8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89581; File No. SR-MEMX-2020-04]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Various Exchange Rules to Make Changes to Proposed Exchange System Functionality Prior to the Launch of the Exchange

August 17, 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 August 4, 2020, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission ("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[3] 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

[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.

The Exchange is filing with the Commission a proposed rule change to proposed rule change to amend various Exchange Rules to make changes to proposed Exchange System[5] functionality prior to the launch of the Exchange.[6] The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning the 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 purpose of this proposed rule change is to amend various Exchange Rules to make changes to proposed functionality prior to the launch of the Exchange. Each change is based upon a final review of functionality that the Exchange would like to offer at the time of launch

---

5 As defined in Rule 1.5(gg), the Exchange's "System" is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing. As defined in Rule 1.5(jj), a "User" is a member of the Exchange ("Member") or sponsored participant of a Member who is authorized to obtain access to the System pursuant to Rule 11.3. The Exchange notes that it proposes to amend Rule 1.5 to designate the term "Top of Book" as paragraph (ii), as there are currently two paragraphs labeled (jj). As amended, the term User would continue to be labeled as paragraph (jj).

6 The Exchange's application to register as a national securities exchange was approved in May of 2020. See Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020). The Exchange currently anticipates launching in September of 2020.

and is either intended to simplify the operation of the System, to align with functionality offered on other exchanges, or to make clear certain aspects of the operation of the System that are not clear based on the Exchange's current Rules. These changes are described in detail below and include amending: (i) Rules 1.5, 11.1, 11.6, 11.7, 11.8, and 11.16 in connection with the elimination of the Exchange's Early Order Entry Session,[7] Opening Process,[8] and Re-Opening Process[9] and a related modification to the operation of the System in the event of a trading halt; (ii) Rule 11.8 regarding certain details applicable to Market Orders[10] and Limit Orders;[11] (iii) Rules 11.6 and 11.9 regarding the handling of orders with a Primary Peg instruction[12] or a Midpoint Peg instruction;[13] (iv) Rules 11.6 and 11.8 regarding the removal of certain "default" instructions applicable to order types and order type instructions; and (v) Rules 11.6, 11.8, 11.10

---

7 As defined in Rule 1.5(i), the Early Order Entry Session is "the time between 6:00 a.m. and 7:00 a.m. Eastern Time."

8 As defined in Rule 1.5(t), the Opening Process is "the computations performed by the System as defined in Rule 11.7, which begin at 9:30 a.m. Eastern Time."

9 As defined in Rule 1.5(cc), the Re-Opening Process is "a computation performed by the System as defined in Rule 11.7(e) following a halt, suspension or pause."

10 Market Orders are the first of three primary order types offered by the Exchange. Market Orders are described in Exchange Rule 11.8(a) and generally defined as an order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.

11 Limit Orders are the second of three primary order types offered by the Exchange. Limit Orders are described in Exchange Rule 11.8(b) and generally defined as an order to buy or sell a stated amount of a security at a specified price or better.

12 A Primary Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to the NBB, for a buy order, or the NBO, for a sell order. See Exchange Rule 11.6(h)(1). Pegged Orders are the third of three primary order types offered by the Exchange. Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c). Pegged Orders are generally defined as an order that automatically re-prices in response to changes in the NBBO.

and 11.16 regarding the handling of orders with certain attributes (i.e., Displayed instruction,[14] Non-Displayed instruction[15] and Reserve Quantity[16]) in specific circumstances.

Elimination of the Early Order Entry Session, Opening Process, Re-Opening Process and Related Changes

The Exchange is proposing to make various changes to simplify the way the Exchange opens for trading each day and re-opens in the event of a trading halt. Specifically, the Exchange proposes to eliminate the Early Order Entry Session, the Opening Process and the Re-Opening Process, and to modify the operation of the System in the event of a trading halt, each as further described below.

Currently, the Early Order Entry Session is described as a trading session running from 6:00 a.m. to 7:00 a.m. during which certain types of orders could be submitted to and held by the Exchange but would not be executed.[17] Such orders would queue until the beginning of the Pre-Market Session, at 7:00 a.m., at which time they would be handled in time sequence, beginning with the order with the oldest timestamp, and would be placed on the MEMX Book,[18] routed,

---

13 A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to midpoint of the NBBO. See Exchange Rule 11.6(h)(2).

14 A Displayed instruction is an instruction a User may attach to an order stating that the order is to be displayed by the System on the MEMX Book. See Exchange Rule 11.6(c)(1).

15 A Non-Displayed instruction is an instruction a User may attach to an order stating that the order is not to be displayed by the System on the MEMX Book. See Exchange Rule 11.6(c)(2).

16 A Reserve Quantity is the portion of an order that includes a Non-Displayed instruction in which a portion of that order is also displayed on the MEMX Book. See Exchange Rule 11.6(k).

17 See Rule 1.5(i) and Rule 11.1(a).

18 As defined in Rule 1.5(q), the MEMX Book is the System's electronic file of orders.

cancelled, or executed in accordance with the terms of the order. The Exchange is proposing to eliminate the Early Order Entry Session by deleting such term from Rule 1.5(i) and removing the description of the handling of orders during such trading session set forth in paragraphs (a) and (a)(1) of Rule 11.1. As proposed, rather than offering a pre-opening queuing session, the Exchange would instead commence operations each day beginning with the Pre-Market Session, which begins at 7:00 a.m. At the beginning of the Pre-Market Session, the Exchange would begin accepting all orders that are eligible for the Pre-Market Session.[19] In connection with these changes, the Exchange also proposes to amend Rule 1.5(k), which presently defines Exchange Hours and Exchange Operating Hours as the time between 6:00 a.m. and 8:00 p.m. Eastern Time. As amended, because of the elimination of the Early Order Entry Session, the definition would refer instead to the time between 7:00 a.m. and 8:00 p.m. Eastern Time.

