

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95688; File No. SR-MEMX-2022-23]

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

September 7, 2022.

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 August 31, 2022, 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 on September 1, 2022. 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) adopt a reduced fee for executions of Pegged Orders⁴ with a Midpoint Peg⁵ instruction (such orders, "Midpoint Peg Orders") and a time-in-force ("TIF") instruction of IOC⁶ or FOK⁷ that execute at the midpoint of the national best bid and offer ("NBBO"); (ii) modify the required criteria under Liquidity Provision Tiers 1 and 2; and (iii) allow affiliated Members to aggregate their quoting activity for purposes of the Exchange's Displayed Liquidity Incentive ("DLI") Tiers with prior notice to the Exchange, 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. 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 15.5% of the total market share of executed volume of equities trading.⁸ 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 3% of the overall market share.⁹ 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.

Midpoint Peg IOC/FOK Orders

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange now proposes to adopt a reduced fee of \$0.0026 per share for executions of Midpoint Peg Orders in securities priced at or above \$1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry¹⁰ (such orders, "Midpoint Peg IOC/FOK Orders").¹¹ As proposed, executions of Midpoint Peg Orders in securities priced below \$1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry will be charged a fee of 0.25% of the total dollar value of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Midpoint Peg IOC/FOK Orders is to incentivize Members to submit additional liquidity-removing orders designed to execute at the midpoint upon entry (*i.e.*, in the form of Midpoint Peg IOC/FOK Orders) to the Exchange, as the cost of such executions would be lower than it is today. In turn, the Exchange believes the submission of additional Midpoint Peg IOC/FOK Orders would encourage firms that post liquidity at the midpoint to submit additional liquidity-providing orders designed to execute at the midpoint to

¹⁰ The Exchange notes that all Midpoint Peg Orders with a TIF instruction of IOC or FOK, if executed on the Exchange, would remove liquidity from the Exchange upon entry, as orders with a TIF instruction of IOC or FOK do not post on the MEMX Book. The Exchange further notes that a Midpoint Peg Order with a TIF instruction of IOC may be eligible for routing away pursuant to Exchange Rule 11.11, and that if any such order is routed to and executed at an away market it would be charged the current standard fee of \$0.0030 per share for orders that are routed to, and remove liquidity from, another market. See Exchange Rules 11.6(o)(1) and 11.6(o)(3).

¹¹ The proposed pricing for executions of Midpoint Peg IOC/FOK Orders is referred to by the Exchange on the Fee Schedule under the new description "Removed volume from MEMX Book, Midpoint Peg (IOC/FOK)" and such orders will receive a Fee Code of "Rm" assigned by the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

⁴ See Exchange Rule 11.6(h).

⁵ See Exchange Rule 11.6(h)(2).

⁶ See Exchange Rule 11.6(o)(1).

⁷ See Exchange Rule 11.6(o)(3).

⁸ Market share percentage calculated as of August 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

⁹ *Id.*

the Exchange, as such orders would have a greater chance of being executed as a result of additional contra-side liquidity-removing Midpoint Peg IOC/ FOK Orders to interact with. Thus, the Exchange's proposal to reduce the fee for executions of Midpoint Peg IOC/ FOK Orders is designed to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue.

Liquidity Provision Tiers 1 and 2

The Exchange currently provides a standard rebate of \$0.0020 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"). The Exchange also currently offers the Liquidity Provision 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 tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tiers 1 and 2, as further described below, but the Exchange does not propose to change the rebates provided under such tiers.

With respect to Liquidity Provision Tier 1, a Member currently qualifies for such tier by achieving: (1) a Displayed ADAV¹² that is equal to or greater than 0.40% of the TCV;¹³ or (2) a Remove ADV¹⁴ that is equal to or greater than 0.25% of the TCV and a Step-Up ADAV¹⁵ from June 2022 that is equal to or greater than 0.05% of the TCV. Now, the Exchange proposes to modify the required criteria under such tier such that a Member would now qualify for Liquidity Provision Tier 1 by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) a Remove ADV that is equal to or greater than 0.20% of the TCV and a Step-Up

ADAV from June 2022 that is equal to or greater than 0.05% of the TCV. Thus, such proposed change would lower the Remove ADV threshold in one of the two alternative criteria under such tier.

