

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-91027; File No. SR-MEMX-2021-01)

February 1, 2021

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Interpretation and Policy .03 to Exchange Rule 4.2 Regarding the Provision of Members' Broker-Dealer Annual Reports

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 January 21, 2021, 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 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 add proposed Interpretation and Policy .03 to Exchange Rule 4.2 that would provide a waiver of the requirement that members of the Exchange ("Members") for which the Exchange is not the designated examining authority ("DEA") provide the Exchange with copies of their broker-dealer annual reports. 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

SEC Rule 17a-5(d)<sup>5</sup> generally requires each broker-dealer registered under Section 15 of the Act to file with the Commission and the broker-dealer’s DEA certain financial-related reports described in that rule on an annual basis (such reports, “Annual Reports”). SEC Rule 17a-5(d)(6)<sup>6</sup> further requires each broker-dealer to provide all self-regulatory organizations (“SROs”) of which the broker-dealer is a member with copies of its Annual Reports. The Exchange proposes to add proposed Interpretation and Policy .03 to Exchange Rule 4.2 to relieve Members for which the Exchange is not the DEA of the requirement of SEC Rule 17a-5(d)(6) that a broker-dealer must provide copies of its Annual Reports to the Exchange.

In 2013 the Commission amended certain broker-dealer annual reporting, audit, and notification requirements.<sup>7</sup> Among these amendments was an amendment to paragraph (d)(6) of Rule 17a-5 to allow an SRO that is not a broker-dealer’s DEA to waive by rule the requirement

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<sup>5</sup> 17 CFR 240.17a-5(d).

<sup>6</sup> 17 CFR 240.17a-5(d)(6).

<sup>7</sup> See Exchange Act Release No. 70073 (August 21, 2013), 78 FR 51909 (August 21, 2013).

that such broker-dealer provide its Annual Reports to that SRO.<sup>8</sup> This amendment was proposed because in some cases SROs do not believe it is necessary to receive copies of a broker-dealer's Annual Reports, particularly when an SRO is not the broker-dealer's DEA.<sup>9</sup>

The Exchange is not currently the DEA for any of its Members and does not expect to be the DEA for any of its Members.<sup>10</sup> The Exchange does not believe it is necessary for it to receive copies of Annual Reports from its Members for which it is not the DEA, as the Exchange does not anticipate using any information contained therein in order to carry out its regulatory responsibilities. The Exchange believes that receiving such information is important for an SRO that is a broker-dealer's DEA but not for an SRO that is not the broker-dealer's DEA, particularly as one of the key responsibilities of a broker-dealer's DEA is to oversee such broker-dealer's compliance with applicable financial responsibility rules. Furthermore, the Exchange notes that even with the proposed waiver in effect the Exchange would still be able to request the Annual Reports or any information contained therein from any Member pursuant to Exchange Rule 4.2, which requires a Member to furnish to the Exchange, upon request, current copies of any financial information filed with the Commission, which includes the Annual Reports and any information contained therein.<sup>11</sup> As such, the Exchange believes that the proposed waiver would benefit Members for which it is not the DEA by eliminating an unnecessary requirement and

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<sup>8</sup> See id. at 51923-24.

<sup>9</sup> See id. See also Exchange Act Release No. 64676 (June 15, 2011), 76 FR 37572, 37592 (June 27, 2011).

<sup>10</sup> See Exchange Rule 2.3, which sets forth certain Member eligibility criteria and generally requires that a prospective Member be and remain a member of a national securities association registered under Section 15A(a) of the Act or a member of another national securities exchange registered under Section 6(a) of the Act in order to be eligible to be, and to remain, a Member. As such, the Exchange believes that each Member will already have an assigned DEA prior to joining the Exchange as a Member.

<sup>11</sup> See Exchange Rule 4.2.

facilitating a more efficient exchange of information between the Exchange and such Members in that they would only be required to furnish their Annual Reports or any information contained therein if and when the Exchange deems it necessary and requests such information. Therefore, the Exchange proposes the addition of proposed Interpretation and Policy .03 to Exchange Rule 4.2 in order to explicitly waive the requirement of SEC Rule 17a-5(d)(6) for such Members to file copies of their Annual Reports with the Exchange. The Exchange notes, however, that if and to the extent the Exchange is the DEA for any of its Members the Exchange's Rules would still require each such Member to provide it with copies of such Member's Annual Reports in accordance with the requirements of SEC Rule 17a-5(d)(6).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</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 it will be able to properly regulate Members for which it is not the DEA even without the information contained in the Annual Reports currently required to be provided to the Exchange by such Members under SEC Rule 17a-5(d)(6). Firstly, the Exchange is not currently the DEA for any of its Members and does not currently use the

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

information contained in its Members' Annual Reports for any purpose. Additionally, if the Exchange was to determine that the information contained in the Annual Reports of a Member for which it is not the DEA was necessary for any reason, the Exchange can directly request those records from the Member pursuant to Exchange Rule 4.2, which requires a Member to furnish to the Exchange current copies of any financial information filed with the Commission, which includes the Annual Reports and any information contained therein.<sup>14</sup> In this way, the Exchange could still obtain the information contained in the Annual Reports currently required to be provided by such Members under SEC Rule 17a-5(d)(6) even with the proposed waiver of such requirement.

Given that Members must furnish the Exchange with Annual Reports or the information contained therein if and when the Exchange so requests, the Exchange does not believe that it is necessary for it to separately receive copies of Annual Reports from its Members for which it is not the DEA pursuant to SEC Rule 17a-5(d)(6). Finally, the proposed Interpretation and Policy .03 of Rule 4.2 is consistent with the Act in that it is adopting a waiver explicitly provided for by the Commission in SEC Rule 17a-5(d)(6).

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

The Exchange believes that the 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 proposed Interpretation and Policy .03 is not a competitive proposal as it is concerned solely with the administration of the Exchange and simply creates a more efficient exchange of information between the Exchange and its Members. The Exchange notes that the proposed Interpretation and Policy .03 would apply equally to all Members for which the

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<sup>14</sup> See Exchange Rule 4.2.

Exchange is not the DEA, which currently includes all of the Exchange's Members. The Exchange notes that it still believes it is appropriate to require provision of the Annual Reports by any Member for which it is the DEA pursuant to SEC Rule 17a-5(d)(6) as the Exchange believes the information contained in the Annual Reports is important for an SRO that is a broker-dealer's DEA. Furthermore, the Exchange notes that the proposed Interpretation and Policy .03 would be directly implementing a permitted waiver adopted by the Commission in SEC Rule 17a-5(d)(6), and as such, any SRO can adopt such a waiver to the extent permitted by that rule. Consequently, the Exchange does not believe that the proposed rule change would impose any burden on intermarket or intramarket competition.

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>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2021-01 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-2021-01. 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 such 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-2021-01, 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.<sup>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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