The Exchange is proposing the elimination of the Early Order Entry Session because this change will reduce complexity with respect to the functionality used to open the Exchange each trading day. At least upon its initial launch, the Exchange does not anticipate having significant volume in its Early Order Entry Session. Because the Exchange will still offer the Pre-Market Session, Users will still be able to enter orders into the Exchange prior to the commencement of the Market Session. Further, not all exchanges offer a trading session equivalent to the Early Order Entry Session.[20] For the reasons stated above, the Exchange does not believe the removal

---

19 See Rule 11.8(a)(4), which specifies that Market Orders are not eligible for any session other than the Market Session. The Market Session is the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See also Rule 11.6(o)(5), which states that the TIF of RHO is an instruction a User may attach to an order designating it for execution only during Regular Trading Hours.

20 See, e.g., IEX Rule 11.110, which lists the trading sessions available on IEX as a Pre-Market Session, a Regular Market Session and a Post-Market Session, which would be equivalent to the three trading sessions offered by the Exchange. The Exchange notes that

of the Early Order Entry Session is a significant departure from its originally proposed operations.

The Exchange proposes to further simplify the operations of the Exchange by eliminating the Opening Process and Re-Opening Process and making conforming changes throughout the Exchange's Rules. The Opening Process is described in Rule 11.7, which sets forth a variety of computations performed by the Exchange beginning at the start of the Market Session in order to match orders on the Exchange at the midpoint of the national best bid and offer ("NBBO") following the opening of trading on the applicable primary listing market (i.e., the "Opening Match" described in Rule 11.7(b)). Rule 11.7 further defines the types of orders eligible to participate in the Opening Match, the methodology used by the Exchange to determine when to process the Opening Match and the methodology used by the Exchange to re-open a security that is subject to a halt, suspension, or pause in trading. The Exchange proposes to delete the definitions of Opening Match, Opening Process and Re-Opening Process contained in Rule 1.5(s), Rule 1.5(t) and Rule 1.5(cc), respectively, as well as Rule 11.7 in its entirety. Accordingly, rather than using an Opening Process and opening the Market Session following a match of eligible orders at the midpoint of the NBBO, the Exchange would instead immediately transition to the Market Session at 9:30 a.m. Similarly, rather than using a Re-Opening Process to match eligible orders following a halt, suspension, or pause in trading, the Exchange would re-open and begin accepting and processing orders when such halt, suspension, or pause in trading has been lifted.

---

its Pre-Market Session will begin one hour earlier than IEX, at 7:00 a.m. Eastern Time instead of 8:00 a.m. Eastern Time.

As noted above, the Exchange believes these changes will reduce complexity with respect to the functionality used to open the Exchange each trading day and following a halt, suspension, or pause in trading. At least upon its initial launch, the Exchange does not anticipate having significant volume in either the Opening Process or the Re-Opening Process. The Exchange instead anticipates that Users will participate in the applicable opening processes and re-opening processes on other exchanges where they currently participate today. For the reasons stated above, the Exchange does not believe the removal of the Opening Process or Re-Opening Process is a significant departure from its originally proposed operations.

In connection with the changes described above, the Exchange proposes to delete Rule 11.16(e)(6), which describes the process to re-open following a trading pause pursuant to the Limit Up-Limit Down Plan ("LULD Plan") through a cross-reference to Rule 11.7(e) (as described above, the Exchange has proposed to delete such provision). In order to provide a general procedure for all types of trading halts, including but not limited to trading pauses pursuant to the LULD Plan, the Exchange also proposes to amend Rule 11.16(f). Rule 11.16(f) currently states that when any trading halt occurs, except where a User has designated that its orders be cancelled, all outstanding orders in the System will remain on the MEMX Book. The Exchange proposes to amend this Rule first by removing the optionality of the functionality (i.e., orders remain unless a User chooses to have them cancelled) and instead cancelling all orders on the MEMX Book in the event of any trading halt, including a trading pause pursuant to the LULD Plan. Thus, as amended, in the event of any trading halt, all orders will be cancelled. Further, the Exchange proposes to add language to Rule 11.16(f) to state that the Exchange will not accept any orders during a halt, suspension, or pause in trading, and that it will begin accepting orders again when the halt, suspension, or pause in trading has ended.

In connection with the elimination of the Opening Process and Re-Opening Process the Exchange proposes additional conforming changes in Rules 11.6 and 11.8, as follows. First, the Exchange proposes to remove language referring to the Opening Process and Re-Opening Process from Rule 11.6(o)(5), which describes the Time-in-Force ("TIF") of Regular Hours Only ("RHO") as an order designated for execution only during Regular Trading Hours.[21] Second, the Exchange proposes to modify Rule 11.8(a)(1) by removing reference to the handling of a Market Order with a TIF of RHO following an Opening Process or Re-Opening Process. Third, the Exchange proposes to modify Rule 11.8(c) to remove a description of the System's handling of a Pegged Order with a Minimum Execution Quantity instruction[22] during the Opening Process. Without an Opening Process or Re-Opening Process, none of these details are necessary.

