

Required fields are shown with yellow backgrounds and asterisks.

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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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 checked="" 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 *).

Proposal to amend the manner in which the Exchange will designate certain Members to participate in its mandatory disaster recovery testing, pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2020.

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 *)

Date 09/04/2020 Compliance Officer
 By Lauren Strathman 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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 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) MEMX LLC (“MEMX” or the “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend the manner in which the Exchange will designate certain Members to participate in its mandatory disaster recovery testing, pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2020. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act³ and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) thereunder.⁴

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 hereto 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.

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(f)(6)(iii).

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

a. Purpose

The Exchange proposes to amend MEMX Rule 2.4, Mandatory Participation in Testing of Backup Systems, so as to revise how the Exchange will designate certain Members to participate in mandatory disaster recovery pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2020. Regulation SCI requires MEMX, as an SCI entity, to maintain business continuity and disaster recovery plans that provide for resilient and geographically diverse backup and recovery capabilities that are reasonably designed to achieve two-hour resumption of critical SCI systems and next business day resumption of other SCI systems following a wide-scale disruption.⁵

Regulation SCI and MEMX Rule 2.4 also require MEMX to designate certain Members⁶ to participate in business continuity and disaster recovery testing in a manner specified by MEMX and at a frequency of not less than once every 12 months.⁷ Such testing is part of an industry-wide test, which is next scheduled for October 24, 2020.

⁵ Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014).

⁶ The term "Member" refers to any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a member of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See MEMX Rule 1.5(p).

⁷ MEMX Rule 2.4(a) and (b).

MEMX Rule 2.4 governs mandatory participation in testing of the Exchange's backup systems, and states that the Exchange will designate Members that account for a specified percentage of executed volume on MEMX as required to connect to the Exchange's backup systems and participate in functional and performance testing of such system.⁸ MEMX is not currently operational and is not expecting to have sufficient trading data on which to base its Member designation prior to the October 24, 2020 test. Thus, as currently written, Rule 2.4 would not permit the Exchange to designate any Members to participate in the industry-wide test for 2020 because no Members will have sufficient trading volume on MEMX upon which a designation can be based.

To address the unique circumstances for disaster recovery testing in 2020, the year in which MEMX will become operational, the Exchange proposes to add new paragraph (c). Proposed paragraph (c) would provide that for calendar year 2020, notwithstanding paragraph (b) which assigns the Exchange responsibility of "identifying Members that account for a meaningful percentage of the Exchange's overall volume," the Exchange will instead designate at least three Members who have a meaningful percentage of trading volumes in NMS Stocks on other equity exchanges. This would allow the Exchange to identify Members for industry-wide disaster recovery testing in the absence of metrics that will be used in ordinary course to designate such firms.

MEMX believes that designating at least three Members who are likely already to be participating in the industry-wide test by virtue of their trading activities on other exchanges is likely to reduce the burdens associated with being designated for disaster

⁸ Id.

recovery testing by MEMX in absence of significant trading volumes on the Exchange. Moreover, to reduce the burdens on designated Members the Exchange proposes, where possible, to designate firms that have already established connections to its backup systems. This is intended to address the “notice” requirements in the existing Rule 2.4.⁹ The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. The Exchange notes that the Long-Term Stock Exchange, Inc. (“LTSE”) has adopted a similar rule for 2020 given its recent launch and the same inability to follow its normal designation procedures.¹⁰

MEMX intends to notify Members of their designation for disaster recovery testing no later than September 10, 2020. With respect to industry-wide disaster recovery testing in 2021 and beyond, the Exchange will issue one or more regulatory circulars establishing the standards to be used for determining which Members contribute a meaningful percentage of the Exchange’s overall volume and thus are required to participate in functional and performance testing. Such standards will be informed by the Exchange’s actual market and trading data, in accordance with MEMX Rule 2.4(b).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular,

⁹ Pursuant to Rule 2.4(b), after 2020, the Exchange will provide at least six months prior notice to a Member that is designated for mandatory testing. See MEMX Rule 2.4(b).

¹⁰ See LTSE Rule 2.250(d).

¹¹ 15 U.S.C. 78f(b).

in that it is designed to prevent fraudulent and manipulative 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.

MEMX believes that, in the absence of sufficient trading data on the Exchange, its proposed methodology of designating Members who have meaningful levels of trading activity on other exchanges and who have established connectivity to the Exchange's backup systems is consistent with the protection of investors and the public interest. The Exchange further believes that the proposed rule change will ensure that the Members necessary to ensure the maintenance of fair and orderly markets in the event of the activation of the Exchange's disaster recovery plans have been designated consistent with MEMX Rule 2.4 and Rule 1004 of Regulation SCI. Specifically, the proposal will address the unique circumstances of industry-wide testing taking place within a short time of when the Exchange commences operations. The Exchange believes that the proposed rule change balances the objectives of having Members participate in industry-wide disaster recovery testing, including MEMX's backup systems, and the burdens on such Members who, at the time of designation, will not have traded on MEMX.

