

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 90119; File No. SR-MEMX-2020-11)

October 7, 2020

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Shorten the Exchange’s Post-Market Session to End at 5:00 p.m. Eastern Time

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 October 2, 2020, 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 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 to amend Exchange Rule 1.5(w) to shorten the length of the Exchange’s after-hours trading session (i.e., the Post-Market Session⁵) to end at 5:00 p.m. Eastern Time⁶ rather 8:00 p.m., and to make conforming changes to Exchange Rules 1.5(k) and

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.

⁵ “Post-Market Session” means the time between 4:00 p.m. and 8:00 p.m. Eastern Time. See Exchange Rule 1.5(w).

⁶ All time references in this filing are to Eastern Time unless otherwise noted.

11.1(a). 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 Exchange offers three distinct trading sessions in which the Exchange accepts orders from members of the Exchange ("Members") for potential execution: (1) the "Pre-Market Session," which begins at 7:00 a.m. and continues until 9:30 a.m.,⁷ (2) "Regular Trading Hours," which begin at 9:30 a.m. and continue until 4:00 p.m.,⁸ and (3) the "Post-Market Session," which begins at 4:00 p.m. and continues until 8:00 p.m.⁹ Members may designate when their orders are eligible for execution by selecting their desired Time-in-Force instruction.¹⁰

The purpose of the proposed rule change is to shorten the length of the Exchange's after-hours trading session by amending Exchange Rule 1.5(w), which

⁷ "Pre-Market Session" means the time between 7:00 a.m. and 9:30 a.m. See Exchange Rule 1.5(x).

⁸ "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. See Exchange Rule 1.5(bb).

⁹ See supra note 5.

¹⁰ See Exchange Rule 11.6(o).

defines Post-Market Session, to end the Post-Market Session at 5:00 p.m. rather than 8:00 p.m. The Exchange submits that shortening the Post-Market Session would allow the Exchange to utilize its staff and resources in a more efficient manner while continuing to provide Members with an after-hours trading session for one hour after the close of the Regular Hours Session.

The Exchange believes the proposal to reduce the operating time of its Post-Market Session to end at 5:00 p.m. rather than 8:00 p.m. is reasonable and appropriate given that only a very small percentage (approximately 0.65%) of daily trading volume in NMS stocks occurs during those hours,¹¹ and as such the Exchange believes that the costs to the Exchange associated with operating during those hours outweigh the benefits to Members and other market participants. Moreover, since the Exchange commenced trading operations on September 21, 2020 (supporting trading in seven NMS stocks), the Exchange has received very few orders in the Post-Market Session, and all such orders were received between 4:00 p.m. and 5:00 p.m. The Exchange expects that it will continue to receive very few orders in the Post-Market Session even after the Exchange completes its rollout of supporting trading in all NMS stocks, and that the large majority of such orders would continue to be received between 4:00 p.m. and 5:00 p.m. rather than between 5:00 p.m. and 8:00 p.m. To the extent the Exchange in the future believes there is adequate demand to justify operating a longer after-hours trading session, it will consider again extending its hours to accommodate such demand.

The Exchange notes that other exchanges offer a longer after-hours trading

¹¹ Percentage calculated based on data from the week of September 21, 2020. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

session after the close of Regular Trading Hours and that Members and other market participants can choose to direct their orders to those exchanges if they wish to participate in an after-hours trading session extending beyond 5:00 p.m.¹² The Exchange also notes that other exchanges currently end their after-hours trading sessions prior to 8 p.m., including three exchanges that close at 5:00 p.m. consistent with the Exchange's proposal.¹³ Thus, the Exchange believes that its proposal will adequately address the needs of Members by providing for a one-hour Post-Market Session, which trade data show is the period in which most of the after-hours trading activity occurs, as described above, and would allow the Exchange to conserve resources and staff time that would otherwise be dedicated to supporting the Exchange's after-hours trading session for a four-hour period on every trading day.

The Exchange also proposes to make conforming changes to Exchange Rules 1.5(k) and 11.1(a) to reflect the Post-Market Session ending at 5:00 p.m. Specifically, the Exchange proposes to amend Exchange Rule 1.5(k), which defines "Exchange Operating Hours" or "Exchange Hours," to reflect that the Exchange's daily trading

¹² See, e.g., Cboe BZX Exchange, Inc. Rule 1.5(c), which provides for an "After Hours Trading Session" from 4:00 p.m. to 8:00 p.m.; Cboe EDGX Exchange, Inc. Rule 1.5(r), which provides for a "Post-Closing Session" from 4:00 p.m. to 8:00 p.m.; NYSE Arca Equities, Inc. Rule 7.34-E.(a)(3), which provides for a "Late Trading Session" that concludes at 8:00 p.m. Eastern Time; Nasdaq Rule 4701(g), which provides for "Post-Market Hours" that end at 8:00 p.m. Eastern Time.

