

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 14, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 716 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–396, K2025–394.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101643; File No. SR–MEMX–2024–43]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Concerning Options Transaction Fees

November 15, 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 pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the MEMX Options Fee Schedule (the “Options Fee Schedule”) pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Exchange Rule 1.5(p).

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 Options Fee Schedule to (1) amend the Transaction Fees section of the Options Fee Schedule to separate the existing transaction rebates and fees for executions of contracts made in the Market Maker capacity⁴ from transaction rebates and fees for executions of contracts made in the Professional,⁵ Firm,⁶ Away Market Maker,⁷ or Broker-Dealer⁸ capacities;⁹ (2) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is in the Penny Interval program (“Penny options”)¹⁰ which add liquidity to the MEMX Options Book¹¹ and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities; and (3) reduce the transaction rebate for executions of contracts where the underlying security of the applicable option is not in the Penny Interval program (“Non-Penny

⁴ MEMX Options provides fee qualifier “m” for market maker transactions. Fee qualifiers will be provided by the Exchange on the monthly invoices provided to Options Members.

⁵ MEMX Options provides fee qualifier “p” for professional transactions.

⁶ MEMX Options provides fee qualifier “f” for firm transactions.

⁷ MEMX Options provides fee qualifier “a” for away market maker transactions.

⁸ MEMX Options provides fee qualifier “b” for broker-dealer transactions.

⁹ Each of professional transactions, firm transactions, away market maker transactions, and broker-dealer transactions, and market maker transactions are referred to as “non-Customer” transactions.

¹⁰ MEMX Options provides Fee Code “P” for transactions in Penny options. Fee Codes are provided by the Exchange on the monthly invoices provided to Options Members.

¹¹ MEMX Options provides Fee Code “D” for transactions which add liquidity to the MEMX Options Book.

options”)¹² which add liquidity to the MEMX Options Book and which are made in the Professional, Firm, Away Market Maker, or Broker-Dealer capacities, each 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. The Exchange is one of only 18 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than approximately 17.13% of the market share and currently the Exchange represents only approximately 3.29% of the market share.¹³ In such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products in response to fee changes. Accordingly competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange’s Fee Schedule sets forth standard rebates and rates applied per contract.

Amended Transaction Fees Section of the Options Fee Schedule To Separate the Transaction Rebates and Fees for Executions in the Market Maker Capacity From Executions in Other Non-Customer Capacities

Currently, the Exchange provides the same standard transaction rebates and fees for all executions in Market Maker, Professional, Firm, Away Market Maker, and Broker-Dealer capacities (each a “non-Customer” capacity). Specifically, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny options (as defined above) in all non-Customer capacities which add liquidity to the MEMX Options Book, a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in all non-Customer

¹² MEMX Options provides Fee Code “N” for transactions in Non-Penny options.

¹³ Market share percentage calculated as of October 31, 2024. The Exchange receives and processes data made available through the consolidated data feeds (*i.e.*, OPRA).

capacities which add liquidity to the MEMX Options Book, a standard transaction fee of \$0.50 per contract for executions of Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book, and a standard transaction fee of \$1.21 per contract for executions of non-Penny options in all non-Customer capacities which remove liquidity from the MEMX Options Book. The Transaction Fees table within the Options Fee Schedule currently groups together all non-Customer capacities and shows that executions made in any non-Customer capacity receive the same standard transaction rebates and fees. Now, the Exchange proposes to provide different transaction rebates and fees for executions in the Market Maker capacity than are provided for other non-Customer capacities (namely, different than the transaction rebates and fees provided for executions in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities). As such, the Exchange proposes to delete the rows “Professional (“p”)”, “Firm (“f”)”, “Away Market Maker (“a”)”, and “Broker-Dealer (“b”)” in the fourth row of the table and to create a new fifth row of the table that separates out the fees and rebates applicable to executions in the Market Maker capacity. The Exchange does not propose to change any of the fees charged or rebates provided for any executions in the Market Maker capacity, which remain in the fourth row of the table.