Market Order and Limit Order Functionality

The Exchange also proposes minor changes to the current descriptions of Market Orders and Limit Orders as further described below.

First, the Exchange proposes to make clear that a Market Order with a TIF of Immediate or Cancel ("IOC") can be routed away from the Exchange to another Trading Center[23] if the

---

21 The Exchange also proposes to update the description of the RHO TIF to more closely mirror other TIF instructions, such as the Day TIF instruction, and make clear that an order with a TIF of RHO will expire at the end of Regular Trading Hours if not executed. Further, the Exchange proposes to expressly state in Rule 11.6(o)(5) that any order with a TIF instruction of RHO entered into the System before the opening or after the closing of Regular Trading Hours will be rejected.

22 The Minimum Execution Quantity instruction is described in Rule 11.6(f) and is generally defined as an instruction a User may attach to an order with a Non-Displayed instruction or a Time-in-Force of Immediate-or-Cancel instruction requiring the System to execute the order only to the extent that a minimum quantity can be satisfied.

23 As defined in Rule 11.6(p), the term Trading Center includes other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers.

entering User instructs the Exchange accordingly. The Exchange's current rules conflict on this point. Current Rule 11.8(a)(1) states that a Market Order with a TIF instruction of IOC that is not executed upon return to the System after being routed to an away Trading Center will be cancelled. However, current Rule 11.8(a)(5) states that a Market Order with a TIF instruction of IOC is not eligible for routing. The Exchange proposes to modify Rule 11.8(a)(1) by removing the sentence related to routed orders with an IOC instruction and relocating it to Rule 11.8(a)(5), which relates to routing generally, but without direct reference to the TIF instruction of IOC. This new sentence would instead read that if a Market Order is routed, any portion of the Market Order not executed upon return to the System after being routed to an away Trading Center will be cancelled. The Exchange proposes to further amend Rule 11.8(a)(5) by removing the reference to Market Orders with a TIF instruction of IOC from the list of orders not eligible for routing.

Second, the Exchange proposes to add new provisions to the descriptions of both Market Orders and Limit Orders that state that if an order is received by the System when the NBBO is not available then such order will be rejected back to the entering User. The applicable provision would be added as Rule 11.8(a)(7) for Market Orders and Rule 11.8(b)(9) for Limit Orders.[24] The language is based on language applicable to Pegged Orders set forth in Rule 11.8(c)(7), which states that a Pegged Order received by the System when the NBBO is not available will be rejected or cancelled back to the entering User.

<u>Orders with a Primary Peg Instruction or Midpoint Peg Instruction</u>

---

[24] Due to the addition of new paragraph (b)(9) to Rule 11.8, the Exchange proposes to re-number subsequent paragraphs of Rule 11.8(b).

The Exchange proposes to modify paragraphs (a)(2)(A) and (a)(2)(B) of Rule 11.9 to separate orders with a Primary Peg instruction and orders with a Midpoint Peg instruction from a priority perspective. The Exchange currently has a single priority level for all Pegged Orders. The Exchange believes that separation of the two types of Pegged Orders will be more consistent with other exchanges[25] and that orders with a Primary Peg instruction should be afforded higher priority than orders with a Midpoint Peg instruction because a Pegged Order with a Primary Peg instruction is a more aggressive order type. For an order with a Primary Peg instruction to be resting at the same price as an order with a Midpoint Peg instruction the order with a Primary Peg instruction must have an aggressive offset; depending on subsequent price movements, such an order with a Primary Peg instruction might provide price improvement from the applicable quote to which it is pegged of a full penny or multiple pennies whereas a Midpoint Peg can provide such price improvement under certain circumstances but also may be executed in smaller increments of $0.005. The Exchange is seeking to reward more aggressive order types, even when not displayed, because such order types provide price improvement to incoming orders and thus promote the operation of a fair and orderly market.

In addition to the change described above, the Exchange proposes two minor changes to the description of the Primary Peg instruction set forth in Rule 11.6(h)(1). First, the current rule states that a User may, but is not required to, select an offset equal to or greater than one Minimum Price Variation[26] above or below the NBB or NBO that the order is pegged to

---

25 See, e.g., Cboe BZX Rule 11.12(a)(2), which places Non-Displayed Pegged Orders above Mid-Point Peg Orders in the priority list; see also Cboe EDGX Rule 11.9(a)(2)(B), which places Orders with a Pegged instruction above MidPoint Peg Orders in the priority list when both orders are at the midpoint of the NBBO.

26 The Minimum Price Variation is defined in Rule 11.6(g) and provides the minimum increments for bids, offers, or orders in securities traded on the Exchange.

("Primary Offset Amount"). The Exchange proposes to limit the Primary Offset Amount to a $0.01 minimum. While the Minimum Price Variation for securities priced below $1.00 is an increment of $0.0001, the Exchange does not believe that orders with a Primary Peg instruction will be commonly used in securities priced below $1.00 or that allowing a more granular offset is necessary when the Exchange could instead simplify its System's operation. The Exchange notes that Users that wish to submit orders with a Primary Peg instruction in a security priced below $1.00 can still submit such an order with an offset in an increment of $0.01. If such an offset is not sufficiently granular to meet the needs of a particular User, such User would be able to submit priced Limit Orders in the standard MPV for a security priced below $1.00 (i.e., in an increment of $0.0001). The Exchange notes that it already maintains other exceptions for securities trading below $1.00 to maintain the simplicity of the System.[27] Second, the Exchange proposes to make clear that a User submitting a Pegged Order with a Primary Peg instruction may not include a limit price on such order. This limitation is already implied, as there is no language permitting the inclusion of a limit price (and instead the Rule permits inclusion of an offset, as described above). However, since the description of the Midpoint Peg instruction does explicitly address the inclusion of a limit price on such an order and such inclusion is permitted,

