

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96773; File No. SR-MEMX-2023-01)

January 30, 2023

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Exchange's Post-Market Session to End at 8:00 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 January 17, 2023, 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 amend Exchange Rule 1.5(w), which defines the Post-Market Session, to allow trading until 8:00 p.m. Eastern Time. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 during in which the Exchange accepts orders from Users⁵ for potential execution: (1) the “Pre-Market Session,” which begins at 7:00 a.m. Eastern Time (“ET”) and continues until 9:30 a.m. ET,⁶ (2) “Regular Trading Hours,” which begin at 9:30 a.m. ET and continue until 4:00 p.m. ET,⁷ and (3) the “Post-Market Session,” which begins at 4:00 p.m. ET and continues until 5:00 p.m. ET.⁸ Members may designate when their orders are eligible for execution by selecting their desired Time-in-Force instruction.⁹

The purpose of the proposed rule change is to extend the length of the Exchange’s after-hours trading session by amending Exchange Rule 1.5(w), which defines Post-Market Session, to allow trading until 8:00 p.m. ET. The Exchange notes that it allowed trading in the Post-Market Session until 8:00 p.m. ET under the Exchange’s initial rules¹⁰ when it commenced trading

⁵ See Exchange Rule 1.5(jj).

⁶ See Exchange Rule 1.5(x).

⁷ See Exchange Rule 1.5(bb).

⁸ See Exchange Rule 1.5(w).

⁹ See Exchange Rule 11.6(o).

¹⁰ See Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

operations in September 2020 until the Exchange modified its operating hours to end trading in the Post-Market Session at 5:00 p.m. ET in October 2020.¹¹ The Exchange shortened its operating hours to end trading in the Post-Market Session at 5:00 p.m. ET, instead of 8:00 p.m. ET, because it was a new entrant to the market at that time and did not believe that the trading volume it was experiencing during those hours justified the costs to the Exchange to operate during those hours; however, the Exchange noted in its proposal to shorten the Post-Market Session to end at 5:00 p.m. ET that “[t]o 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.”¹² The Exchange now believes that there is adequate demand to justify operating the Post-Market Session until 8:00 p.m. ET.

As proposed, orders entered for participation in the Post-Market Session will continue to be handled in the same manner as today, with the exception that the Exchange will now accept those orders until 8:00 p.m. ET, thereby providing additional time for market participants to source liquidity outside of Regular Trading Hours. The Exchange therefore believes that amending Rule 1.5(w) to extend the Exchange’s trading hours will benefit market participants, which will now be able to trade on the Exchange later in the day. The Exchange also notes that having a Post-Market Session that lasts from 4:00 p.m. ET until 8:00 p.m. ET, as proposed, is consistent with the after-hours sessions currently available on several other exchanges, including each of the equity exchanges operated by Cboe Global Markets, Inc.¹³

¹¹ See Securities Exchange Act Release No. 90119 (October 7, 2020), 85 FR 64536 (October 13, 2020) (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).

¹² See id. at 64537.

¹³ See e.g., Cboe BZX Rule 1.5(c); Cboe BYX Rule 1.5(c); Cboe EDGX Rule 1.5(r); Cboe EDGA Rule 1.5(r).

In connection with the change described above, 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 8:00 p.m. ET. 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 hours, comprised of all three trading sessions offered by the Exchange, would begin at 7:00 a.m. ET and continue until 8:00 p.m. ET. 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) of the Act,¹⁴ in general, and furthers the objectives of Sections and 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Specifically, the Exchange believes that the proposed rule change will benefit market participants by providing additional opportunities to transact on the Exchange later in the trading day. As described above, the Exchange currently accepts orders in its Post-Market Session until

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

5:00 p.m. ET, while several other exchanges currently have after-hours sessions that end at 8:00 p.m. ET.¹⁶ The Exchange believes that market participants would benefit from a longer Post-Market Session on the Exchange too, and it is therefore proposing to extend its Post-Market Session to allow trading until 8:00 p.m. ET. The Exchange believes that this change will provide additional opportunities for firms to source liquidity for their orders on the Exchange later in the trading day and will enable the Exchange to better compete with other exchanges that offer trading in after-hours sessions until 8:00 p.m. ET. For the reasons set forth above, the Exchange believes the proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, 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, in that all Members would be allowed to submit orders to the Exchange in the Post-Market Session until 8:00 p.m. ET, and it is therefore consistent with Section 6(b)(5) of the Act. Moreover, as described above, the Exchange previously operated the Post-Market Session until 8:00 p.m. ET under its initial rules,¹⁷ other exchanges allow trading in after-hours sessions from 4:00 p.m. ET until 8:00 p.m. ET,¹⁸ and there is precedent for an exchange extending the end of its after-hours trading session

¹⁶ See supra note 13.

¹⁷ See supra note 10.

¹⁸ See supra note 13.

from 5:00 p.m. ET to 8:00 p.m. ET,¹⁹ 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.

In addition, the Exchange believes the proposed amendments to Exchange Rules 1.5(k) and 11.1(a) are consistent with the Act because such amendments would update those rules to reference the proposed 8:00 p.m. ET 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 to be implemented with 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. The Exchange does not believe that the proposed rule change would have any significant impact on intermarket competition, as there are other equity exchanges that already allow after-hours trading until 8:00 p.m. ET, and other markets are free to provide similar trading hours. Furthermore, the Exchange does not believe that the proposed rule change would have any significant impact on intramarket 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.

¹⁹ See Securities Exchange Act Release No. 83809 (August 9, 2018), 83 FR 40599 (August 15, 2018) (notice of filing and immediate effectiveness of a proposed rule change by Cboe BZX Exchange, Inc. to extend the end of its After Hours Trading Session from 5:00 p.m. to 8:00 p.m.).

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 Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ 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 Act²² and Rule 19b-4(f)(6)²³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states the proposed rule change extends the Post-Market Session on the Exchange to provide additional opportunities for market participants to source liquidity later in the day and that its Members would benefit from the same after-hours trading hours available on other exchanges (including each of the equity exchanges operated by Cboe Global Markets, Inc.),

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

which already offer after-hours trading until 8:00 p.m. ET.²⁶ For these reasons, and because the proposed rule change does not raise any novel regulatory issues,²⁷ the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²⁸

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 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

²⁶ See supra note 13.

²⁷ See Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) at note 155 (noting that MEMX's initial rulebook when the Commission granted MEMX's registration as a national securities exchange provided for a Post-Market Session that ran until 8:00pm ET).

²⁸ 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2023-01 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-2023-01. 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-2023-01 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

Sherry R. Haywood

Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).