With respect to Liquidity Provision Tier 2, a Member currently qualifies for such tier by achieving an ADAV¹⁶ that is equal to or greater than 0.25% of the TCV.¹⁷ Now, the Exchange proposes to modify the required criteria under such tier such that a Member would now qualify for Liquidity Provision Tier 2 by achieving an ADAV that is equal to or greater than 0.20% of the TCV. Thus, such proposed change would lower the ADAV threshold under such tier.

The Exchange believes that lowering the Remove ADV threshold under Liquidity Provision Tier 1 and the ADAV threshold under Liquidity Provision Tier 2, as proposed, would make such tiers easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange anticipates that more Members will strive to qualify for such tiers than currently do, resulting in the submission of additional order flow to the Exchange.

Aggregation of Affiliated Members' DLI Quoting Activity

Lastly, the Exchange proposes to add a note to the Fee Schedule to allow affiliated Members to aggregate the quoting activity of such affiliated Members' MPIDs for purposes of DLI Tier qualification if such Members provide prior notice to the Exchange. As proposed, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to aggregate the quoting activity (but not the NBBO Time¹⁸) of such affiliated Members' MPIDs in a manner that is consistent with the DLI Tier calculation methodologies currently set forth on the Fee

Schedule.¹⁹ More specifically, the Exchange would use the same calculation methodologies currently applicable to the aggregation of the quoting activity (but not the NBBO Time) of multiple MPIDs of one Member to aggregate the quoting activity (but not the NBBO Time) of all MPIDs associated with the affiliated Members.

As proposed, the Exchange will verify such affiliation using a Member's Form BD, which lists control affiliates. The purpose of this proposed change is to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate quoting activity as proposed would produce the same result for purposes of the Exchange's DLI Tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. The Exchange notes that the proposed aggregation of affiliated Member firms' quoting activity for purposes of DLI Tier qualification, as described above, is consistent with the current practice of the Exchange and other exchanges with respect to the aggregation of affiliated Member firms' volumes for purposes of ADAV and ADV calculations with respect to pricing tiers.²⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²¹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²² in particular, 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 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

¹² 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.

¹³ 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.

¹⁴ 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, and the term "Remove ADV" means ADV with respect to orders that remove liquidity.

¹⁵ As set forth on the Fee Schedule, "Step-Up ADAV" means ADV in the relevant baseline month subtracted from current ADAV.

¹⁶ 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.

¹⁷ 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.

¹⁸ As set forth on the Fee Schedule, "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's MPIDs has a displayed order of at least one round lot at the national best bid or the national best offer.

¹⁹ See the Exchange's Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>) and the Exchange's initial proposal to adopt the DLI (Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07)) for additional details regarding the Exchange's calculation methodologies for the DLI Tiers.

²⁰ See, e.g., the Cboe EDGX Exchange, Inc. equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/).

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(4) and (5).

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.”²³

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 incentivize market participants to direct additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members.

The Exchange believes that its proposal to charge a reduced fee for executions of Midpoint Peg IOC/FOK Orders is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Midpoint Peg IOC/FOK Orders to the Exchange, which, in turn, the Exchange believes would encourage firms that post midpoint liquidity to submit additional liquidity-adding orders designed to execute at the midpoint to the Exchange in order to interact with such Midpoint Peg IOC/FOK Orders, as described above. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the

Exchange’s market quality to the benefit of all Members and enhancing its attractiveness as a trading venue, particularly as the Exchange believes the proposed reduction in the fee for executions of Midpoint Peg IOC/FOK Orders (*i.e.*, \$0.0004 per share lower than the standard fee for Removed Volume) is not excessive and is instead reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Midpoint Peg IOC/FOK Orders is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

With respect to Liquidity Provision Tiers 1 and 2, the Exchange notes that volume-based incentives and discounts 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 discounts 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 Liquidity Provision Tiers 1 and 2, as modified by the proposed changes to the required criteria under such tiers, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to increase their order flow to the Exchange in order to qualify for the corresponding enhanced rebate for executions of Added Displayed Volume, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange also believes that the proposed changes to the required criteria under Liquidity Provision Tiers 1 and 2 reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes the enhanced rebate for executions of Added Displayed Volume under each such tier remains commensurate with the corresponding required criteria under the applicable tier and reasonably related to the market quality benefits the applicable tier is designed to achieve.