The Exchange proposes to make these changes in order to align its Options Fee Schedule with those of other national securities exchanges and to offer different transaction fees and rebates for executions made in the non-Customer, non-Market Maker capacity from transactions made in the Customer capacity and in the Market Maker capacity. The Exchange notes that the Options Fee Schedules of several national securities exchanges separate transaction fees and rebates for executions in the Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.¹⁴ The Exchange also notes

¹⁴ See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The Cboe C2 Options Fee Schedule separates executions in the C2 Market-Maker capacity from executions in other non-Customer capacities (the “Non-Customer, Non-Market-Maker” capacity on the C2 Options Fee Schedule). Specifically, the C2 Options Fee Schedule provides a transaction rebate of \$0.41 for executions of Penny options in the C2 Market-Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the C2 Market-Maker capacity which remove liquidity from C2, a transaction rebate of \$0.73 for

that other national securities exchanges have established separate transaction fees and rebates for executions made in each non-Customer capacity.¹⁵

Reduced Transaction Rebate for Executions of Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.45 per contract for executions of Penny options

executions of non-Penny options in the C2 Market-Maker capacity which add liquidity to C2, and a transaction fee of \$0.90 for executions of non-Penny options in the C2 Market-Maker capacity which remove liquidity from C2. The C2 Options Fee Schedule groups together transactions in the “Non-Customer, Non-Market Maker” capacities, which includes Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, and Joint Back Office capacities. The C2 Options Fee Schedule provides a transaction rebate of \$0.36 for executions of Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, a transaction fee of \$0.50 for Penny options executed in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2, a transaction rebate of \$0.65 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which add liquidity to C2, and a transaction fee of \$0.93 for executions of non-Penny options in the Non-Customer, Non-Market Maker capacity which remove liquidity from C2. See also the MIAx Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>. The MIAx Pearl Options Fee Schedule separates executions in the “All MIAx Pearl Market Maker” capacity from executions in other non-Customer capacities (the “Non-Priority Customer, Firm, BD, and Non-MIAx Pearl Market Makers” origin capacities listed on the MIAx Pearl Options Fee Schedule. Specifically, the MIAx Pearl Options Fee Schedule sets forth a rebate ranging from \$0.25 to \$0.48 (based on tier) for executions of Penny options in the MIAx Pearl Market Maker capacity which add liquidity to MIAx Pearl where the contra side of the contract arises from a non-Priority Customer, a rebate ranging from \$0.22 to \$0.46 (based on tier) for executions of Penny options in the MIAx Pearl Market Maker capacity which add liquidity to MIAx Pearl where the contra side of the contract arises from a Priority Customer, a fee of \$0.50 for executions of Penny Options in the MIAx Pearl Market Maker capacity which remove liquidity from MIAx Pearl, a rebate ranging from \$0.30 to \$0.85 (based on tier) for executions of non-Penny options in the MIAx Pearl Market Maker capacity which add liquidity to MIAx Pearl, and a fee ranging from \$1.07 to \$1.10 (based on tier) for executions of non-Penny options in the MIAx Pearl Market Maker capacity which remove liquidity from MIAx Pearl.

¹⁵ See the Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/. The Cboe BZX Options Fee Schedule establishes separate ranges of transaction fees and rebates, based on tier, for executions made in the Customer, Professional, Firm/Broker-Dealer/Joint Back Office, Market Maker, and Away Market Maker capacities. See also the MIAx Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/miax-options/fees>. The MIAx Options Fee Schedule establishes separate ranges of transaction fees and rebates for executions made in the capacity of all MIAx Market Makers, Priority Customers, Public Customers that are not Priority Customers, Non-MIAx Market Makers, Non-Member Broker-Dealer, and Firm capacity.

