

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95903; File No. SR-MEMX-2022-27)

September 23, 2022

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Update Exchange Rule 13.4(a) Regarding the Exchange's Usage of Data Feeds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 19, 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, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 update Exchange Rule 13.4(a) regarding the sources of data that the Exchange utilizes for the handling, execution and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules, with respect to certain market centers. The text of the proposed rule change is provided in Exhibit 5.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 update Exchange Rule 13.4(a) regarding the sources of data that the Exchange utilizes for the handling, execution and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules, with respect to certain market centers. Specifically, the Exchange proposes to amend Exchange Rule 13.4(a) to reflect that it no longer utilizes direct data feeds and instead will utilize market data from the Consolidated Quotation System (“CQS”)/UTP Quotation Data Feed (“UQDF”) for such purposes with respect to the following markets centers: Cboe BYX, Cboe EDGA, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, and NYSE National.<sup>5</sup> The Exchange does not have a secondary source for data for these market centers.

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<sup>5</sup> The Exchange previously filed the proposal, which was effective on filing prior to August 1, 2022, the date that the Exchange transitioned over to use CQS/UQDF for the market centers listed above. See Securities Exchange Act Release No. 95395 (July 29, 2022), 87 FR 47799 (August 4, 2022) (SR-MEMX-2022-20) (the “Original Proposal”). The Exchange withdrew the Original Proposal and re-filed this proposal in order to provide additional transparency and respond to a comment letter received on the Original Proposal. See Letter from Christopher Nagy, Research Director, Healthy Markets Association, to Vanessa Countryman, Secretary, Securities and Exchange Commission dated August 16, 2022.

By making the changes set forth above, the Exchange anticipates saving approximately \$30,000 per month, or \$360,000 annually, by discontinuing receipt of direct data feeds from the markets listed above. The Exchange determined the list of markets from which to discontinue direct data feeds because such markets represent the U.S. national securities exchanges that charge for market data but have less than 2% market share (the majority of these exchanges have less than 1% market share). In addition, the Exchange notes that it does not anticipate that the change will negatively impact its operations or negatively impact investors. To the contrary, given the relative size of these markets and quality of quoting on such markets as compared to size and quality of quoting on the Exchange and the markets from which it continues to receive direct data feeds,<sup>6</sup> the Exchange does not anticipate a significant difference with respect to its implementation of applicable requirements of Regulation NMS, including SEC Rule 611 (i.e., the Order Protection Rule).<sup>7</sup> Furthermore, with respect to the Exchange's routing services, the Exchange does not route to the markets from which it has discontinued direct data feeds nearly as much as it does to larger markets, again likely due to differences in quote quality and available liquidity at such markets. Furthermore, the Exchange's routing services are completely optional. Finally, the Exchange notes that other exchanges have made similar determinations to use direct data feeds from some markets, primarily larger markets or their own affiliates, and

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<sup>6</sup> Based on publicly available information, the Exchange maintained quotations at the national best bid or offer ("NBBO") over 25% of the time, which is third amongst all exchanges and only behind the Nasdaq Stock Market and NYSE Arca Equities. In contrast, none of the markets from which the Exchange has discontinued direct data feeds maintained a quotation at the NBBO more than 10% of the time. See Cboe Global Markets NBBO Quote Quality Statistics, available at: [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).

<sup>7</sup> 17 CFR 242.611.

market data from the CQS/UQDF data feeds for other markets.<sup>8</sup>

The Exchange proposes for this proposed rule change to become operative on filing with the Commission.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Exchange believes that its proposal to update Exchange Rule 13.4(a) to reflect that it will utilize market data from the CQS/UQDF with respect to Cboe BYX, Cboe EDGA, Nasdaq BX, Nasdaq PSX, NYSE American, NYSE Chicago, and NYSE National is consistent with the Act because it will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the

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<sup>8</sup> See, e.g., Cboe BZX Exchange, Inc. (“BZX”) Rule 11.26 (listing IEX, MEMX, MIAIX Pearl, NYSE American, NYSE Chicago, and NYSE National as exchanges for which BZX uses CQS/UQDF data even though such markets offer direct data feeds); see also NYSE Arca Equities (“Arca”) Rule 7.37-E.(d) (listing IEX, MEMX, and MIAIX Pearl as exchanges for which Arca uses CQS/UQDF data even though such markets offer direct data feeds).

<sup>9</sup> See supra note 5.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

regulatory compliance checks related to each of those functions. As noted above, the Exchange does not anticipate that the change will negatively impact its operations or negatively impact investors. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because disclosing the primary and secondary data sources utilized by the Exchange with respect to all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.

The proposed rule change updates the sources of data the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes to reflect the use of CQS/UQDF rather than direct data feeds with respect to the market centers identified above. The Exchange states that the proposed change will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The Exchange states that the proposed rule change is similar to the rules of other exchanges.<sup>16</sup>

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any novel issues. Therefore, the Commission hereby waives the operative delay and designates

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business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See supra note 8.

the proposal as operative upon filing.<sup>17</sup>

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 under Section 19(b)(2)(B)<sup>18</sup> of the Act 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2022-27 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.

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<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-MEMX-2022-27. This file number should be included on the subject line if e-mail 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-2022-27 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

J. Matthew DeLesDernier,  
Deputy Secretary.

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<sup>19</sup> 17 CFR 200.30-3(a)(12).