

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 25	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 03 Amendment No. (req. for Amendments *)
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Filing by MEMX LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change to add the CAT Compliance Rules to the list of minor rule violations in Rule 8.15 and to make an additional change to paragraph (a) of Rule 8.15.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Anders Last Name * Franzon
 Title * General Counsel
 E-mail * afranzon@memx.com
 Telephone * (551) 370-1003 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
Compliance Officer

Date 07/31/2020
By Lauren Strathman (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Lauren Strathman,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ MEMX LLC (“MEMX” or the “Exchange”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to add the Consolidated Audit Trail (“CAT”) industry member compliance rules (“CAT Compliance Rules”) to the list of minor rule violations in Rule 8.15 and to make an additional change to paragraph (a) of Rule 8.15.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

Questions and comments on the proposed rule change may be directed to Anders Franzon, General Counsel, (551) 370-1003.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

a. Purpose

In order to implement the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”), the Exchange codified the CAT Compliance Rules in Rules 4.5 through 4.16 as part of its initial Rules.² The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Act,³ and each Plan Participant accordingly has adopted the same compliance rules as in Exchange Rules 4.5 through 4.16. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 8.15 provides for disposition of certain violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 8.15.01, specifically, sets forth the list of specific Exchange Rules under which any member of the Exchange (“Member”), associated person of a Member, or registered or non-registered employee of a Member may be subject to a fine for violations of such Rules. The Exchange proposes to amend Rule 8.15.01 to add the CAT Compliance Rules in Rules 4.5 through 4.16 to the list of rules in Rule 8.15.01 eligible for disposition pursuant to a minor fine; specifically, under proposed Rule 8.15.01(h).⁴ Proposed Rule 8.15.01(h) provides that for

² On May 4, 2020, the Commission approved the MEMX Form 1 application for registration as a national securities exchange. See Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

³ 17 CFR 242.613.

⁴ FINRA’s maximum fine for minor rule violations under FINRA Rule 9216(b) is

failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 4.5 through 4.16, the Exchange may impose a minor rule violation fine of up to \$2,500. The Exchange may seek other disciplinary action for more serious violations.

The Exchange is coordinating with the Financial Industry Regulatory Authority, Inc. (“FINRA”) and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants’ CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (“common members”).⁵ Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to MEMX pursuant to the Rule 17d-2 Plan, the Exchange and FINRA have

\$2,500. The Exchange will apply an identical maximum fine amount for eligible violations of Rules 4.5 through 4.16 to achieve consistency with FINRA and also amend its minor rule violation plan (“MRVP”) to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than \$2,500 for violations of Rules 4.5 through 4.16 in a regular disciplinary proceeding or a letter of consent under Chapter 8 as appropriate. Any fine imposed in excess of \$2,500 or not otherwise covered by Rule 19d-1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 8-9, *infra*.

⁵ See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

entered into a Regulatory Services Agreement (“RSA”) pursuant to which FINRA will assist the Exchange with conducting surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange’s behalf. The Exchange expects that the other exchanges will be entering into similar RSAs.

The Exchange notes that this proposal is based upon the FINRA filing to amend FINRA Rule 9217 in order to add FINRA’s corresponding CAT Compliance Rules to FINRA’s list of rules that are eligible for minor rule violation plan treatment.⁶ The Exchange also notes that the New York Stock Exchange LLC (“NYSE”) submitted a filing to amend its Minor Rule Violation Plan (“MRVP”) to add its CAT Compliance Rules in a manner consistent with FINRA’s proposal,⁷ and other Plan Participants intend to submit the same. Thus, in order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to \$2,500 in connection with minor rule fines for violations of the CAT Compliance Rules (Rules 4.5 through 4.16) in proposed Rule 8.15.01(h) under the Exchange’s MRVP. In connection with FINRA’s proposed amendment to FINRA Rule 9217 to make FINRA’s CAT Compliance Rules MRVP eligible, FINRA has stated that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.⁸

⁶ See Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR-FINRA-2020-013).

⁷ See Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR-NYSE-2020-51).

⁸ See *supra* note 6; see also FINRA Notice to Members 04-19 (March 2004) available at <https://www.finra.org/rules-guidance/notices/04-19> (providing specific factors used to inform dispositions for violations of OATS reporting

Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor fine with respect to CAT Compliance Rule violations will be guided by the same factors that FINRA references in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.⁹

Upon effectiveness of this rule change, the Exchange will publish a regulatory notice notifying its Members of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change

rules).

⁹ See id.

will result in a coordinated, harmonized approach to CAT Compliance Rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

In addition to the changes set forth above, the Exchange proposes to remove a sentence from its current Rule 8.15(a) given the possibility that it may cause confusion. Specifically, as set forth above, the provisions of Rule 8.15 are intended to provide for a way to resolve violations of Exchange Rules that are minor in nature. However, current paragraph (a) of Rule 8.15 states that the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. Given the fact that most violations involving a “pattern or practice” of violative conduct are not considered to be minor in nature, the Exchange believes this language might cause confusion and proposes to delete this sentence.

b. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be 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,

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a letter of consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The Exchange believes the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.¹³ Specifically, the proposed rule change is

¹² Id.

