

Commission will 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-CBOE-2023-064 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-CBOE-2023-064. 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-CBOE-2023-064 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99113; File No. SR-CBOE-2023-065]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a Low Priced Stock Strike Price Interval Program

December 7, 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 December 4, 2023, Cboe Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt a Low Priced Stock Strike Price Interval Program. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 to amend Rule 4.5. Miami International Securities Exchange, LLC ("MIAX") recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.⁵ At this time, the Exchange proposes to adopt rules substantively identical to MIAX in proposed Rule 4.5, Interpretation and Policy .20 and amend Rule 4.5(d) to harmonize the table within that Rule to the proposed rule text.

Currently, Rule 4.5 describes the process and procedures for listing and trading series of options on the Exchange. Rule 4.5, Interpretation and Policy .04 provides for a \$2.50 Strike Price Program, where the Exchange may select up to 60 option classes on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25 but less than \$50.⁶ Rule 4.5, Interpretation and Policy .01 also provides for a \$1 Strike Price Interval Program, where the interval between strike prices of series of options on individual stocks may be \$1.00 or greater provided the strike price is \$50.00 or less, but not less than \$1.00.⁷ Additionally, Rule 4.5, Interpretation and Policy .01 provides for a "\$0.50 Strike Program." The interval of strike prices of series of options on individual stocks may be \$0.50 or greater beginning at \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying security closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that

⁵ See Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR-MIAX-2023-36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

⁶ See Rule 4.5, Interpretation and Policy .04.

⁷ See Rule 4.5, Interpretation and Policy .01(a)(1).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation (“OCC”) during the preceding three calendar months. The listing of \$0.50 strike prices is limited to options classes overlying no more than 20 individual stocks as specifically designated by the Exchange. The Exchange may list \$0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules. A stock shall remain in the \$0.50 Strike Program until otherwise designated by the Exchange.⁸

The Exchange proposes to adopt a new strike interval program for stocks that are not in the aforementioned \$0.50 Strike Program (or the Short Term Option Series Program)⁹ and that close below \$2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The \$0.50 Strike Program considers stocks that have a closing price at or below \$5.00 whereas the Exchange’s proposal will consider stocks that have a closing price below \$2.50. Currently, there is a subset of stocks that are not included in the \$0.50 Strike Program as a result of the limitations of that program which provides that the listing of \$0.50 strike prices is limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by OCC during the preceding three calendar months.¹⁰ Therefore, the Exchange is proposing to implement a new strike interval program termed the “Low Priced Stock Strike Price Interval Program.”

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (1) close below \$2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the

Exchange may list \$0.50 strike price intervals from \$0.50 up to \$2.00.¹¹ For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the “price of the underlying stock” is measured in the same way as “the price of the underlying security” is measured as set forth in the Options Listing Procedures Plan (“OLPP”) as reflected in Rule 4.7.¹² Further, no additional series in \$0.50 intervals may be listed if the underlying stock closes at or above \$2.50 in its primary market. Additional series in \$0.50 intervals may not be added until the underlying stock again closes below \$2.50.

The Exchange’s proposal addresses a gap in strike coverage for low priced stocks. The \$0.50 Strike Program considers stocks that close below \$5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange’s proposal has a narrower focus, with respect to the underlying’s stock price, and is targeted on those stocks that close below \$2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that the program’s average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depositary Receipts (“ADRs”), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the

preceding 12 months.¹³ Rule 4.3, Interpretation and Policy .03 provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 4.3. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three months preceding the selection of the ADR for options trading is 100,000 or more shares.¹⁴ Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 (the “Act”) provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least 1% of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.¹⁵

Additionally, the Exchange proposes to amend the table in Rule 4.5(d) to insert a new column to harmonize the Exchange’s proposal to the strike intervals for Short Term Options Series as described in Rule 4.5(d). The table in Rule 4.5(d)(6) is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.¹⁶ However, the lowest share price column is titled “less than \$25.” The Exchange now proposes to insert a column titled “Less than \$2.50” and to set the strike interval at \$0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled “Less than \$25,” to “\$2.50 to less than \$25” as a result of the adoption of the new proposed column, “Less than \$2.50.” The Exchange believes this

¹³ See Rule 4.3, Interpretation and Policy .01(b)(1).