¹³ See, e.g., New York Stock Exchange LLC Rule 51, which provides that the trading session concludes at 4:00 p.m.; MIAX PEARL, LLC Equities Rule 2600(a), which provides that orders may be entered on such exchange until 4:00 p.m.; Investors Exchange LLC Rule 1.160(aa), which provides for a "Post-Market Session" that concludes at 5:00 p.m.; Long-Term Stock Exchange, Inc. Rule 1.160(ee), which provides for a "Post-Market Session" that concludes at 5:00 p.m.; Nasdaq PHLX LLC Rule 3301(g), which provides for "Post-Market Hours" that end at 5:00 p.m. Eastern Time.

hours, comprised of all three trading sessions offered by the Exchange, would begin at 7:00 a.m. and continue until 5:00 p.m.¹⁴ The Exchange also proposes to amend Exchange Rule 11.1(a) to update the hours of operations referenced in that Rule consistent with the changes described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁵ of the Act, in general, and furthers the objectives of Sections and 6(b)(5)¹⁶ of the Act, in particular, in that it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest; furthermore, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes its proposal to amend Rule 1.5(w) to shorten the length of its Post-Market Session to end at 5:00 p.m. rather than 8:00 p.m. would allow the Exchange to conserve its resources and staff time and focus these on the Exchange's core business, which is providing an efficient and cost-effective marketplace for trading in equity securities during Regular Trading Hours, and other aspects of the Exchange's operations, including its regulatory function, while maintaining a facility for Members to execute trades for one hour after Regular Trading Hours. Reducing the time during which the Post-Market Session operates would allow the Exchange to maximize efficiencies and eliminate costs that are associated with supporting trading operations

¹⁴ "Exchange Operating Hours" or "Exchange Hours" currently means the time between 7:00 a.m. and 8:00 p.m. See Exchange Rule 1.5(k).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

during the longer after-hours trading session but are not expected to yield a sufficient economic return. The Exchange believes that the proposed rule change is therefore consistent with Section 6(b)(5) of the Act in that, by seeking to operate in a more efficient manner that focuses on trading during Regular Trading Hours and other aspects of the Exchange's operations, including its regulatory function, it will operate to promote just and equitable principles of trade and, in general, protect investors and the public interest. The Exchange also believes that the proposed rule change would not permit unfair discrimination between customers, issuers, brokers, or dealers because it would affect all Members and market participants in the same way and to the same extent, and is therefore consistent with Section 6(b)(5) of the Act. Moreover, the Exchange notes that there is precedent for an exchange shortening the hours of its after-hours trading session (also changing from 8:00 p.m. to 5:00 p.m.) to allow it to utilize its staff time and resources in a more efficient manner and focus these on other aspects of its operations, so this aspect of the proposed rule change does not raise any new or novel issues that have not previously been considered by the Commission.¹⁷

In addition, the Exchange believes that the proposed amendment to Exchange Rule 1.5(w) furthers the objectives of Sections 6(b)(1)¹⁸ of the Act in that it would conserve Exchange resources, which are expended to support trading operations during the Exchange's trading hours, and would allow the Exchange to utilize these resources for other purposes, including the Exchange's regulatory function, thereby enabling it to

¹⁷ See Securities Exchange Act Release No. 72215 (May 21, 2014), 79 FR 30678 (May 28, 2014) (rule change of National Stock Exchange, Inc. shortening its after-hours trading session from 8:00 p.m. to 5:00 p.m.).

¹⁸ 15 U.S.C. 78(f)(b)(1).

be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange also believes that the proposed amendments to Exchange Rules 1.5(k) and 11.1(a) are consistent with the Act because the amendments update those Rules to reference the proposed 5:00 p.m. time as the time until which the Exchange would accept orders in the Post-Market Session. No further substantive changes to those Rules are proposed. The Exchange believes that it is appropriate to update all of its rules that specifically reference the Exchange's operating hours so that the Exchange's rules properly reflect the change to the Post-Market Session being implemented in this proposed rule change.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the Act. By shortening the time period during which its Post-Market Session operates, the Exchange is reducing the number of equity exchanges offering an after-hours trading session extending from after the close of Regular Trading Hours until 8:00 p.m. However, the Exchange does not believe that this will inappropriately burden competition in that, as proposed, the Exchange will continue to offer a Post-Market Session until 5:00 p.m. and other exchanges offer an after-hours trading session extending until 8:00 p.m.¹⁹ The Exchange therefore believes that the availability of an after-hours trading facility at other exchanges will provide Members and other market participants with venues to which they

¹⁹ See supra note 12.

can direct their after-hours activity after the Exchange's proposed 5:00 p.m. Post-Market Session end time and the reduction in the time frame during which the Exchange's after-hours facility operates will not impair competition.

Furthermore, the Exchange does not believe that the proposed rule change would have any significant impact on inter-market competition as there are other exchanges that already end their after-hours trading sessions prior to 8:00 p.m., including at 5:00 p.m.,²⁰ and other marketplaces are free to provide similar trading hours. The Exchange also does not believe that the proposed rule change would have any significant impact on intra-market competition as all Members would be subject to the modified hours of the Post-Market Session.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²² 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

²⁰ See supra note 13.

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6).

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act²³ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁴

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may 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 proposal may take effect immediately. The Exchange states that waiver of the 30-day operative delay would allow the Exchange to immediately implement the proposed change to the Post-Market Session, which would better align the expenses of operating the Post-Market Session with the expected volume and revenue associated with that trading session, thereby allowing the Exchange to conserve resources and staff time and focus these on the Exchange's core business and other aspects of the Exchange's operations, including the Exchange's regulatory function. The Commission believes that the proposed rule change raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 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 fulfilled this requirement.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

the operative delay and designates the proposal operative upon filing.²⁷

At any time within 60 days of the filing of such 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)²⁸ 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. Please include File Number SR-MEMX-2020-11 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.

²⁷ 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).

²⁸ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-MEMX-2020-11. 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, D.C. 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-2020-11 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.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).