---

[27] See, e.g., Rule 11.6(l)(2), which provides that orders with a Post Only instruction priced below $1.00 will remove liquidity if there is contra-side liquidity (i.e., the Post Only instruction is effectively inapplicable). The Exchange also notes that other exchanges appear to offer offsets in $0.01 increments. See, e.g., NYSE Pillar Gateway FIX Protocol Specification, at pages 24-25, specifying the limit for a Market Peg order offset to a "multiple of .01"; available at: https://www.nyse.com/publicdocs/NYSE_Pillar_Gateway_FIX_Protocol_Specification.pdf.

the Exchange believes that expressly stating that a limit price is not permitted for an order with a Primary Peg instruction would help to avoid potential confusion with the Exchange's Rules.

Removal of References to Default Instructions

Next, the Exchange proposes to eliminate references throughout its Rules 11.6 and 11.8 to certain "default" instructions. As currently drafted, such default instructions are instructions that the Exchange will infer with respect to certain order types and order type instructions to the extent an order does not specify such details on the order. The Exchange has determined not to offer default settings for most order types and order type instructions, but rather, will require a User to specify attributes on an order when entered. The Exchange notes that its technical specifications delineate the required fields for entering orders into the Exchange as well as the applicable options for such fields.[28] Accordingly, the Exchange proposes to delete the following references to default settings:

- Rule 11.6(c)(1) with respect to display instructions – rather than defaulting to a Displayed instruction, a User will need to designate an order with either a Displayed or Non-Displayed instruction;

---

[28] While the Exchange is removing most references to default instructions, the Exchange notes that its specifications, in order to align with current industry protocols, do permit some fields to be left blank without rejecting an order. See infra notes 32 and 34-36. While the Exchange may require certain fields to be completed on all orders at some point in the future following proper notice to Members and an update to its specifications, standard industry protocols (i.e., the FIX protocol) currently dictate the Exchange's implementation with respect to the certain instructions. The Exchange also notes that many of the defaults the Exchange is removing involve an optional functionality that, in turn, has multiple variations. For instance, while the Exchange does not require a User to submit an order with Reserve Quantity and thus, a User could leave all relevant fields blank, if a User does submit an order with a Reserve Quantity then the User must complete all of the fields relevant to the handling of an order with Reserve Quantity, as described below.

- Rule 11.6(j)(1)(A)(iii) with respect to Display-Price Sliding – rather than defaulting to Display-Price Sliding that only reprices an order one time following initial placement on the MEMX Book, a User will need to select either single or multiple price sliding;[29]
- Rule 11.6(j)(2)(A) with respect to Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO ("Short Sale Price Sliding") – rather than defaulting to Short Sale Price Sliding that only reprices an order one time following initial placement on the MEMX Book, a User will need to select either single or multiple Short Sale Price Sliding;[30]
- Rule 11.6(k)(1)(A) with respect to the Random Replenishment instruction for orders with a Reserve Quantity instruction – rather than defaulting to the immediate re-load of an order with a Random Replenishment instruction, a User will need to either select immediate replenishment or to have the time interval of such re-load randomly set by the Exchange;
- Rule 11.8(a)(1) with respect to the TIF instruction for a Market Order – rather than defaulting to a TIF instruction of Day, a User will need to select the applicable TIF instruction;[31]

---

29 The Exchange notes that it proposes to add the phrase "single price sliding process" to Rule 11.6(j)(1)(A)(iii) to be consistent with an existing reference in such Rule to the Exchange's "multiple price sliding process", and proposes to expressly state that a User that submits an order with a Display-Price Sliding instruction must select either single or multiple price sliding. The Exchange also proposes to eliminate the word "optional" from both Rule 11.6(j)(1)(A)(iii) and Rule 11.16(e)(5)(B)(i) when referring to the multiple price sliding process, as both the single price sliding process and the multiple price sliding process are "optional", and thus, the reference could be confusing.

30 Consistent with the proposed changes to Rule 11.6(j)(1)(A)(iii) discussed immediately above, the Exchange proposes to expressly state that a User that submits an order with a short sale re-pricing instruction must select either single or multiple price sliding. The Exchange proposes to use this terminology throughout Rule 11.6(j)(2)(A) to describe the two different options for short sale re-pricing.

31 In connection with this change, the Exchange proposes to use language consistent with

- Rule 11.8(b)(1) with respect to the TIF instruction for a Limit Order – rather than defaulting to a TIF instruction of Day, a User will need to select the applicable TIF instruction;
- Rule 11.8(b)(3) with respect to the display instruction for a Limit Order – rather than defaulting to a Limit Order with a Displayed instruction, a User may include either a Displayed instruction or a Non-Displayed instruction;[32]
- Rule 11.8(b)(4) with respect to the replenishment instruction for a Limit Order with a Reserve Quantity – rather than defaulting to a Fixed Replenishment instruction, a User will need to select the applicable replenishment instruction;[33]
- Rule 11.8(b)(5) with respect to the TIF instruction for a Limit Order with an Intermarket Sweep Order instruction – rather than defaulting to a TIF instruction of Day, a User will need to select the applicable TIF instruction;

---

that used with respect to the TIF options for a Limit Order, as set forth in Rule 11.8(b)(1), as amended. Specifically, the Exchange proposes to state that a Market order "must have one of the following TIF instructions", followed by a list of the possible instructions.