(as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce the standard transaction rebate on contracts for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for executions of Penny options in such capacities which add liquidity to the MEMX Options Book is \$0.42 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange’s expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange’s overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. As noted above, other national securities exchanges separate out the transaction rebate provided for executions in non-Customer, non-Market Maker capacities from those executions made in Customer capacity and executions made in the Market Maker capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in Penny options which add liquidity.¹⁶

Reduced Transaction Rebate for Executions of Non-Penny Options in the Professional, Firm, Away Market Maker, or Broker Dealer Capacities Which Add Liquidity to the MEMX Options Book

Currently, the Exchange provides a standard transaction rebate of \$0.80 per contract for executions of non-Penny options (as defined above) in the Professional, Firm, Market Maker, Away Market Maker, and Broker Dealer capacities which add liquidity to the MEMX Options Book. Now, the Exchange proposes to reduce; the standard transaction rebate on contracts for the execution of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity

¹⁶ See *infra* note 22.

to the MEMX Options Book from \$0.80 per contract to \$0.72 per contract. Specifically, the Exchange proposes to create a separate line on the Options Fee Schedule for executions made in the Professional, Firm, Away Market Maker, and Broker-Dealer capacities and to note on the Options Fee Schedule that the standard transaction rebates for execution of non-Penny options in such capacities which add liquidity to the MEMX Book is \$0.72 per contract.

The purpose of reducing the rebate is for business and competitive reasons as the Exchange believes that reducing such rebate would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book. As discussed above, other national securities exchanges separate out the transaction rebate for non-Customer, non-Market Maker capacities from those executions made in the Customer capacity. The Exchange notes that the proposed reduced rebate is competitive with, or exceeds the transaction rebate provided by other national securities exchanges for executions in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity.¹⁷

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,¹⁸ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ 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.

MEMX Options 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."²⁰

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 reasonable and equitable to provide different transaction rebates and fees for executions in non-Customer, non-Market Maker capacities, than for executions in the Customer capacity or in the Market Maker capacity. The Exchange believes that providing different rebates and assessing different fees for executions in non-Customer, non-Market Maker capacities is equitable and not unfairly discriminatory because each Member who executes contracts in such capacities will be assessed the respective fees or provided the respective rebates. As noted above, other national securities exchanges separate transaction fees and rebates for executions in the Market Maker capacity from the transaction fees and rebates for executions made in other non-Customer capacities.²¹

The Exchange believes that the proposed changes to reduce the rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book from \$0.45 per contract to \$0.42 per contract, and to reduce the rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options

Book from \$0.80 per contract to \$0.72 per contract, are reasonable because such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging executions which add liquidity to the MEMX Options Book in both Penny and non-Penny options. The Exchange believes that the proposed changes are equitable and not unfairly discriminatory because the reduced rebates will apply to all market participants who make executions of Penny options or non-Penny options, respectively, in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book.

The Exchange believes the proposed reduced rebate for executions of Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and competitive with, the rebates provided by other exchanges for executions of Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²² Similarly, the Exchange believes that the proposed reduced rebate for executions of non-Penny options made in non-Market Maker, non-Customer capacities which add liquidity to the MEMX Options Book is appropriate because it exceeds or is comparable to, and competitive with, the rebates offered by other national securities exchanges on Options platforms for executions of non-Penny options made in non-Market Maker and non-Customer capacities which add liquidity.²³ The

²² For example, the Cboe C2 Options Exchange offers a rebate of \$0.36 for transaction in non-Customer, non-Market Maker capacities in Penny options which add liquidity to the C2 Book. See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAx Pearl Options Exchange offers rebates ranging from \$0.22 to \$0.48 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAx Pearl Market Maker capacities in Penny options which add liquidity to the MIAx Pearl Options Book. See the MIAx Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

²³ For example, the Cboe C2 Options Exchange offers a rebate of \$0.65 for transaction in non-Customer, non-Market Maker capacities in non-Penny options which add liquidity to the C2 Book. See the Cboe C2 Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/. The MIAx Pearl Options Exchange offers rebates ranging from \$0.85 to \$0.30 for transactions in non-Priority Customer, Firm, Broker-Dealer, and Non-MIAx Pearl Market Maker capacities in non-Penny options which add liquidity to the MIAx Pearl Options Book. See the MIAx Pearl Options Fee Schedule, available at <https://www.miaxglobal.com/markets/us-options/pearl-options/fees>.

¹⁷ See *infra* note 23.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²¹ See *supra* note 14.

