

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-CboeEDGA-2024-047 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-CboeEDGA-2024-047. 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-CboeEDGA-2024-047 and should be submitted on or before December 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101556; File No. SR-MEMX-2024-44]

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

November 7, 2024.

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 October 31, 2024, 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). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. 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 amend the Fee Schedule to: (i) modify the required criteria under Liquidity Provision Tier 2; and (ii) modify the Cross Asset Tiers by eliminating Cross Asset Tiers 1 and 2 and renaming the current Cross Asset Tier 3 as Cross Asset Tier 1, as further described below.

The Exchange first notes that it operates in a highly 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. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 14% of the total market share of executed volume of equities trading.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2% of the overall market share.⁵ The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

⁴ Market share percentage calculated as of October 30, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

⁵ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

Liquidity Provision Tier 2

The Exchange currently provides a standard rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”).⁶ The Exchange also currently offers Liquidity Provision Tiers 1–5, among other volume-based tiers, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2,⁷ as further described below.

The Exchange currently provides an enhanced rebate of \$0.0032 per share for executions of Added Displayed Volume for Members that qualify for Liquidity Provision Tier 2 by achieving (1) an ADAV⁸ that is equal to or greater than 0.20% of the TCV⁹ in securities priced at or above \$1.00 per share and an ADV¹⁰ that is equal to or greater than 0.40% of the TCV in securities priced at or above \$1.00 per share; or (2) a Step-Up ADAV¹¹ from June 2024 (excluding Retail Orders) that is equal to or greater than 0.05% of the TCV in securities priced at or above \$1.00 per share and an ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share; or (3) an ADAV that is equal to or greater than 0.30% of the TCV. Now, the Exchange proposes to modify alternative criteria (1) of Liquidity Provision Tier 2, such that a Member may qualify for such alternative criteria (1) by achieving an ADAV that

⁶ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume” with a Fee Code of “B”, “D” or “J”, as applicable, on execution reports.

⁷ The pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 2” with a Fee Code of “B2”, “D2”, or “J2”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

⁸ As set forth on the Fee Schedule, “ADAV” means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and “Displayed ADAV” means ADAV with respect to displayed orders.

⁹ As set forth on the Fee Schedule, “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁰ As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

¹¹ As set forth on the Fee Schedule, “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

is equal to or greater than 0.20% of the TCV and an ADV that is equal to or greater than 0.50% of the TCV. Thus, the Exchange is proposing to keep the existing alternative criteria (2) and (3) intact without changes while modifying the current alternative criteria (1) such that the TCV calculation includes all securities, not just those priced at or above \$1.00 per share, and the ADV requirement in the second half of the criteria is increased from 0.40% of the TCV to 0.50% of the TCV. The Exchange is not proposing to change the rebate provided under Liquidity Provision Tier 2.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the proposed changes to Liquidity Provision Tier 2 reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange’s overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under Liquidity Provision Tier 2 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that such tier is designed to achieve.

Cross Asset Tiers

The Exchange currently offers Cross Asset Tiers 1–3 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume in securities priced at or above \$1.00 per share by achieving the corresponding required volume criteria for such tier on the Exchange’s equity options platform, MEMX Options. The Exchange now proposes to modify the Cross Asset Tiers by eliminating Cross Asset Tiers 1 and 2 and renaming the current Cross Asset Tier 3 to become Cross Asset Tier 1.

With respect to the current Cross Asset Tiers 1 and 2, under Cross Asset Tier 1, the Exchange provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by

achieving an Options ADAV¹² in the Market Maker¹³ capacity that is equal to or greater than 250,000 contracts on MEMX Options and an ADAV on MEMX Equities that is equal to or greater than 0.30% of the TCV. Under the current Cross Asset Tier 2, the Exchange provides an enhanced rebate of \$0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV in the Market Maker capacity that is equal to or greater than 125,000 contracts on MEMX Options. The Exchange now proposes to eliminate Cross Asset Tiers 1 and 2, as the Exchange no longer wishes to, nor is it required to, maintain such tiers.

With respect to the current Cross Asset Tier 3, the Exchange currently provides an enhanced rebate of \$0.0026 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV in the Customer¹⁴ and/or Professional¹⁵ capacity that is equal to or greater than 20,000 contracts on MEMX Options. The Exchange is not proposing to change the rebate provided or the required criteria under this tier, however, given the elimination of Cross Asset Tiers 1 and 2, the Exchange is proposing to re-number the current Cross Asset Tier 3 as Cross Asset Tier 1.¹⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,¹⁷ in general, and with sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that

¹² As set forth on the Fee Schedule, a Member’s “Options ADAV” for purposes of equities pricing means the average daily added volume calculated as a number of contracts added on MEMX Options per day by the Member, which is calculated on a monthly basis.

¹³ As set forth on the MEMX Options Fee Schedule, “Market Maker” applies to any order for the account of a registered Market Maker. “Market Maker” shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

¹⁴ As set forth on the MEMX Options Fee Schedule, “Customer” applies to any order for the account of a Priority Customer. Priority Customer shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

¹⁵ As set forth on the MEMX Options Fee Schedule, “Professional” applies to any order for the account of a Professional.

¹⁶ Currently, as noted on the Fee Schedule, Members that qualify for Cross Asset Tier 3 based on activity in a given month will also receive that associated Cross Asset Tier 3 rebate during the following month. Given the Exchange is proposing to re-name this tier Cross Asset Tier 1 and leave it otherwise unchanged, it will update the note under the table to read: “Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month.”