32 The Exchange notes that, as set forth in its specifications, Limit Orders without a Displayed instruction or Non-Displayed instruction will not be rejected but instead, will be accepted and handled in accordance with other instructions on the applicable order. For instance, a Limit Order with a Minimum Quantity instruction but no display instruction will be treated as an order with a Non-Displayed instruction whereas a Limit Order with no other special handling instructions will be treated as an order with a Displayed instruction.

33 The Exchange also proposes to make clear in Rule 11.8(b)(4) that a Reserve Quantity will not be displayed by the System. While this is already clear from Rule 11.6(k), the Exchange believes that it is helpful to re-iterate in Rule 11.8(b)(4).

- Rule 11.8(b)(10) with respect to the election of a Display-Price Sliding instruction for a Limit Order – rather than defaulting to a Display-Price Sliding instruction, a User may select either Display-Price Sliding (either single or multiple) or Cancel Back;[34]
- Rule 11.8(b)(11) with respect to the election of a Short Sale Price Sliding instruction for a Limit Order – rather than defaulting to a Short Sale Price Sliding instruction, a User will need to select either Short Sale Price Sliding (either single or multiple) or Cancel Back;[35]
- Rule 11.8(c)(3) with respect to the description of the display instruction of a Pegged Order – rather than defaulting to a Non-Displayed instruction, the Exchange proposes to simply state that a Pegged Order is not eligible to have a Displayed instruction.[36]

None of the changes proposed above alter the behavior of the System other than requiring applicable fields of an order to be specified rather than defaulting to certain attributes or instructions to the extent such fields are left blank.

<u>Handling of Orders with Displayed, Non-Displayed and Reserve Quantity Instructions in Specific Situations</u>

---

[34] The Exchange notes that, as set forth in its specifications, Limit Orders without a Display-Price Sliding or Cancel Back instruction will be accepted by the Exchange, however, if a User wishes to use the Exchange's Display-Price Sliding functionality, such User will need to indicate such election on its orders and will need to specify the type of Display-Price Sliding (either single or multiple).

[35] The Exchange notes that, as set forth in its specifications, Limit Orders without a Short Sale Price Sliding or Cancel Back instruction will be accepted by the Exchange, however, if a User wishes to use the Exchange's Short Sale Price Sliding functionality, such User will need to indicate such election on its orders and will need to specify the type of Short Sale Price Sliding (either single or multiple).

[36] The Exchange notes that, as set forth in its specifications, Pegged Orders without a Displayed instruction or Non-Displayed instruction will not be rejected but instead, will be accepted and handled as orders with a Non-Displayed instruction.

Finally, the Exchange proposes to modify the behavior of orders with certain instructions in the situations specified below.

Orders with a Reserve Quantity when Replenished.

Current Rule 11.9(a)(6) states that the Reserve Quantity of an order retains its original timestamp but the Exchange has determined that the most efficient way to update orders with a Reserve Quantity when replenishing the displayed portion is to handle such orders as new orders, which will result in the displayed portion and the Reserve Quantity each receiving a new timestamp and being placed back on the MEMX Book. Accordingly, the Exchange proposes to amend Rule 11.9(a)(6) to state that the Reserve Quantity of an order receives a new timestamp for the displayed portion as well as the Reserve Quantity of an order each time it is replenished. The Exchange notes that this functionality is identical to the functionality offered by Cboe EDGX Exchange, Inc., which also assigns a new timestamp to both the displayed portion and Reserve Quantity each time an order is replenished.[37] In connection with this change, the Exchange proposes to make clear in Rule 11.6(k)(1) that when the System replenishes the displayed quantity of an order with a Reserve Quantity, the order will be handled by the System as a new order. Rule 11.6(k) already states that a new order identification number will be created each time a displayed quantity is replenished but the Exchange believes it is important to also explicitly state that the order will be handled as a new order given the implementation by the Exchange of the behavior necessary to replenish orders with a Reserve Quantity.

The proposed change to provide new timestamps to both the displayed portion and the Reserve Quantity of an order when an order is replenished is intended to simplify the operation

---

[37] See Cboe EDGX Rule 11.9(a)(6).

of the Exchange and does allow for fair treatment of orders with Reserve Quantity for the following reasons. The Exchange believes it will be rare for there to be multiple orders with a Reserve Quantity at the same price on the same side and in the same security, in which case, the proposed change will not impact the handling of an order with a Reserve Quantity – i.e., although it will receive a new timestamp, it will still maintain the same priority on the order book vis-à-vis other orders as it would if the Reserve Quantity did not receive a new timestamp. Even if there are multiple orders with a Reserve Quantity at the same price on the same side and in the same security, the Exchange believes it is fair to allow such orders to lose and regain queue position as they are each individually replenished. As set forth in current Rule 11.9(a)(2), the Reserve Quantity of Limit Orders is always last in the Exchange's priority list, and thus Reserve Quantity is least likely to be executed at any given time. As such, a User primarily concerned with queue position could instead send any other type of order and receive a higher position in the Exchange's priority queue than the Reserve Quantity of such order will receive.

