

should be submitted on or before March 31, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91256; File No. SR-MEMX-2021-03]

### Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.6(h)(1) To Enable Users To Include a Limit Price on a Pegged Order With a Primary Peg Instruction

March 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 24, 2021, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend Exchange Rule 11.6(h)(1) to enable Users <sup>5</sup> to include a limit price on a Pegged Order <sup>6</sup> with a Primary Peg

instruction.<sup>7</sup> 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

Currently, Exchange Rule 11.6(h)(1) provides that a User submitting a Pegged Order with a Primary Peg instruction may not include a limit price on such order.<sup>8</sup> In contrast, Exchange Rule 11.6(h)(2) provides that a User submitting a Pegged Order with a Midpoint Peg instruction may, but is not required to, include a limit price on such order. The Exchange therefore currently has different functionality with respect to a User’s ability to include a limit price on a Pegged Order with a Primary Peg instruction and a Pegged Order with a Midpoint Peg

automatically re-prices in response to changes in the NBBO. The two types of peg instructions for Pegged Orders are: (1) Primary Peg, which pegs to the NBB (NBO) for buy (sell) orders; and (2) Midpoint Peg, which pegs to the midpoint of the NBBO.

<sup>7</sup> 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. A User may, but is not required to, select an offset equal to or greater than \$0.01 above or below the NBB or NBO that the order is pegged to. See Exchange Rule 11.6(h)(1).

<sup>8</sup> As initially adopted, Exchange Rule 11.6(h)(1) was silent as to whether a User submitting a Pegged Order with a Primary Peg instruction may include a limit price on such order. The Exchange interpreted the Rule’s silence in this regard to mean that a limit price may not be included on such orders, which was the intended functionality for such orders at the time of the Exchange’s initial launch. However, after receiving inquiries from Users as to whether a limit price may be included on such orders, prior to commencing operations the Exchange adopted a change to Exchange Rule 11.6(h)(1) to expressly state that a User submitting a Pegged Order with a Primary Peg instruction may not include a limit price on such order. The purpose of this change was therefore to make Exchange Rule 11.6(h)(1) more clearly reflect the intended and actual functionality. See Securities Exchange Act Release No. 89581 (August 17, 2020), 85 FR 51799 (August 21, 2020) (SR-MEMX-2020-04).

instruction in that Users may only include a limit price on the latter.

The Exchange now proposes to enable a User submitting a Pegged Order with a Primary Peg instruction to include a limit price on such order. The purpose of the proposed change is to align the functionality with respect to a User’s ability to include a limit price for the two types of peg instructions for Pegged Orders (*i.e.*, Primary Peg and Midpoint Peg), as the Exchange believes there should be no distinction with respect to this functionality for such orders. Thus, the language of the proposed change is based on and mirrors the relevant language applicable to Pegged Orders with a Midpoint Peg instruction set forth in Exchange Rule 11.6(h)(2) and, accordingly, provides that a User submitting a Pegged Order with a Primary Peg instruction may, but is not required to, include a limit price on such order.

The Exchange notes that by enabling a User to include a limit price on a Pegged Order with a Primary Peg instruction, the User is able to establish an additional risk protection in the form of a specified price limitation, which the Exchange believes would help to minimize the risk of executions of such orders at unintended price levels, thereby promoting the operation of a fair and orderly market. Accordingly, as Users would have greater flexibility in establishing a price limitation with respect to such orders, the Exchange believes that the proposed change would result in Users sending additional Pegged Orders with a Primary Peg instruction to the Exchange, which would deepen the liquidity on the Exchange to the benefit of all Users. The Exchange also notes that the proposed change to enable Users to include a limit price on a Pegged Order with a Primary Peg instruction is consistent with the existing functionality of other exchanges.<sup>9</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange’s rules must be designed to

<sup>9</sup> See, *e.g.*, Cboe EDGX Exchange, Inc. (“EDGX”) Rule 11.8(b)(9), which provides that pegged functionality (including a primary peg instruction similar to the Exchange’s Primary Peg instruction) is available for limit orders that are posted to the EDGX book; The Nasdaq Stock Market LLC (“Nasdaq”) Rule 4703(d), which generally permits an order with pegging (including primary pegging similar to the Exchange’s Primary Peg instruction) to specify a limit price beyond which the order may not be executed.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>5</sup> As defined in Exchange 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 Exchange Rule 11.3. As defined in Exchange 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.

<sup>6</sup> Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and

promote just and equitable principles of trade and 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, and Section 6(b)(8) of the Act,<sup>11</sup> which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate.

As noted above, the proposed change is intended to align the functionality for Pegged Orders with a Primary Peg instruction with the functionality for Pegged Orders with a Midpoint Peg instruction with respect to enabling a User to include a limit price on such orders, as the Exchange believes there should be no distinction with respect to this functionality for such orders. The Exchange believes that the proposed change is appropriate and consistent with the Act as the Exchange believes that enabling Users to establish additional risk protection in the form of a specified price limitation for Pegged Orders with a Primary Peg instruction would help to minimize the risk of executions of such orders at unintended price levels, which the Exchange believes would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange further believes that enabling Users to include a limit price on a Pegged Order with a Primary Peg instruction is appropriate and consistent with the Act as the Exchange believes that its Users would want to utilize this functionality, thereby resulting in additional liquidity in the form of Pegged Orders with a Primary Peg instruction being sent to the Exchange, which would deepen the liquidity on the Exchange to the benefit of all Users.

