

indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>32</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."<sup>33</sup>

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>34</sup> in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

- According to the Exchange, the investment objective of the Trust will be for the Shares to reflect the performance of the price of EUAs, and that the Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis and will not hold or trade in commodity futures contracts.<sup>35</sup> The Exchange further represents, however, that the Trust is not a proxy for investing in physical carbon credits, and that the Administrator will use the settlement price for the Daily EUA Futures established by ICE Endex to calculate the NAV.<sup>36</sup> What are commenters' views on the Trust's holdings in spot EUAs, on the one hand, and its method of calculating NAV based on the settlement price of Daily EUA Futures, on the other? What are commenters' views on the correlation in pricing between the EUA and Daily EUA Futures markets?

- The Exchange asserts that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued

listing criteria in NYSE Arca Rule 8.201-E. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices?

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>37</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 3, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 17, 2023.

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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2023-37 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.

<sup>37</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to file number SR-NYSEARCA-2023-37. 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-NYSEARCA-2023-37 and should be submitted on or before October 3, 2023. Rebuttal comments should be submitted by October 17, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98303; File No. 4-546]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add MEMX, LLC, as a Participant

September 6, 2023.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934

<sup>38</sup> 17 CFR 200.30-3(a)(57).

<sup>32</sup> *Id.*

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> See Notice, *supra* note 3.

<sup>35</sup> See *id.* at 38110.

<sup>36</sup> See *id.*; *id.* at 38112.

(“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on August 29, 2023, MEMX, LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) an amendment to the Options Order Protection and Locked/Crossed Market Plan (“Plan”).<sup>3</sup> The amendment adds MEMX as a Participant<sup>4</sup> to the Plan. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

### I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MEMX as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, Emerald, ISE, ISE Gemini, ISE Mercury, MIAX, Nasdaq, Pearl, Phlx, NYSE MKT, and NYSE Arca. MEMX has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an

Eligible Exchange<sup>5</sup> may become a Participant in the Plan by: (i) executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.<sup>6</sup>

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) execute a copy of the Plan with the only change being the addition of the new Participant’s name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

### II. Effectiveness of the Proposed Linkage Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>7</sup> because it has been designated as involving solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

<sup>5</sup> Section 2(6) of the Plan defines an “Eligible Exchange” as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) is a “Participant Exchange” in the Options Clearing Corporation (“OCC”) (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (“OPRA”) Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MEMX has represented that it has met the requirements for being considered an Eligible Exchange. See letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023.

<sup>6</sup> MEMX has represented that it has executed a copy of the current Plan, amended to include MEMX as a Participant and has sent each current Participant a copy of the executed Plan. See letter from Anders Franzon, General Counsel, MEMX, to Vanessa Countryman, Secretary, Commission, dated August 29, 2023.

<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(a)(1).

<sup>1</sup> 15 U.S.C. 78k–1(a)(3).

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), the NASDAQ Stock Market LLC (“Nasdaq”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX, Inc. (“Phlx”), NYSE Amex, LLC (“NYSE Amex”), and NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). See also Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. (“BATS”) as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated (“C2”) as a Participant); 66969 (May 12, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC (“BOX Options”) as a Participant); 70763 (October 28, 2013), 78 FR 65740 (November 1, 2013) (adding Topaz Exchange, LLC (“Topaz”) as a Participant); 70762 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding MIAX International Securities Exchange, LLC (“MIAX”) as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. (“EDGX”) as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016) (adding ISE MERCURY, LLC (“ISE Mercury”) as a Participant); 79896 (January 30, 2017), 82 FR 9264 (February 3, 2017) (adding MIAX Pearl “Pearl”) as a Participant); 85229 (March 1, 2019), 84 FR 8347 (March 7, 2019) (adding MIAX Emerald, LLC (“Emerald”) as a Participant).