<u>Orders with a Non-Displayed Instruction at Prices that Cross External Quotations</u>. Exchange Rule 11.10(a)(2) currently states that to the extent an order with a Non-Displayed instruction is resting on the MEMX Book, such order will be cancelled if an incoming contra-side order that is eligible for display on the MEMX Book is entered and such incoming order would execute against the resting order with a Non-Displayed instruction at a price that would constitute a trade-through of a Protected Quotation[38] displayed on another trading center. Thus,

---

[38] As set forth in Rule 1.5(z), a Protected Quotation is a quotation that is a Protected Bid or Protected Offer. In turn, a Protected Bid or Protected Offer is a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.

according to the Exchange's current Rules, the Exchange would maintain orders with a Non-Displayed instruction on its order book that cross the prices displayed on other trading centers unless and until execution of such an order would result in a trade-through.[39] The Exchange's original proposal in this regard was made to reduce cancellations of orders with Non-Displayed instructions to the extent such orders would ultimately be again executable based on changes to the NBBO. However, as described below, the Exchange now proposes to instead cancel an order with a Non-Displayed instruction as soon as it is resting at a price that would be a trade-through of a Protected Quotation – i.e., as soon as it is at a crossing price. The Exchange proposes to remove the existing language from Rule 11.10(a)(2) regarding cancellation of an order when it would be a trade-through and to modify Rules 11.8(b), regarding Limit Orders and Rule 11.8(c), regarding Pegged Orders, as described below.

The Exchange proposes adopting new paragraph (b)(8) regarding Limit Orders to address the handling of orders with a Non-Displayed instruction received or resting on the MEMX Book when the Limit Price on such orders crosses the price of a Protected Quotation of another Trading Center. Proposed paragraph (b)(8), titled Crossed Market, would state that to the extent an incoming Limit Order with a Non-Displayed instruction would be a Crossing Quotation if displayed at its limit price, such order will execute against interest in the MEMX Book at prices up to and including the Locking Price and will then be cancelled by the System. Proposed paragraph (b)(8) would also state that a resting Limit Order with a Non-Displayed instruction

---

39 The Exchange notes that when an order is not displayed, ranking such an order at a crossing price is permissible, however, execution of an order at such a price is generally not permissible as it would constitute a trade-through of the Protected Quotation that the order crosses.

that would be a Crossing Quotation if displayed at the price at which it is ranked will be cancelled by the System.[40]

Similarly, the Exchange proposes to modify existing paragraph (c)(6) of Rule 11.8, which provides information regarding the handling of Pegged Orders when the market is locked or crossed. Current paragraph (c)(6) addresses the handling of Pegged Orders resting on the MEMX Book when a Locking or Crossing Quotation exists and makes clear that such orders are not executable at such times but again become eligible for execution when a Locking or Crossing Quotation no longer exists. The Exchange proposes to add language making clear that this behavior applies to orders resting on the MEMX Book and to add a provision addressing the handling of Pegged Orders that would be a Crossing Quotation when initially received by the Exchange. Similar to the handling of Limit Orders with a Non-Displayed instruction, the Exchange proposes to execute interest to the extent permissible upon receipt of a Pegged Order up to and including the Locking Price but then to cancel such order. In contrast to a Pegged Order that is already on the MEMX Book at a permissible price that is subsequently locked or crossed, which the Exchange proposes to allow to rest in a non-executable state while such condition exists, the Exchange does not believe a Pegged Order received at a price that would cross a Protected Quotation should be placed on the MEMX Book.

Orders with a Non-Displayed Instruction Subject to Rule 201 of Regulation SHO.

Under the Exchange's current rules as further amended by the proposals described above, the Exchange does not generally offer functionality that moves orders with a Non-Displayed instruction to a permissible price, instead opting to cancel such orders back to the entering Users

---

40 Due to the addition of new paragraph (b)(8) to Rule 11.8, the Exchange proposes to re-number subsequent paragraphs of Rule 11.8(b).

if the orders with a Non-Displayed instruction would be ranked or are ranked at impermissible prices. Consistent with this approach, rather than re-pricing to a permissible price, the Exchange proposes to modify Rule 11.6(j)(2)(A) to state that in the event the NBB changes such that the price of an order with a Non-Displayed instruction subject to Rule 201 of Regulation SHO would be a Locking Quotation or Crossing Quotation, the order will be cancelled. While many other exchanges do offer re-pricing for non-displayed interest that, if executed, would be a violation of Regulation SHO, the Exchange does not believe it is required to do so and that, instead, cancellation of resting hidden interest is an equally permissible implementation in order to ensure that the Exchange does not execute orders at prices prohibited by Rule 201 of Regulation SHO. The Exchange notes other exchanges do cancel resting non-displayed interest under the same circumstances to the extent members of such exchanges have submitted orders that are ineligible for applicable price sliding functionality.[41]

Orders Priced Through Limit Up-Limit Down ("LULD") Bands.

The Exchange proposes to make three changes to the description of orders that are priced through applicable price bands under the LULD Plan. First, the Exchange further proposes to modify Rule 11.16(e)(5) to state that orders that are repriced by the Exchange due to applicable LULD price bands will have priority behind resting interest that was originally less aggressively priced but that was not re-priced, as such orders will retain their original timestamps. The Exchange originally proposed to maintain price priority for orders that have been re-priced due

41 See, e.g., Cboe Exchange Regulation SHO Amendment FAQ, available at https://cdn.cboe.com/resources/membership/BATS_Exchange_Regulation_SHO_Amendment_FAQ.pdf (stating that if price sliding is disabled a resting hidden short sale order will be cancelled "when a short sale circuit breaker goes into effect and the hidden order locks or crosses the prohibited bid price").

