

any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to a product exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on (which list products that compete with VIX options) and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 17% of the market share of executed volume of options trades.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, 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.”¹⁶ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, 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’”¹⁷ Accordingly, the Exchange does not believe its proposed changes to the incentive programs 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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) of the Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2022-048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2022-048. 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-CBOE-2022-048 and should be submitted on or before October 24, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95933; File No. SR-NASDAQ-2022-027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

September 27, 2022.

On March 21, 2022, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 7, 2022), available at http://markets.cboe.com/us/options/market_share/.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ *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-NYSEArca-2006-21)).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

change to allow companies to modify certain pricing limitations for companies listing in connection with a Direct Listing with a Capital Raise in which the company will sell shares itself in the opening auction on the first day of trading on Nasdaq. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.³ On May 19, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve or disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on June 2, 2022.⁶ On July 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.⁸ On September 15, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filings, as modified by Amendment No. 1, in its entirety.⁹

Section 19(b)(2) of the Act¹⁰ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in

the **Federal Register** on April 8, 2022.¹¹ The 180th day after publication of the Notice is October 5, 2022. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 2, along with the comments on the proposal. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹² designates December 4, 2022, as the date by which the Commission should either approve or disapprove the proposed rule change (File No. SR-NASDAQ-2022-027), as modified by Amendment No. 2.

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

J. Matthew DeLesDernier,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95936; File No. SR-MEMX-2022-26]

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

September 27, 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 September 15, 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 and non-Members (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

Background

The Exchange is re-filing its proposal to amend the Fee Schedule regarding fees the Exchange charges to Members and non-Members for physical connectivity to the Exchange and for application sessions (otherwise known as "logical ports") that a Member utilizes in connection with their participation on the Exchange (together with physical connectivity, collectively referred to in this proposal as "connectivity services," as described in greater detail below and in Exhibit 5). The Exchange is proposing to implement the proposed fees immediately.

The Exchange filed its Initial Proposal on December 30, 2021, and began charging fees for connectivity services for the first time in January of 2022. On February 28, 2022, the Commission suspended the Initial Proposal and asked for comments on several questions.⁴ The Exchange then filed the

³ See Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022) ("Notice"). Comments received on the proposal are available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2022-027/srnasdaq2022027.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See Securities Exchange Act Release No. 94989 (May 26, 2022), 87 FR 33558 (June 2, 2022).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 95220 (July 7, 2022), 87 FR 41780 (July 13, 2022).

⁹ See Securities Exchange Act Release No. 95811 (September 16, 2022), 87 FR 57951 (September 22, 2022).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See Notice, *supra* Note 3.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(57).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

⁴ See Securities Exchange Act Release No. 94332 (February 28, 2022) (SR-MEMX-2021-22) (Suspension of and Order Instituting Proceedings to