As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules

¹² 15 U.S.C. 78f(b)(5).

(including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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.”¹³ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange believes its 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 Exchange believes that the proposed rule change promotes fair competition among brokers and dealers and exchanges by ensuring the Exchange can designate Members to participate in mandatory disaster recovery testing pursuant to Regulation SCI for calendar year 2020. The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans, thereby promoting intermarket competition between exchanges in furtherance of the principles of Section 11(a)(1) of the Act.¹⁴ The Exchange notes that the LTSE has adopted a similar rule for 2020.¹⁵

¹³ See supra note 5 at 72350.

¹⁴ 15 U.S.C. 78k-1(a)(1).

¹⁵ See supra note 10.

With respect to intramarket competition, the proposed rule change seeks to reduce the burdens on Members by only designating Members who are likely already participating in the industry-wide test by virtue of their trading activities on other exchanges. Under the proposed rule change, the Exchange will designate firms that have already established connections to the Exchange's backup systems. Consequently, MEMX does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹⁶ of the Act and Rule 19b-4(f)(6) thereunder¹⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed change to the manner in which certain

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

Members will be designated to participate in the mandatory disaster recovery testing, pursuant to Regulation SCI and MEMX Rule 2.4, will not significantly affect the protection of investors and the public interest. As discussed above, the proposed change will simply align MEMX's mandatory disaster recovery testing with the industry-wide test already scheduled for October 24, 2020. In addition, the Exchange does not believe that this proposal imposes any significant burden on competition because the proposed amendment does not address competitive issues but is concerned solely with the administration and governance of the Exchange, and the performance of its mandatory disaster recovery testing pursuant to Regulation SCI and MEMX Rule 2.4. The Exchange notes that the LTSE has adopted a similar rule for 2020.¹⁸ Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.²⁰

Furthermore, Rule 19b-4(f)(6)(iii)²¹ 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully

¹⁸ See supra note 10.

¹⁹ 15 U.S.C. 78(s)(b)(3)(A).

²⁰ 17 CFR 240.19b-4.

²¹ 17 CFR 240.19b-4(f)(6)(iii).

requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange may notify designated Members of such status earlier than would be possible without a waiver of the operative delay. The waiver of the operative delay would principally benefit the designated Members by allowing them more advance notice of the need to prepare for disaster recovery testing on MEMX's backup systems pursuant to Regulation SCI and MEMX Rule 2.4.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

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

The proposed rule is based on and substantially similar to LTSE Rule 2.250(d).

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 - 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-2020-07]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Manner in which the Exchange will Designate Members to Participate in its Mandatory Disaster Recovery Testing for Calendar Year 2020

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 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 the manner in which the Exchange will designate certain Members to participate in its mandatory disaster recovery testing, pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2020. The text of the proposed rule change is provided in Exhibit

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.

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 proposes to amend MEMX Rule 2.4, Mandatory Participation in Testing of Backup Systems, so as to revise how the Exchange will designate certain Members to participate in mandatory disaster recovery pursuant to Regulation SCI and MEMX Rule 2.4 for calendar year 2020. Regulation SCI requires MEMX, as an SCI entity, to maintain business continuity and disaster recovery plans that provide for resilient and geographically diverse backup and recovery capabilities that are reasonably designed to achieve two-hour resumption of critical SCI systems and next business day resumption of other SCI systems following a wide-scale disruption.⁵

Regulation SCI and MEMX Rule 2.4 also require MEMX to designate certain Members⁶ to participate in business continuity and disaster recovery testing in a manner

⁵ Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014).

⁶ The term "Member" refers to any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a

specified by MEMX and at a frequency of not less than once every 12 months.⁷ Such testing is part of an industry-wide test, which is next scheduled for October 24, 2020.

MEMX Rule 2.4 governs mandatory participation in testing of the Exchange's backup systems, and states that the Exchange will designate Members that account for a specified percentage of executed volume on MEMX as required to connect to the Exchange's backup systems and participate in functional and performance testing of such system.⁸ MEMX is not currently operational and is not expecting to have sufficient trading data on which to base its Member designation prior to the October 24, 2020 test. Thus, as currently written, Rule 2.4 would not permit the Exchange to designate any Members to participate in the industry-wide test for 2020 because no Members will have sufficient trading volume on MEMX upon which a designation can be based.