to applicable LULD price bands, i.e., placing such orders in front of orders that were originally less aggressively priced. The Exchange believes that the System behavior necessary to achieve this result is unnecessarily complicated as compared to the benefit received from adopting such behavior. The Exchange does not believe that market participants utilize LULD price bands, and placement of orders at or near such bands, as an opportunity to achieve queue position under normal conditions. Rather, the Exchange believes that orders resting at or near applicable price bands and the re-pricing of orders priced through such price bands is evidence of unusual conditions and that the Exchange's functionality should be focused on reducing risk in handling such situations. The Exchange also notes that other exchanges have adopted similar order handling that would provide new timestamps to orders that are re-priced.[42]

As noted in the sub-section immediately above, under the Exchange's current rules (as further amended by the proposals described above), the Exchange does not generally offer functionality that moves orders with a Non-Displayed instruction to a permissible price, instead opting to cancel such orders back to the entering Users if the orders with a Non-Displayed instruction would be booked or are resting at impermissible prices. The Exchange proposes to also adopt this logic in the context of the Exchange's order handling to comply with the LULD Plan ("LULD repricing"). Specifically, the Exchange proposes to modify Rule 11.16(e)(5)(B)(i) to make a clear distinction between orders with a Displayed instruction, which will continue to be eligible for LULD re-pricing, and orders with a Non-Displayed instruction or a portion of the order that is not displayed on the Exchange (i.e., orders with a Reserve Quantity), which will not

42 See, e.g., IEX Rule 11.280(e)(5), which states that resting orders that are re-priced due to applicable price bands receive new timestamps (but does not say that resting orders that are not re-priced also receive new timestamps); see also Nasdaq PSX Rule 3100(a)(2)(E).

be eligible for LULD re-pricing. The Exchange proposes to cancel orders resting on the MEMX Book with a Non-Displayed instruction or a Reserve Quantity that are ranked at prices more aggressive than the applicable LULD price bands. The Exchange believes this will further simplify the System and that the change is consistent with the general principle of cancelling non-displayed interest resting on the Exchange at impermissible prices.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[43] which require, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(b)(8) of the Act,[44] which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. The proposed changes are generally intended to simplify the operation of the System, to align the System with functionality offered on other exchanges, or to make clear certain aspects of the operation of the System that are not clear based on the Exchange's current Rules.

As noted above, removal of the Early Order Entry Session and Opening Process will reduce complexity with respect to the functionality used to open the Exchange each trading day. Similarly, cancelling orders in the event of a trading halt, not accepting orders during a trading halt and removing the Re-Opening Process will simplify the functionality used by the Exchange to re-open the market following a trading halt. The Exchange does not anticipate having significant volume that would be submitted during the Early Order Entry Session nor does the

---

43 15 U.S.C. 78f(b)(6).

44 15 U.S.C. 78f(b)(8).

Exchange anticipate having significant volume that would match in its Opening Match or the corresponding match for the Re-Opening Process. Thus, allowing orders to queue at the beginning of the day through the Early Order Entry Session or leading up to the open of the Market Session or allowing orders to remain on the Exchange during a trading halt would complicate the market without much meaningful benefit, and instead the Exchange believes simplification of its System would be better, at least in connection with the initial launch of the Exchange. The Exchange believes that these changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. With respect to the Early Order Entry Session, the Exchange also notes that the Exchange will still offer the Pre-Market Session, and thus, Users will be able to enter orders into the Exchange prior to the commencement of the Market Session. Further, not all exchanges offer a trading session equivalent to the Early Order Entry Session.[45] The Exchange also believes that the minor proposed amendments to make conforming changes to other Exchange Rules that reference the deleted functionality will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

The Exchange also believes that the clarifying changes to the descriptions of Market Orders and Limit Orders are necessary and consistent with the Act in that they provide additional clarity by correcting the ambiguity in Exchange Rules that is already present with respect to routing of Market Orders with a TIF of IOC or add protections to the operation of the Exchange so that the Exchange is not accepting or processing orders (of any type) when there is no NBBO.

---

45 See supra note 20.

The Exchange believes that the absence of an NBBO may be indicative of a potential market problem. Further, without an NBBO, many of the protections in place for the protection of investors would be absent, and thus the Exchange believes that, at least in connection with the launch of the Exchange, it should not accept orders when there is no available NBBO in the applicable security. Thus, the Exchange believes the proposed changes in this regard would promote just and equitable principles of trade, and, in general, would protect investors and the public interest.

The proposed change to the Exchange's priority rule, Rule 11.9, to separate orders with a Primary Peg instruction and orders with a Midpoint Peg instruction and to afford a higher priority to orders with a Primary Peg instruction, are based on the rules of another exchange[46] and are intended to provide higher priority to orders with a Primary Peg instruction, which are more aggressive orders than orders with a Midpoint Peg instruction, as described above. The Exchange is seeking to reward more aggressive order types, even when not displayed, because such order types provide price improvement to incoming orders and thus promote the operation of a fair and orderly market and protect investors and the public interest. With respect to the limitation of the offset for Primary Peg Orders to an increment of $0.01, the Exchange does not believe that orders with a Primary Peg instruction will be commonly used in securities priced below $1.00 or that allowing a more granular offset is necessary when the Exchange could instead simplify its System's operation. The Exchange notes that Users that wish to submit orders with a Primary Peg instruction in a security priced below $1.00 can still submit such an order with an offset in an increment of $0.01. If such an offset is not sufficiently granular to meet

---

[46] See supra note 25.