Furthermore, the proposed change would make the Exchange's functionality consistent with the functionality of certain other exchanges with respect to a User's ability to include a limit price on Pegged Orders with a Primary Peg instruction,<sup>12</sup> which the Exchange believes would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, would protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would 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 would make the functionality with respect to a User's ability to include a limit price on Pegged Orders with a Primary Peg instruction consistent with the functionality of other exchanges.<sup>13</sup> The Exchange believes that the proposed rule change would not burden intramarket competition because the ability to include a limit price on Pegged Orders with a Primary Peg instruction would be applicable to all Users. The Exchange also believes that the proposed rule change would not burden, but rather increase, intermarket competition as the Exchange believes that enabling Users to include a limit price on Pegged Orders with a Primary Peg instruction would ultimately enable the Exchange to better compete with other exchanges that offer this same functionality. Thus, the Exchange believes that the proposed rule change would facilitate fair competition among national securities exchanges.

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

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not

become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay would allow the Exchange to begin accepting Pegged Orders with a Primary Peg instruction that include a limit price as soon as practicable,<sup>18</sup> thus benefitting Users and investors by sooner offering functionality that enables Users to establish an additional risk protection in the form of a specified price limitation for such orders. The Exchange believes this would help to minimize the risk of executions of such orders at unintended price levels, thereby promoting the operation of a fair and orderly market. In addition, the Exchange states that the proposed rule change merely seeks to align the functionality for Pegged Orders with a Primary Peg instruction with the functionality for Pegged Orders with a Midpoint Peg instruction with respect to a User's ability to include a limit price on such orders. The Commission believes waiver of the operative delay will provide Users with an optional additional risk protection tool, permitting them to set a limit price for Pegged Orders with a Primary Peg instruction if they choose, without unnecessary delay. The Commission further believes that the proposed functionality is consistent with the functionality of other exchanges<sup>19</sup> and thus does not raise any new or novel issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the operative delay and designates the proposed rule change operative upon filing.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

<sup>13</sup> See *supra* note 9.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice its intent to file the proposed rule change, along with a brief description and text of 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 complied with this requirement.

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

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

<sup>18</sup> In its filing, the Exchange stated that it plans to implement the proposed rule change on or about March 15, 2021.

<sup>19</sup> See, e.g., *supra* note 9.

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> See *supra* note 9.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MEMX-2021-03 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MEMX-2021-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2021-03, and

should be submitted on or before March 31, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91258; File No. SR-FINRA-2020-041]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change To Adopt FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111)

March 4, 2021.

#### I. Introduction

On November 16, 2020, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FINRA-2020-041 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to address the risks that can be posed to investors and the broader market by broker-dealers that have a history of misconduct. The proposed rule change was published for public comment in the **Federal Register** on December 4, 2020.<sup>3</sup> On January 12, 2021, FINRA consented to extend, until March 4, 2021, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>5</sup> to institute proceedings to determine

whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

The proposed rule change would: (1) Adopt FINRA Rule 4111 (Restricted Firm Obligations) to require member firms that are identified as "Restricted Firms" to maintain a deposit in a segregated account with withdrawals requiring FINRA's approval, adhere to specified conditions or restrictions, or comply with a combination of such obligations; and (2) adopt FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111), and amend FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series), to create a new expedited proceeding to implement proposed Rule 4111.<sup>6</sup>

##### *Proposed Rule 4111 (Restricted Firm Obligations)*

Proposed Rule 4111 would establish numeric thresholds based on firm-level and individual-level disclosure events to identify member firms with a significantly higher level of risk-related disclosures as compared to similarly-sized peers.<sup>7</sup> Following a multi-step process of evaluating a member firm, FINRA's Department of Member Regulation ("Department") would be permitted to impose on member firms it determines pose a high risk to the investing public a "Restricted Deposit Requirement,"<sup>8</sup> conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest, or both.<sup>9</sup>

FINRA would conduct the process annually for each member firm, determining whether it should be designated (or re-designated) as a Restricted Firm and whether it should be subject to any obligations.<sup>10</sup> Each member firm that is preliminarily identified based on its firm-level and individual-level disclosure events would have several ways to affect outcomes during subsequent steps in the evaluative process, including a one-time opportunity to terminate registered representatives with relevant disclosure events so as to no longer trigger the numeric thresholds.<sup>11</sup> The member firm would also be able to explain to the Department why it should not be subject to a Restricted Deposit Requirement or

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 90527 (Nov. 27, 2020), 85 FR 78540 (Dec. 4, 2020) (File No. SR-FINRA-2020-041) ("Notice").

<sup>4</sup> See letter from Michael Garawski, Associate General Counsel, OGC Regulatory Practice and Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated January 12, 2021.

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See Notice at 78541-78550.

<sup>7</sup> See Notice at 78541.

<sup>8</sup> See proposed Rule 4111(i)(15) (defining "Restricted Deposit Requirement").

<sup>9</sup> See Notice at 78542.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*