To address the unique circumstances for disaster recovery testing in 2020, the year in which MEMX will become operational, the Exchange proposes to add new paragraph (c). Proposed paragraph (c) would provide that for calendar year 2020, notwithstanding paragraph (b) which assigns the Exchange responsibility of "identifying Members that account for a meaningful percentage of the Exchange's overall volume," the Exchange will instead designate at least three Members who have a meaningful

member of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See MEMX Rule 1.5(p).

⁷ MEMX Rule 2.4(a) and (b).

⁸ Id.

percentage of trading volumes in NMS Stocks on other equity exchanges. This would allow the Exchange to identify Members for industry-wide disaster recovery testing in the absence of metrics that will be used in ordinary course to designate such firms.

MEMX believes that designating at least three Members who are likely already to be participating in the industry-wide test by virtue of their trading activities on other exchanges is likely to reduce the burdens associated with being designated for disaster recovery testing by MEMX in absence of significant trading volumes on the Exchange. Moreover, to reduce the burdens on designated Members the Exchange proposes, where possible, to designate firms that have already established connections to its backup systems. This is intended to address the “notice” requirements in the existing Rule 2.4.⁹ The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. The Exchange notes that the Long-Term Stock Exchange, Inc. (“LTSE”) has adopted a similar rule for 2020 given its recent launch and the same inability to follow its normal designation procedures.¹⁰

MEMX intends to notify Members of their designation for disaster recovery testing no later than September 10, 2020. With respect to industry-wide disaster recovery testing in 2021 and beyond, the Exchange will issue one or more regulatory circulars establishing the standards to be used for determining which Members contribute a meaningful percentage of the Exchange’s overall volume and thus are required to

⁹ Pursuant to Rule 2.4(b), after 2020, the Exchange will provide at least six months prior notice to a Member that is designated for mandatory testing. See MEMX Rule 2.4(b).

¹⁰ See LTSE Rule 2.250(d).

participate in functional and performance testing. Such standards will be informed by the Exchange's actual market and trading data, in accordance with MEMX Rule 2.4(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative 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.

MEMX believes that, in the absence of sufficient trading data on the Exchange, its proposed methodology of designating Members who have meaningful levels of trading activity on other exchanges and who have established connectivity to the Exchange's backup systems is consistent with the protection of investors and the public interest. The Exchange further believes that the proposed rule change will ensure that the Members necessary to ensure the maintenance of fair and orderly markets in the event of the activation of the Exchange's disaster recovery plans have been designated consistent with MEMX Rule 2.4 and Rule 1004 of Regulation SCI. Specifically, the proposal will address the unique circumstances of industry-wide testing taking place within a short time of when the Exchange commences operations. The Exchange believes that the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

proposed rule change balances the objectives of having Members participate in industry-wide disaster recovery testing, including MEMX's backup systems, and the burdens on such Members who, at the time of designation, will not have traded on MEMX.

As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, 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."¹³ The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange believes its 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 Exchange believes that the proposed rule change promotes fair competition among brokers and dealers and exchanges by ensuring the Exchange can designate Members to participate in mandatory disaster recovery testing pursuant to Regulation SCI for calendar year 2020. The Exchange believes that designating three or more such firms is reasonably designed to provide the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans,

¹³ See supra note 5 at 72350.

thereby promoting intermarket competition between exchanges in furtherance of the principles of Section 11(a)(1) of the Act.¹⁴ The Exchange notes that the LTSE has adopted a similar rule for 2020.¹⁵

With respect to intramarket competition, the proposed rule change seeks to reduce the burdens on Members by only designating Members who are likely already participating in the industry-wide test by virtue of their trading activities on other exchanges. Under the proposed rule change, the Exchange will designate firms that have already established connections to the Exchange's backup systems. Consequently, MEMX does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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 Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder. At any time within 60

¹⁴ 15 U.S.C. 78k-1(a)(1).

¹⁵ See *supra* note 10.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

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 will 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. Please include File Number SR-MEMX-2020-07 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-2020-07. 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-2020-07 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.¹⁸

¹⁸ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

CHAPTER 2. MEMBERS OF THE EXCHANGE

* * * * *

Rule 2.4. Mandatory Participation in Testing of Backup Systems

(a) – (b) No change.

(c) For calendar year 2020, notwithstanding paragraph (b), the Exchange will instead designate at least three Members who have a meaningful percentage of trading volumes in NMS Stocks on other equity exchanges. The Exchange will designate firms that have already established connections to the Exchange’s backup systems. The Exchange will notify Members designated under this paragraph (c) no later than September 10, 2020.

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