Exchange believes that the proposed reduced rebates which add liquidity to the MEMX Book in Penny and non-Penny options in non-Market Maker, non-Customer capacities will provide right-sized incentives which will continue to attract non-Market Maker, non-Customer order flow to the Exchange.

For the reasons discussed above, the Exchange submits that its proposed change to the Options Transaction Fee Schedule satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁴ 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 are not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed rebate described herein is 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 decrease the Exchange's expenditures, generate additional revenue with respect to its transaction pricing, incentivize market participants to direct additional order flow to the MEMX Options platform, 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. Further, MEMX Options' proposed modified transaction fees and rebates exceed or are comparable to the transaction fees and rebates assessed by other options exchanges.²⁵ 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 rebate applies equally to all Options Members. The proposed pricing structure is intended to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, in a manner that is comparable with the rebates and fees offered by other exchanges for executions in the non-Customer, non-Market Maker capacities in both Penny and non-Penny options. The Exchange believes that the proposed reduced rebates are consistent with the Exchange's overall pricing philosophy. As the proposed rebate is 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 provide rebates for executions in non-Customer, non-Market Maker capacities which add liquidity to the MEMX Options book which 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 rebate is 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."²⁷ 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' . . .".²⁸ 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 Act²⁹ and Rule 19b-4(f)(2)³⁰ 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-2024-43 on the subject line.

²⁸ *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)).

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78f(b)(4) and (5).

²⁵ See *supra* notes 22 and 23.

²⁶ See *supra* note 20.

²⁷ See *supra* note 20.

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-2024-43. 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-2024-43 and should be submitted on or before December 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Stephanie J. Fouse,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101635; File No. SR-NYSE-NAT-2024-31]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE National Rule 7.13 To Remove References to the Chair of the Board and a Cross-Reference to NYSE National Rule 5.5

November 15, 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 November 8, 2024, NYSE National, Inc. ("NYSE National" or the "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 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 amend NYSE National Rule 7.13 to remove references to the Chair of the Board and a cross reference. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend NYSE National Rule 7.13 (Trading Suspensions) to remove references to the Chair of the Board of Directors of the Exchange ("Board") and a cross reference.

Under current Rule 7.13,⁴ except as otherwise stated in Rule 5.5, the Chair of the Board or the President of the Exchange, or the officer designee of the Chair or the President, has the power to suspend trading on any and all securities traded on the Exchange whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than two days or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

The Exchange believes that it is advisable to remove the cross-reference to Rule 5.5 in the current rule, as there is no Exchange Rule 5.5. Although a Rule 5.5 was proposed at the same time as the current Rule 7.13, Rule 5.5 was removed from the relevant filing in an amendment.⁵ The cross-reference is therefore meaningless.

The Exchange believes that it is advisable to remove the references to the Chair in Rule 7.13 because the Chair has not acted under Rule 7.13 since the rule was adopted and the Exchange does not anticipate that an independent or non-employee Chair will have sufficient involvement in the day-to-day

⁴ The current text of Rule 7.13 was adopted in 2018. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSE-NAT-2018-02) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Support the Re-Launch of NYSE National, Inc. on the Pillar Trading Platform).

⁵ Proposed Rule 5.5 contained rules for the delisting of investment company units (an exchange traded product) and listed the rules pursuant to which the Exchange may have determined that it was appropriate to either suspend dealings in and/or remove securities from listing. Proposed Rule 5.5 was removed in an amendment of the relevant filing. See Exhibit 1 to SR-NYSE-NAT-2018-02 (February 21, 2018) (available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2018/NYSE-NAT-2018-02,%20Re-file.pdf>), and Amendment No. 1 to SR-NYSE-NAT-2018-02 (May 16, 2018), at 10 (stating that "in this Amendment No. 1, the Exchange will not be proposing rules relating to the listing of Exchange Traded Products in Rule[] 5") (available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2018/NYSE-NAT-2018-02,%20Am.1.pdf>). See also 83 FR 23968, *supra* note 4.

³¹ 17 CFR 200.30-3(a)(12).