

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90022; File No. SR-MEMX-2020-09)

September 28, 2020

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Current Pilot Program Related to MEMX Rule 11.15, Clearly Erroneous Executions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 2020, MEMX LLC (“MEMX” or “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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 proposed rule change [sic] to extend the current pilot program related to MEMX Rule 11.15, “Clearly Erroneous Executions,” to the close of business on April 20, 2021. 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 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

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 extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions to the close of business on April 20, 2021. Portions of Rule 11.15, explained in further detail below, are currently operating as a pilot program which expired on April 20, 2020.⁵

On May 4, 2020, the Commission approved MEMX's Form 1 Application to register as a national securities exchange with rules including, on a pilot basis, MEMX Rule 11.15.⁶ Rule 11.15, among other things (i) provides for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduces the ability of the Exchange to deviate from objective standards set forth in the rule. The rule further provides that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for

⁵ See MEMX Rule 11.15.

⁶ See Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security, and before such a trading halt has officially ended according to the primary listing market.⁷

Previously, the pilot program and the current Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “LULD Plan”) were a single pilot program. On December 26, 2018, the Commission published the proposed Eighteenth Amendment to the LULD Plan to allow the LULD Plan to operate on a permanent, rather than pilot, basis.⁸ On April 17, 2019, the Commission published an approval of the Eighteenth Amendment.⁹ Accordingly, national securities exchanges filed with the Commission amendments to exchange rules to untie the pilot program’s effectiveness from that of the LULD Plan in order to provide such exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the LULD Plan.¹⁰

⁷ See MEMX Rule 11.15.

⁸ See Securities Exchange Release Act No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

⁹ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4-631).

¹⁰ See, e.g., Securities Exchange Act Release No. 85542 (April 8, 2019), 84 FR 15009 (April 12, 2019) (SR-CboeBYX-2019-003).

On July 6, 2020, MEMX executed and filed with the Commission an amended copy of the LULD Plan.¹¹ An amended and executed copy of the LULD Plan, with MEMX included as a Party, was provided to each then current Party to the Plan, in accordance with the requirements for the addition of a new member to the LULD Plan. Accordingly, MEMX is now a Participant pursuant to the LULD Plan.¹²

The Exchange now proposes to amend MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2021. MEMX understands that the other national securities exchanges and the Financial Industry Regulatory Authority ("FINRA") also intend to file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to MEMX Rule 11.15.

The Exchange does not propose any additional changes to MEMX Rule 11.15. By proposing to extend the pilot, the Exchange will avoid any discrepancy between its clearly erroneous pilot program and the pilot programs of other exchanges and FINRA, as the language of such rules are identical to MEMX Rule 11.15 and, as noted above, other exchanges and FINRA also intend to file proposals to extend their respective clearly erroneous execution pilot programs. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited pilot basis. As the LULD Plan was approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of MEMX Rule 11.15 on a

¹¹ See Securities Exchange Act Release No. 89420 (July 29, 2020), 85 FR 46762 (August 3, 2020).

¹² See id.

limited basis should provide the Exchange and other national securities exchanges additional time to consider future amendments, if any, to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed extension to the pilot rule addressing clearly erroneous extensions would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed extension would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and the other national

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

securities exchanges consider and develop a permanent proposal for clearly erroneous executions reviews.

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 understands that FINRA and other national securities exchanges will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed extension will help to ensure consistency across market centers without implicating any competitive issues.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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 so that the proposed rule change may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the proposed rule change to become operative prior to the launch of the Exchange's operation as a national securities exchange and permit the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.¹⁹

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 should be approved or disapproved.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-MEMX-2020-09 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-2020-09. 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-2020-09 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).