¹⁴ See Rule 4.3, Interpretation and Policy .03(c)(2).

¹⁵ See Rule 4.10(f)(7).

¹⁶ See Securities Exchange Release Act No. 91456 (April 1, 2021), 86 FR 18090 (April 7, 2021) (SR–Cboe–2021–019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 4.5 (Series of Option Contracts Open for Trading) in Connection With Limiting the Number of Strikes Listed for Short Term Option Series Which Are Available for Quoting and Trading on the Exchange).

¹¹ While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program, the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

¹² The Exchange notes this is the same methodology used in the \$1 Strike Price Interval Program. See Rule 4.5, Interpretation and Policy .01(a)(1).

⁸ See Rule 4.5, Interpretation and Policy .01(b).

⁹ Rule 4.5(d).

¹⁰ See Rule 4.5, Interpretation and Policy .01(b).

change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort to curb strike proliferation. For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the "Strike Interval Proposal").¹⁷ The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.¹⁸ The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there was not demand. At the time of its proposal, the Exchange estimated that the Strike Interval Proposal would reduce the number of listed strikes in the options market by approximately 81,000 strikes.¹⁹ The Exchange proposes to amend the table to define the strike interval at \$0.50 for underlying stocks with a share price of less than \$2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand²⁰ which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols, the Exchange

notes that 36 were in the \$1 Strike Price Interval Program with \$1.00 and \$2.00 strikes listed. Under the Exchange's proposal, the \$0.50 and \$1.50 strikes for these symbols would be added for the current expiration terms. The remaining 70 symbols eligible under the proposal would have \$0.50, \$1.00, \$1.50 and \$2.00 strikes added to their current expiration terms. Therefore, the Exchange notes that for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program, a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, and therefore, the additional options that would be listed under this proposal would represent a relatively minor increase of 0.294% in the number of options listed.

The Exchange does not believe that its proposal contravenes any previous efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than \$2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is \$0.50 there are only a total of four strikes that may be listed under the program (\$0.50, \$1.00, \$1.50, and \$2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (e.g., the \$0.50 Strike Program or the \$1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority ("OPRA"), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Trading Permit Holders ("TPHs") will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²² 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)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under \$2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at \$0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.²⁴ Currently the lowest strike listed is for \$2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at \$0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.²⁵ Similarly, the lowest strike listed is for \$2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in \$0.50 increments from \$0.50 up to \$2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See proposed Rule 4.5, Interpretation and Policy .20(a), which requires that an underlying stock must (1) close below \$2.50 in its primary market on the previous trading day; and (2) have an average daily trading volume of at least 1,000,000 shares per day for the three preceding calendar months.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ *Id.*

²⁴ See Yahoo! Finance, <https://finance.yahoo.com/quote/SOND/history?p=SOND> (last visited August 10, 2023).

²⁵ *Id.*

Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to any previous efforts to curb strike proliferation as those efforts focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below \$2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is \$0.50, there are only a maximum of four strikes that may be added (\$0.50, \$1.00, \$1.50, and \$2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,²⁶ ADRs,²⁷ and broad-based indexes.²⁸

The Exchange also believes the proposed rule change is consistent with

section 6(b)(1) of the Act,²⁹ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its TPHs will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in 4.3. Specifically, Rule 4.3(a) requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be duly registered (with the Commission) and be an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act); (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded. Additionally, Rule 4.3, Interpretation and Policy .01(a) provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading

volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 4.3 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all TPHs and all TPHs may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below \$2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

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.

²⁶ See *supra* note 13.

²⁷ See *supra* note 14.

²⁸ See *supra* note 15.

²⁹ 15 U.S.C. 78f(b)(1).

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

Pursuant to section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6)³¹ thereunder, the Exchange has designated this proposal as one that 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 interest.³²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.³⁴ The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁵

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

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2023-065 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-CBOE-2023-065. 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-CBOE-2023-065 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99112; File No. SR-MEMX-2023-31]

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

December 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2023, 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 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 Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c) relating to the Options Regulatory Fee. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on November 24, 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

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(6).

³² In addition, Rule 19b-4(f)(6) 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.

³³ 17 CFR 240.19b-4(f)(6)(iii).

³⁴ See *supra* note 5.

³⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁶ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).