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

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 permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates 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.”¹⁹

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. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to encourage market participants to strive for higher volume on the Exchange, 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 notes that volume-based incentives (such as Liquidity Provision Tiers and Cross Asset Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value

to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed changes to the required criteria under Liquidity Provision Tier 2 are reasonable, equitable and not unfairly discriminatory because, as described above, such changes are available to all Members on an equal basis, and, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, orders to the Exchange in order to qualify for an enhanced rebate, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes the proposed change to eliminate Cross Asset Tiers 1 and 2 and renumber the existing Cross Asset Tier 3 to Cross Asset Tier 1 is reasonable because, as noted above, the Exchange is not required to maintain such tiers and the opportunity to qualify for the former Cross Asset Tier 3, now Cross Asset Tier 1, continues to be equally available to all Members, and continues to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange and on MEMX Options, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of sections 6(b)(4) and 6(b)(5) of the Act²⁰ 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. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, 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. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, 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.”²¹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would maintain a tiered pricing structure that is still consistent with the Exchange’s overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize members to submit additional order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to

¹⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

²¹ See *supra* note 19.

the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tier 2 and re-numbered Cross Asset Tier 1, and thus receive the corresponding enhanced rebates, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly 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. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, 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 choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by

exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

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."²² 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'"²³ 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.

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 Act²⁴ and Rule 19b-4(f)(2)²⁵ thereunder.

²² See *supra* note 19.

²³ *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)).

²⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁵ 17 CFR 240.19b-4(f)(2).

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-2024-44 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-2024-44. 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–2024–44 and should be submitted on or before December 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101559; File No. SR–NYSEARCA–2024–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt Temporary Rule 7.34–E(T) and Revise Rules 1.1 and 7.34–E To Lengthen Current Extended Trading Sessions

November 7, 2024

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on October 25, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt temporary Rule 7.34–E(T) and revise Rules 1.1 and 7.34–E to permit the Exchange to lengthen the current extended trading sessions. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to adopt temporary Rule 7.34–E(T) and revise Rules 1.1 (Definitions) and 7.34–E (Trading Sessions) to permit the Exchange to lengthen current extended trading hours for NMS stocks to 22 hours a day, 5 days a week. The Exchange also proposes certain technical, conforming changes to Rule 5.1–E(a) (General Provisions and Unlisted Trading Privileges) and Commentary .08 to Rule 9.5320–E (Prohibition Against Trading Ahead of Customer Orders).

Background and Proposed Rule Change

The Exchange currently offers three trading sessions each day the Exchange is open for business unless the Exchange determines otherwise, as follows.

First, the Exchange’s Early Trading Session begins at 4:00 a.m. Eastern Time (“E.T.”) and concludes at the commencement of the Core Trading Session.⁴ The second or Core Trading Session begins for each security at 9:30 a.m. E.T. and ends at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later.⁵ The final session is the Late Trading Session, which begins following the conclusion of the Core Trading Session and concludes at 8:00 p.m. E.T.

In order to facilitate the trading of NMS securities on the Exchange for 22 hours a day, 5 days a week, as recently announced,⁶ the Exchange proposes to

adopt a temporary Rule 7.34–E titled “7.34–E(T).” The proposed temporary rule would be identical to current Rule 7.34–E with two exceptions. First, the beginning and ending times of the Early and Late Trading Sessions, respectively, would be changed to reflect the proposed enlarged extended trading hours. Second, the Exchange would shorten the time it will begin accepting orders before commencement of the Early Trading Session from 90 minutes to 30 minutes. The current version of Rule 7.34–E would remain operative until the Exchange announces by Trader Update a transition to the new proposed Extended Trading Hours, which may depend on the effectiveness of additional, related rule filings as well as market infrastructure changes.⁷ Once the proposed enlarged extended trading hours are operative, the Exchange would file a proposed rule change to delete the current version of Rule 7.34–E and the “T” designation in Rule 7.34–E(T).

Further, the Exchange would add the following legend to current Rule 7.34–E (new text italicized):

This version of Rule 7.34–E will remain operative until the Exchange announces by Trader Update the expansion of Extended Trading Hours to encompass the hours set forth in Rule 7.34–E(T)(a). The Exchange will then file a proposed rule change to delete this version of Rule 7.34–E and preamble, and delete the “T” designation in Rule 7.34–E(T).

The Exchange would also revise current Rule 1.1 to add a definition of Extended Hours Trading to mean trading during the Early Trading Session and the Late Trading Session. The term is used without capitalization in current Rule 7.34–E(d) describing required customer disclosures. The Exchange proposes to use the proposed definition in proposed Rule 7.34–E(T)(d) and current Rule 7.34–E(d), with the exception of subsection (d)(4) of the current and proposed temporary rules, which use the phrase generically. The Exchange believes the proposal would add transparency and clarity to the Exchange’s rules.

The Exchange would also make certain technical, conforming changes to Rule 5.1–E(a) and Commentary .08 to Rule 9.5320–E.

Exchange to 22 Hours a Day,” October 25, 2024 (the “Press Release”), available at <https://ir.theice.com/press/news-details/2024/The-New-York-Stock-Exchange-Plans-to-Extend-Weekday-Trading-on-its-NYSE-Arca-Equities-Exchange-to-22-Hours-a-Day/default.aspx>.

⁷ As noted in the Press Release, the Exchange will be seeking support for the proposed extended hours trading from the U.S. securities information processors. See *id.*

²⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Rule 7.34–E(a)(1). The Exchange begins accepting orders 90 minutes before the Early Trading Session begins. See *id.*

⁵ See Rule 7.34–E(a)(2). “Core Trading Hours” means the hours of 9:30 a.m. E.T. through 4:00 p.m. E.T. or such other hours as may be determined by the Exchange from time to time. See Rule 1.1.

⁶ See “The New York Stock Exchange Plans to Extend Weekday Trading on its NYSE Arca Equities