<sup>4</sup> The term “Participant” is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Act and the rules thereunder. 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](mailto:rule-comments@sec.gov). Please include file number 4–546 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 4–546. 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 4–546 and should be submitted on or before October 3, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98304; File No. SR-CBOE-2023-044]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt a Quote Protection Timer

September 6, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 30, 2023, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 5.32. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Rule 5.32 to adopt a passive quote protection mechanism.

The options market is driven by Market-Maker quotes, and thus Market-Maker quotes are critical to provide liquidity to the market and contribute to price discovery for investors. If Market-Makers do not have sufficient time to refresh their resting quotes (the primary source of liquidity for customers in the market) in response to market updates before executing against incoming interest that has incorporated those market updates, this increased risk of execution at stale prices may cause Market-Makers to widen their quotes to the detriment of investors or otherwise withhold liquidity. This reduced liquidity may reduce execution opportunities or cause executions to occur at worse prices for customers. Further, Market-Makers must comply with various obligations, including to provide continuous electronic quotes and to update quotes in response to market conditions.<sup>3</sup> It takes time for Market-Makers to update quotes in series in their appointed classes, which may not take effect until after faster market participants have updated orders. The Exchange believes it is appropriate to provide Market-Maker quotes with a reasonable amount of protection to allow them to execute at prices reflective of market updates given not only the Exchange-imposed requirements to provide and updates such quotes but also the resources Market-Makers expend to comply with those requirements.

Market-Maker quotes are based generally on pricing models that rely on various factors, including the price of the underlying security and that security’s volatility. As these variables change, a Market-Maker’s pricing model automatically will enter updates to a number of its bids and offers. Additionally, a Market-Maker’s system may also automatically enter orders in response to changes in those variables as part of their market-making activity, such as hedging. As a result, there can be a multitude of instances in which the bids and offers of multiple Market-Makers attempting to update their quotes and submit orders in response to

market changes inadvertently interact with each other, which can lead to significant risk and exposure. This may occur, for example, when one Market-Maker’s price update system is faster than systems used by other Market-Makers. In this respect, a Market-Maker’s system that updates options prices microseconds, or even nanoseconds, faster than another Market-Maker’s system may lock or cross its bids (offers) against the other Market-Maker’s offers (bids) every time its bid (offer) adjusts to the offer (bid) of the second Market-Maker even if the second Market-Maker’s system was also in the process of updating that offer (bid).

For example, suppose three Market-Makers for class XYZ have the following displayed markets:

Market-Maker A: (10) 10.00–10.20 (10)  
Market-Maker B: (5) 10.05–10.20 (5)  
Market-Maker C: (5) 9.95–10.15 (5)

Each of the Market-Maker’s systems identify an increase in the price of stock XYZ, which causes those systems to send updated quotes. However, Market-Maker A, as a result of its own technological investment, has the fastest system, which received the updated price of stock XYZ three microseconds before the systems of the other two Market-Makers, and thus sent its updated quotes to the Exchange three microseconds before the systems of the other two Market-Makers. Market-Maker A sent a revised two-sided market of (10) 10.20–10.40 (10) based on the updated price of XYZ. Because the quotes for Market-Maker A’s updated market reached the Exchange before the updated markets of Market-Makers B and C, Market-Maker A’s bid will execute against Market-Maker C’s offer of 10.15 and Market-Maker B’s offer of 10.20, which offers were based on a lower stock price. Market-Maker B’s and C’s updated markets of (5) 10.25–10.40 (5) and (5) 10.15–10.35 (5) reached the Exchange after this execution, despite those Market-Makers no longer being interested in selling at the price of 10.15 or 10.20. Market-Maker A likely submitted its updated market to display liquidity available for customer prices at an updated price, rather than remove liquidity from other liquidity providers at outdated prices. This could happen contemporaneously in a large number of series within the class, such that instead of locking one quote, Market-Maker A may lock 20 of Market-Maker B’s and Market-Maker C’s quotes. This may expose each Market-Maker to significant risk due to these unintended executions and prevent orders intended to provide liquidity in the Book from doing so.

<sup>9</sup> 17 CFR 200.30-3(a)(85).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Rule 5.51.