¹³ Pursuant to Rule 8.15(a) and (e), the Exchange has the discretion to impose a fine in lieu of commencing a disciplinary proceeding for a violation that is minor in nature. Rule 8.15(e) states specifically that nothing in Rule 8.15 requires the Exchange to impose a fine pursuant to Rule 8.15 with respect to the violation of

designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct. For the same reason, the Exchange believes its proposal to amend Rule 8.15(a) is consistent with the Act as it is designed to prevent fraudulent and manipulative acts and practices because it would remove a reference to an action brought under the Exchange's MRVP when the applicable violation is a pattern or practice violation.

In connection with the fine level specified in the proposed rule change, adding proposed Rule 8.15.01(h) to specifically provide that for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 the Exchange may impose a fine not to exceed \$2,500 would further the goal of transparency within the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendment to Rule 8.15.01 is consistent with Section 6(b)(6) of the Act,¹⁴ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a

any Rule included in any such listing.

¹⁴ 15 U.S.C. 78f(b)(6).

member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange the ability to sanction minor or technical violations of Rules 4.5 through 4.16 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁵ Rule 8.15 does not preclude a Member, associated person of a Member, or registered or non-registered employee of a Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in Rules 4.5 through 4.16 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. Also, as stated above, the proposed rule change is consistent with similar proposals recently filed by FINRA and NYSE, and other Plan Participants intend to submit the same.

5. 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

¹⁵ 15 U.S.C. 78f(b)(7) and 78f(d).

change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.¹⁶ The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable, thus allowing the change to take effect in line with the commencement of the first phase of industry member reporting to CAT. The Exchange believes accelerated approval will facilitate more efficient, effective, and coordinated enforcement of the CAT Compliance Rules as the first phase of industry member reporting takes effect, and the Exchange believes accelerated approval is appropriate given the proposed rule change is consistent with the proposals submitted by FINRA and NYSE, as well as FINRA's approach to MRVP dispositions for the CAT Compliance Rules. As noted above, the Exchange proposes to apply minor fines for the CAT Compliance Rules in the same manner as FINRA.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

¹⁶ 15 U.S.C. 78s(b)(2).

The proposed rule change is based on SR-FINRA-2020-013 and SR-NYSE-2020-51, to make FINRA's and NYSE's CAT Compliance Rules eligible for minor rule fines under their respective Rule 9217.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2020-03]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of a Proposed Rule Change to Amend Rule 8.15 and to Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Rule 8.15.01

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 [insert date], 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 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 the Consolidated Audit Trail (“CAT”) industry member compliance rules (“CAT Compliance Rules”) to the list of minor rule violations in Rule 8.15 and to make an additional change to paragraph (a) of Rule 8.15. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In order to implement the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), the Exchange codified the CAT Compliance Rules in Rules 4.5 through 4.16 as part of its initial Rules.³ The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Act,⁴ and each Plan Participant accordingly has adopted the same compliance rules as in Exchange Rules 4.5 through 4.16. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 8.15 provides for disposition of certain violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 8.15.01, specifically, sets forth the list of specific Exchange Rules under which any member of the Exchange ("Member"), associated person of a Member, or registered or non-registered employee of

³ On May 4, 2020, the Commission approved the MEMX Form 1 application for registration as a national securities exchange. See Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

⁴ 17 CFR 242.613.

a Member may be subject to a fine for violations of such Rules. The Exchange proposes to amend Rule 8.15.01 to add the CAT Compliance Rules in Rules 4.5 through 4.16 to the list of rules in Rule 8.15.01 eligible for disposition pursuant to a minor fine; specifically, under proposed Rule 8.15.01(h).⁵ Proposed Rule 8.15.01(h) provides that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 4.5 through 4.16, the Exchange may impose a minor rule violation fine of up to \$2,500. The Exchange may seek other disciplinary action for more serious violations.

The Exchange is coordinating with the Financial Industry Regulatory Authority, Inc. (“FINRA”) and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants’ CAT Compliance Rules. The Commission recently approved a Rule 17d-2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (“common members”).⁶ Under the Rule 17d-2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under

⁵ FINRA’s maximum fine for minor rule violations under FINRA Rule 9216(b) is \$2,500. The Exchange will apply an identical maximum fine amount for eligible violations of Rules 4.5 through 4.16 to achieve consistency with FINRA and also amend its minor rule violation plan (“MRVP”) to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than \$2,500 for violations of Rules 4.5 through 4.16 in a regular disciplinary proceeding or a letter of consent under Chapter 8 as appropriate. Any fine imposed in excess of \$2,500 or not otherwise covered by Rule 19d-1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d-1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 9-10, infra.