Without having a view of activity on other markets and off-exchange venues,

the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed Liquidity Provision Tiers 1 and 2. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange believes that the proposed changes to lower the Remove ADV threshold and the ADAV threshold under Liquidity Provision Tiers 1 and 2, respectively, would make such tiers easier to achieve, and the Exchange anticipates that more Members will strive to qualify for such tiers than currently do, resulting in the submission of additional order flow to the Exchange.

As described above, the proposed language on the Fee Schedule permitting aggregation of quoting activity (but not NBBO Time) amongst affiliated Members for purposes of DLI Tier qualification is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate quoting activity in determining DLI Tier qualification would produce the same result for purposes of the Exchange’s DLI Tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange’s pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Members’ volumes for purposes of determining ADAV and ADV with respect to pricing tiers, and therefore, it does not raise any new or novel issues that have not previously been considered by the Commission.²⁴

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 Act²⁵ 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

²³ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ See *supra* note 20.

²⁵ 15 U.S.C. 78f(b)(4) and (5).

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, including in the form of orders designed to execute at the midpoint of the NBBO, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members. 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."²⁶

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including liquidity-adding and liquidity-removing orders designed to execute at the midpoint, to the Exchange, 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 opportunity to qualify for the proposed new criteria under Liquidity Provision Tiers 1 and 2, and thus receive the corresponding enhanced rebates for executions of

Added Displayed Volume, would continue to be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new 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. Additionally, as noted above, the ability for Members to aggregate quoting activity amongst affiliated Member firms for purposes of the Exchange's determination of DLI Tier qualification is designed to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity and would apply equally to all Members as does the Exchange's current practice with respect to the aggregation of affiliated Members' volumes for purposes of determining ADAV and ADV with respect to pricing tiers. 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 15.5% 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, including with respect

to executions of Midpoint Peg IOC/FOK Orders and Added Displayed Volume, 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 encourage additional order flow to the Exchange through a reduced fee for executions of Midpoint Peg IOC/FOK Orders and modifications to the required criteria under certain volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Additionally, as discussed above, the proposed change to allow affiliated Members to aggregate their quoting activity for purposes of the Exchange's determination of DLI Tier qualification is consistent with the practice of the Exchange and other exchanges with respect to the aggregation of affiliated Member firms' volumes for purposes of ADAV and ADV calculations with respect to pricing tiers. 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 incentives to market participants and aggregation of trading activity amongst affiliated firms with respect to pricing incentives.

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

²⁶ See *supra* note 23.

²⁷ See *supra* note 23.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-23 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-2022-23. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2022-23 and should be submitted on or before October 4, 2022.

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

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022-19681 Filed 9-12-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-814, OMB Control No. 3235-0764]

Proposed Collection; Comment Request; Extension: Rule 6c-11

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information

summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6c-11 under the Investment Company Act of 1940 (the "Act") permits exchange-traded funds ("ETFs") that satisfy certain conditions to operate without first obtaining an exemptive order from the Commission. The rule was designed to create a consistent, transparent, and efficient regulatory framework for ETFs and facilitate greater competition and innovation among ETFs. Rule 6c-11 requires an ETF to disclose certain information on its website, to maintain certain records, and to adopt and implement written policies and procedures governing its constructions of baskets, as well as written policies and procedures that set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the ETF and its shareholders.

We estimate that the total hour burdens and time costs associated with rule 6c-11, including the burden associated with reviewing and updating website disclosures, recordkeeping, and reviewing and updating policies and procedures, will result in an average aggregate annual burden of 51,156 hours and an average aggregate time cost of \$1,248,912.

The requirements of this collection of information are mandatory. If information collected pursuant to rule 6c-11 is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by November 14, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

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).

³¹ 17 CFR 200.30-3(a)(12).