[11] *See, e.g.,* the MIAX Pearl Options Fee Schedule, available at *https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf;* the CBOE BZX Options Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/;* and the Nasdaq Options Market Fee Schedule, available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee ranging from $0.47–$0.48 for Customer transactions that remove liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* The Cboe BZX Options trading fee schedule on its public website reflects a transaction fee ranging from $0.46–$0.48 for Customer transactions that remove liquidity in Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* The Nasdaq Options Market trading fee schedule on its public website reflects a transaction fee of $0.49 for Customer transactions that remove liquidity in Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Additionally, the NYSE Arca Options trading fee schedule on its public website reflects a transaction fee of $0.46–$0.49 for Customer transactions that remove liquidity in Penny options; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[16] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of $0.50 for Non-Customer transactions that remove liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market maker and professional customers that remove liquidity in Penny options are assessed a $0.47–$0.50 fee and transactions for the accounts of broker dealers that remove liquidity in Penny options are assessed a $0.46–$0.50 fee; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of firms, broker-dealers, and market makers that remove liquidity in Penny options are assessed a fee of $0.50 and transactions for the accounts of professional customers that remove liquidity in Penny options are assessed a fee of $0.49; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and professional customers that remove liquidity in Penny options are assessed a fee of $0.50; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[17] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a transaction fee of $0.85 for Customer transactions that remove liquidity in Non-Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Similarly, the Cboe BZX Options trading fee schedule on its public website also reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Similarly, the Nasdaq Options Market trading fee schedule on its public website also reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly and similarly, the NYSE Arca Options trading fee schedule on its public website reflects a $0.85 transaction fee for Customer transactions that remove liquidity in Non-Penny options; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[18] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that remove liquidity in Non-Penny options are assessed a $1.07–$1.10 fee and transactions for the accounts of professional customers, firms, and broker-dealers that remove liquidity in Non-Penny options are assessed a $1.09–$1.10 fee; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a $1.07–$1.10 fee;

further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Options Members.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.49 for orders for Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Penny options that add liquidity.[19] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.45 for orders for Non-Customer accounts in Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Non-Customer transactions in Penny options that add liquidity.[20] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $1.04 for orders for Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Customer transactions in Non-Penny options that add liquidity.[21] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a rebate of $0.80 for orders for Non-Customer accounts in Non-Penny options that add liquidity because it is comparable to the rebate provided by other exchanges for Non-Customer transactions in Non-Penny options that add liquidity.[22] The Exchange further believes that this rebate is equitably allocated and not unfairly discriminatory because all Options Members are equally eligible for the rebate. The Exchange believes that the rebate is reasonably designed to attract order flow to MEMX Options, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge fees of $0.60 for routing in Penny options and $1.20 for routing in Non-Penny options, because these routing fees are comparable to those charged by other exchanges for routing Penny and Non-Penny options to away exchanges.[23] Additionally, the

see https://www.cboe.com/us/options/membership/fee_schedule/bzx/. Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers, broker-dealers, and firms that remove liquidity in Non-Penny options are assessed a $1.10 fee and transactions for the accounts of professional customers that remove liquidity in Non-Penny options are assessed a $0.85 fee; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers, firms, broker-dealers, and professional customers that remove liquidity in Non-Penny options are assessed a $1.10 fee; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[19] For example, the MIAX Pearl Options trading fee schedule on its public website reflects a rebate ranging from $0.25–$0.52 for Customer transactions that add liquidity in Penny options; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* The Cboe BZX Options trading fee schedule on its public website reflects a rebate ranging from $0.25–$0.53 for Customer transactions that add liquidity in Penny options; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* The Nasdaq Options Market trading fee schedule on its public website reflects a rebate ranging from $0.20–$0.48 for Customer transactions that add liquidity in Penny options; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[20] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options with a Priority Customer on the contra side are provided a $0.22–$0.46 rebate, and transactions for the accounts of professional customers and firms that add liquidity in Penny options with a non-Priority Customer on the contra side are provided a $0.25–$0.48 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a $0.29–$0.38 rebate, transactions for the accounts of professional customers that add liquidity in Penny options are provided a $0.25–$0.48 rebate, and transactions for the account of firms and broker-dealers that add liquidity in Penny options are provided a $0.25–$0.46 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Penny options are provided a $0.20–$0.48 rebate, and transactions for the accounts of professional customers that add liquidity in Penny options are provided a $0.20–$0.47 rebate; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.*