⁶ See Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

the Rule 17d-2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to MEMX pursuant to the Rule 17d-2 Plan, the Exchange and FINRA have entered into a Regulatory Services Agreement (“RSA”) pursuant to which FINRA will assist the Exchange with conducting surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange’s behalf. The Exchange expects that the other exchanges will be entering into similar RSAs.

The Exchange notes that this proposal is based upon the FINRA filing to amend FINRA Rule 9217 in order to add FINRA’s corresponding CAT Compliance Rules to FINRA’s list of rules that are eligible for minor rule violation plan treatment.⁷ The Exchange also notes that the New York Stock Exchange LLC (“NYSE”) submitted a filing to amend its Minor Rule Violation Plan (“MRVP”) to add its CAT Compliance Rules in a manner consistent with FINRA’s proposal,⁸ and other Plan Participants intend to submit the same. Thus, in order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to \$2,500 in connection with minor rule fines for violations of the CAT Compliance Rules (Rules 4.5 through 4.16) in proposed Rule 8.15.01(h) under the Exchange’s MRVP. In connection with FINRA’s proposed amendment to FINRA Rule 9217 to make FINRA’s CAT Compliance Rules MRVP eligible, FINRA has stated that it will apply the minor fines for CAT Compliance

⁷ See Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR-FINRA-2020-013).

⁸ See Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR-NYSE-2020-51).

Rules in the same manner that FINRA has for its similar existing audit trail-related rules.⁹

Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor fine with respect to CAT Compliance Rule violations will be guided by the same factors that FINRA references in its filing.

However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.¹⁰

Upon effectiveness of this rule change, the Exchange will publish a regulatory notice notifying its Members of the rule change and the specific factors that will be

⁹ See supra note 7; see also FINRA Notice to Members 04-19 (March 2004) available at <https://www.finra.org/rules-guidance/notices/04-19> (providing specific factors used to inform dispositions for violations of OATS reporting rules).

¹⁰ See id.

considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT Compliance Rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

In addition to the changes set forth above, the Exchange proposes to remove a sentence from its current Rule 8.15(a) given the possibility that it may cause confusion. Specifically, as set forth above, the provisions of Rule 8.15 are intended to provide for a way to resolve violations of Exchange Rules that are minor in nature. However, current paragraph (a) of Rule 8.15 states that the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. Given the fact that most violations involving a “pattern or practice” of violative conduct are not considered to be minor in nature, the Exchange believes this language might cause confusion and proposes to delete this sentence.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a letter of consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The Exchange believes the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.¹⁴ Specifically, the proposed rule change is

¹³ Id.

¹⁴ Pursuant to Rule 8.15(a) and (e), the Exchange has the discretion to impose a fine in lieu of commencing a disciplinary proceeding for a violation that is minor in nature. Rule 8.15(e) states specifically that nothing in Rule 8.15 requires the

designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct. For the same reason, the Exchange believes its proposal to amend Rule 8.15(a) is consistent with the Act as it is designed to prevent fraudulent and manipulative acts and practices because it would remove a reference to an action brought under the Exchange's MRVP when the applicable violation is a pattern or practice violation.

In connection with the fine level specified in the proposed rule change, adding proposed Rule 8.15.01(h) to specifically provide that for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 the Exchange may impose a fine not to exceed \$2,500 would further the goal of transparency within the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendment to Rule 8.15.01 is consistent with Section 6(b)(6) of the Act,¹⁵ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide

Exchange to impose a fine pursuant to Rule 8.15 with respect to the violation of any Rule included in any such listing.

¹⁵ 15 U.S.C. 78f(b)(6).

the Exchange the ability to sanction minor or technical violations of Rules 4.5 through 4.16 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁶ Rule 8.15 does not preclude a Member, associated person of a Member, or registered or non-registered employee of a Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in Rules 4.5 through 4.16 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. Also, as stated above, the proposed rule change is consistent with similar proposals recently filed by FINRA and NYSE, and other Plan Participants intend to submit the same.

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

¹⁶ 15 U.S.C. 78f(b)(7) and 78f(d).

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2020-03 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-2020-03. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2020-03 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.¹⁷

¹⁷ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; Proposed deletions are in [brackets].

CHAPTER 8. DISCIPLINE

* * * * *

Rule 8.15. Imposition of Fines for Minor Violation(s) of Rules

(a) In lieu of commencing a disciplinary proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine on any Member, associated person of a Member, or registered or non-registered employee of a Member, for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. [The Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct.] The Exchange [also] may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected. Any fine imposed pursuant to this Rule that does not exceed \$2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority.

(b)-(e) (No changes.)

Interpretations and Policies

.01 List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15:

* * * * *

(g) Rule 11.20(a)(1) requirement for Market Makers to maintain continuous two-sided quotations.

Recommended Fine Amount for 8.15.01(h); see paragraph (h) below.

(h) For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 4.5 through 4.16, the Exchange may impose a minor rule violation fine of up to \$2,500.

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