



Regulatory Notice 20-06

DATE: September 15, 2020

TO: All Members of Members Exchange

FROM: MEMX Regulation

SUBJECT: Adoption of Changes to Minor Rule Violation Plans Adding CAT Reporting Compliance Rules

Members Exchange (“MEMX” or the “Exchange”) has adopted changes to the Exchange’s Minor Rule Violation Plan (“MRVP”) to make Members’ violations of the Consolidated Audit Trail (“CAT”) compliance rules (“CAT Compliance Rules”)¹ eligible for disposition with a minor rule violation fine, when warranted. MEMX may seek other disciplinary action for more serious violations.

CAT Compliance Rule violations became eligible for dispositions under MEMX’s MRVP as of September 11, 2020, which is the approval date of MEMX’s MRVP generally.² MEMX, FINRA, and all CAT NMS Plan Participants (“Participants”) entered into an amended plan pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (the “Rule 17d-2 Plan”) and Regulatory Service Agreements (“RSAs”) to coordinate regulation of the CAT Compliance Rules as outlined in a MEMX rule filing³ on July 31, 2020.

The common compliance rules adopted by each Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan. The changes to the Exchange’s MRVP for CAT Compliance Rule violations discussed in this Regulatory Notice are consistent with coordinated regulation under the Rule 17d-2 Plan and the RSAs. A summary of the key changes is as follows.

For failure to comply with the CAT Compliance Rule requirements, the Exchange may impose a minor rule violation with a fine of up to \$2,500.⁴ For more serious violations, formal disciplinary action may be sought. The following factors will help guide the Exchange and the other Participants in determining the appropriate disposition:

- total number of reports that are not submitted or submitted late;

¹ See MEMX Rules 4.5 – 4.17 (Consolidated Audit Trail Compliance Rules)

² See Securities Exchange Act Release No. 89836 (September 11, 2020) (Order Declaring Effective a Minor Rule Violation Plan); see also Securities Exchange Act Release No. 89140 (July 31, 2020), 85 FR 49407 (August 7, 2020) (SR-MEMX-2020-03).

³ A full description of the proposed rule change as filed with the Securities and Exchange Commission, available at (<https://info.memxtrading.com/sr-memx-2020-03-amendment-to-mrvp-to-add-cat-compliance-rules/>).

⁴ See MEMX Rule 8.15 (Imposition of Fines for Minor Violation(s) and MEMX Rule 8.15.01 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

- 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.

Attachment: MEMX Rule 8.15

Additional Information

Please contact MEMX Regulation at regulation@memx.com for additional information.

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 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) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served (as provided in Rule 8.12) with a written statement, signed by an authorized officer of the Exchange, setting forth (i) the Rule or Rules alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided in paragraph (d) below, such date to be not less than 15 business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of such person's right to a disciplinary proceeding under Rules 8.1 through 8.13 and any review of the matter by the Appeals Committee or by the Board.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Exchange not later than the date by which such determination must be contested, a written response meeting the requirements of an Answer as provided in Rule 8.5 at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. In any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Hearing Panel shall (i) be free to impose any one or more disciplinary sanctions and (ii) determine whether the rule violation(s) is minor in nature. The person charged and the Board of the Exchange may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rule 8.10.

(e) The Exchange shall prepare and announce to its Members from time to time a listing of the Exchange Rules as to which the Exchange may impose fines as provided in this Rule. Such listing shall also indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such Rule or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such

violation. Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to the violation of any Rule included in any such listing.

Interpretations and Policies

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

Recommended Fine Schedule – 8.15.01(a)-(e)

<u>Occurrence*</u>	<u>Individual</u>	<u>Member firm</u>
First time fined	\$100	\$500
Second time fined	\$300	\$1,000
Third time fined	\$500	\$2,500

*Within a “rolling” 12 month period

- (a) Rule 4.2 and Interpretations, thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period.
- (b) Rule 11.10(a)(5) requirement to identify short sale orders as such.
- (c) Rule 11.10(f) requirement to comply with locked and crossed market rules.
- (d) Rule 3.5 Advertising Practices.
- (e) Rule 12.11 Interpretation and Policy .01 and Exchange Act Rule 604 – Failure to properly display limit orders.

Recommended Fine Amount for 8.15.01(f)-(g): \$100 per violation

- (f) Rule 4.2 and Interpretations thereunder related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information.
- (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.