[21] For example, per the MIAX Pearl Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.85–$1.04 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.85–$1.05 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Per the Nasdaq Options Market trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.80–$1.10 rebate; *see https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, Customer transactions that add liquidity in Non-Penny options are provided a $0.75 rebate; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[22] For example, per the MIAX Pearl Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.30–$0.85 rebate and transactions for the accounts of professional customers and firms that add liquidity in Non-Penny options are provided a $0.30–$0.85 rebate; *see https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Pearl_Options_Fee_Schedule_08082023.pdf.* Per the Cboe BZX Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.40–$0.88 rebate, transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a $0.65 rebate, transactions for the accounts of away market makers that add liquidity in Non-Penny options are provided a $0.30–$0.52 rebate, and transactions for the accounts of firms and broker-dealers that add liquidity in Non-Penny options are provided a $0.30–$0.82 rebate; *see https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Lastly, per the NYSE Arca Options trading fee schedule on its public website, transactions for the accounts of market makers that add liquidity in Non-Penny options are provided a $0.05–0.40 rebate and transactions for the accounts of professional customers that add liquidity in Non-Penny options are provided a $0.75 rebate; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[23] For example, per the NYSE Arca Options trading fee schedule on its public website, the fee

Continued

Exchange believes these fees are equitable and not unfairly discriminatory because these fees will apply equally to all Options Members.

Lastly, the Exchange believes that it is reasonable to add a definitions section to clarify the terms used in the Options Fee Schedule, because it will clearly set forth the terms used in the Transaction Fees portion of the Options Fee Schedule. The Exchange further believes the definition section is reasonable as other national securities exchanges include a definition section in their fee schedule.[24] The Exchange believes this section is equitable and not unfairly discriminatory because the definitions section (as part of the Options Fee Schedule) will be distributed to all Members so that all Members will have equal clarity on fees charged and rebates provided.

For the reasons discussed above, the Exchange submits that its proposed fee structure and changes to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [25] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As a new entrant in the already highly competitive environment for options trading, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. MEMX Options proposes transaction fees, rebates, and routing fees that are comparable to transaction fees, rebates and routing fees assessed by other options exchanges. As a result, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [26]

Intramarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Options Members. The proposed pricing structure is intended to encourage participants to trade on MEMX Options by providing rebates that are comparable to those offered by other exchanges as well as providing competitive fees. The Exchange believes that the proposed rebates and fees will help to encourage Options Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed fees and rebates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Intermarket Competition

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. Currently, no single registered options exchange has more than approximately 18% of the total market share of executed volume of listed options trading.[27] As a new exchange, the Exchange expects to face intense competition from existing exchanges. The proposed pricing structure is intended to encourage market participants to trade on the exchange by providing rebates and assessing fees that are comparable to those offered by other exchanges, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [28] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[29] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

for routing in Penny options is $0.61 and the fee for routing in Non-Penny options is $1.21; *see https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[24] *See supra* note 11.

[25] 15 U.S.C. 78f(b)(4) and (5).

[26] *See supra* note 14.

[27] Market share percentage calculated as of September 14, 2023. The Exchange receives and processes data made available through the consolidated data feeds (*i.e.,* OPRA).

[28] *See supra* note 14.

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

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)(ii) of the Act [30] and Rule 19b–4(f)(2) [31] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2023–24 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–2023–24. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–24 and should be submitted on or before October 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

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[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98530; File No. SR–CboeBZX–2023–028]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

September 26, 2023.

On April 25, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[3]

On June 15, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 28, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On June 30, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. On July 11, 2023, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. On August 11, 2023, the Commission published notice of Amendment No. 3 to the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.[7]

Section 19(b)(2) of the Act [8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[9] The 180th day after publication of the proposed rule change is November 11, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97461 (May 9, 2023), 88 FR 31045. Comments received on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2023-028/srcboebzx2023028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97732, 88 FR 40877 (June 22, 2023). The Commission designated August 13, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98112, 88 FR 55743 (Aug. 16, 2023).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.