the needs of a particular User, such User would be able to submit its own priced Limit Orders in the standard MPV for a security priced below $1.00 (i.e., in an increment of $0.0001). The Exchange also notes that it already maintains other exceptions for securities trading below $1.00 to maintain the simplicity of the System and that other exchanges offer offsets in $0.01 increments.[47]

The Exchange's proposal to remove certain default instructions under which the Exchange would assume instructions for order entry fields that have not been completed does not change any of the actual functionality of the Exchange once orders are received, but rather, modifies the order entry protocols required by the Exchange. As proposed, all Users will need to complete most applicable order entry fields when sending an order to the Exchange, rather than some fields carrying particular meaning if such fields are left blank. The Exchange believes that requiring most fields to be completed by a User rather than applying Exchange-determined defaults to these fields will also simplify the System and will help to ensure that Users have instructed the Exchange with respect to order handling in a manner that directly matches their intention. As these changes do not alter the ultimate handling of orders with respect to matching engine handling, execution or other processing by the Exchange, and instead provide Users with more control and engagement with respect to their order handling, the Exchange believes such changes promote just and equitable principles of trade, and, in general, protect investors and the public interest.

The Exchange believes that its handling of an order with a Reserve Quantity as a new order when replenishing the displayed portion of such an order is the most efficient way to

---

47 See supra note 27.

operate the System. Also, the Exchange's proposal to provide a new timestamp to both the displayed portion and the Reserve Quantity is based on the rules of another exchange.[48] As described above, the Exchange believes that it will be rare for there to be multiple orders with a Reserve Quantity at the same price on the same side and in the same security, in which case, the proposed change will not impact the handling of an order with a Reserve Quantity. Even if there are multiple orders with a Reserve Quantity at the same price on the same side and in the same security, the Exchange believes it is fair to allow such orders to lose and regain queue position as they are each individually replenished. The Exchange also reiterates that the Reserve Quantity of Limit Orders is always last in the Exchange's priority list, and thus the purpose of such Reserve Quantity is not to achieve the highest possible queue position, but instead, to have sufficient interest that can be replenished and displayed by the Exchange. Based on the foregoing, the Exchange believes that these changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange's proposal to reject on entry any order with a Non-Displayed instruction or any Pegged Order or to cancel any order with a Non-Displayed instruction when an order is resting at a crossing price is consistent with Regulation NMS, particularly Rule 611 thereof,[49] which would prohibit execution of orders with a Non-Displayed instruction on the Exchange as an impermissible trade-through to the extent a Protected Quotation was being displayed by another market at a crossing price. The Exchange also notes that its proposal is consistent with the Exchange's current Rules, which would provide such cancellation if the Exchange received

---

48 See supra note 37.

49 17 CFR 242.611.

an incoming order and sought to execute against orders resting at a price that crosses a Protected Quotation. The Exchange has also proposed to cancel resting orders with a Short Sale instruction and Non-Displayed instruction if such order is subject to Rule 201 of Regulation SHO,[50] and would lock or cross the price of the NBB. This change is consistent with Rule 201's prohibition of executing an order with a Short Sale instruction at the price of the NBB. The Exchange has also proposed to cancel rather than re-price any resting interest with a Non-Displayed instruction or a Reserve Quantity to the extent such interest is resting at a price that is through the applicable LULD price bands. The Exchange believes this will further simplify the System and that the change is consistent with the general principle of cancelling non-displayed interest resting on the Exchange at impermissible prices.

The Exchange's Rules on each of the points described above would have allowed additional interest to remain on the Exchange's book for potential execution depending on later events. However, by instead cancelling such orders in each of the scenarios described above the Exchange will further simplify and reduce risk in connection with the operation of the System. Users who have their orders cancelled will receive immediate notification of such event and will be able to determine the best way to re-enter their interest onto the Exchange if they choose to do so. Thus, the Exchange also believes the proposal promotes just and equitable principles of trade, and, in general, protects investors and the public interest.

Finally, as proposed the Exchange will not seek to maintain price priority for orders that have been re-priced due to applicable LULD price bands or re-price orders with a Non-Displayed instruction or Reserve Quantity to permissible prices when such orders are priced through a

---

50 17 CFR 242.201.

LULD price band. As noted above, the Exchange believes that orders resting at or near applicable price bands and the re-pricing of orders priced through such price bands is evidence of unusual conditions and that the Exchange's functionality should be focused on reducing risk in handling such situations. This change does reduce the complexity of the System in connection with LULD repricing and thus, the Exchange believes the proposal promotes just and equitable principles of trade, and, in general, protects investors and the public interest. The Exchange also notes that other exchanges have adopted similar order handling that would provide new timestamps to orders that are re-priced.[51]

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of the launch of the Exchange and focuses on changes to the proposed operation of the Exchange that further reduce complexity of the System and/or the Exchange's Rules. The changes will allow the Exchange to launch its platform with minor changes to the implementation of certain Exchange operations, but without major distinction from its proposed Rules or the rules of other national securities exchanges already in operation today. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that the changes will reduce complexity of the System and/or the Exchange's Rules.

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

---

51 See supra note 42.

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 Act[52] and Rule 19b-4(f)(6)[53] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-2020-04 on the subject line.

---

52 15 U.S.C. 78s(b)(3)(A).

53 17 CFR 240.19b-4.

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-2020-04. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.; 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-2020-04 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.[54]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-18343 Filed: 8/20/2020 8:45 am; Publication Date: 8/21/2020]

54 17 CFR 200.30-3(a)(12).