

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: July 15, 2020.

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89306; File No. 4-698]

### Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan Governing the Consolidated Audit Trail To Add MEMX LLC as a Participant

July 13, 2020.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2020, MEMX LLC (“MEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) an amendment to the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”).<sup>3</sup> The amendment adds MEMX as a Participant<sup>4</sup> to the CAT NMS Plan. The Commission is publishing this notice to

solicit comments on the amendment from interested persons.

### I. Description and Purpose of the Amendment

The amendment to the CAT NMS Plan adds MEMX as a Participant.<sup>5</sup> The CAT NMS Plan provides that any Person<sup>6</sup> approved by the Commission as a national securities exchange or national securities association under the Exchange Act may become a Participant by submitting to the Company<sup>7</sup> a completed application in the form provided by the Company.<sup>8</sup> As a condition to admission as a Participant, said Person shall: (i) Execute a counterpart of the CAT NMS Plan, at which time Exhibit A shall be amended to reflect the status of said Person as a Participant (including said Person’s address for purposes of notices delivered pursuant to the CAT NMS Plan); and (ii) pay a fee to the Company as set forth in the Plan (the “Participation Fee”).<sup>9</sup> The amendment to the Plan reflecting the admission of a new Participant shall be effective only when: (x) It is approved by the Commission in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608; and (y) the prospective Participant pays the Participation Fee.<sup>10</sup>

MEMX has executed a copy of the current CAT NMS Plan, amended to include MEMX in the List of Parties (including the address of MEMX), paid the applicable Participation Fee and provided each current Plan Participant with a copy of the executed and amended CAT NMS Plan.<sup>11</sup>

<sup>5</sup> Defined in Section 1.1 of the CAT NMS Plan as follows: “Participant” means each Person identified as such on Exhibit A hereto, and any Person that becomes a Participant as permitted by this Agreement, in such Person’s capacity as a Participant in the Company (it being understood that the Participants shall comprise the “members” of the Company (as the term “member” is defined in Section 18-101(11) of the Delaware Act)).

<sup>6</sup> Defined in Section 1.1 of the CAT NMS Plan as follows: “Person” means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

<sup>7</sup> The “Company” refers to the limited liability company, Consolidated Audit Trail, LLC, which is responsible for conducting the activities of the CAT. See Securities Exchange Act Release No. 87149 (September 27, 2019), 84 FR 52905 (October 3, 2019).

<sup>8</sup> See Section 3.3 of the CAT NMS Plan. MEMX was approved as a national securities exchange on May 4, 2020. See Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

<sup>9</sup> See Section 3.3 of the CAT NMS Plan.

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

<sup>11</sup> See Letter from Anders Franzon, General Counsel, MEMX LLC, dated June 5, 2020, to

### II. Effectiveness of the Proposed Plan Amendment

The foregoing CAT NMS Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>12</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,<sup>13</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4-698 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 4-698. 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

Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission.

<sup>12</sup> 17 CFR 242.608(b)(3)(iii).

<sup>13</sup> 17 CFR 242.608(a)(1).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090 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. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-698 and should be submitted on or before August 3, 2020.

By the Commission.

**J. Matthew DeLesDernier**,  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89305; File No. SR-FINRA-2020-011]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Address Broker-Dealers With a Significant History of Misconduct

July 13, 2020.

#### I. Introduction

On April 3, 2020, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA's rules to help further address the issue of broker-dealers with a significant history of misconduct and the firms that employ them. The proposed rule change was published for comment in the **Federal Register** on April 14, 2020.<sup>3</sup> On May 27, 2020, FINRA consented to an extension of 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 to July 13, 2020.<sup>4</sup> On July 2, 2020, FINRA responded to the comment letters received in response to the Notice and filed an amendment to the proposed rule change ("Amendment No. 1").<sup>5</sup>

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to solicit comments on Amendment No. 1 from interested persons and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input from interested parties on the changes to the proposed rule change, as set forth in Amendment No. 1.

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

##### Background

FINRA's proposed rule change would: (1) Amend the FINRA Rule 9200 Series (Disciplinary Proceedings) and the 9300 Series (Review of Disciplinary Proceedings by National Adjudicatory Council and FINRA Board; Application for SEC Review) to allow a hearing officer to impose conditions or restrictions on the activities of a respondent member broker-dealer or respondent associated person, and require the member broker-dealer employing a respondent associated person to adopt heightened supervisory procedures for such associated person, when a disciplinary matter is appealed to the National Adjudicatory Council ("NAC") or called for NAC review; (2) amend the FINRA Rule 9520 Series (Eligibility Proceedings) to require member broker-dealers to adopt heightened supervisory procedures for statutorily disqualified associated persons during the period a statutory disqualification eligibility request is under review by FINRA; (3) amend

FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to require the disclosure through FINRA BrokerCheck of the status of a member broker-dealer as a "taping firm" under FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms); and (4) amend the FINRA Rule 1000 Series (Member Application and Associated Person Registration) to require a member broker-dealer to submit a written request to FINRA's Department of Member Regulation, through the Membership Application Group ("MAP Group"), seeking a materiality consultation and approval of a continuing membership application, if required, when a natural person that has, in the prior five years, one or more "final criminal matters" or two or more "specified risk events" seeks to become an owner, control person, principal or registered person of the member broker-dealer.<sup>7</sup>

##### *Proposed Rule Change to the FINRA Rule 9200 Series (Disciplinary Proceedings) and the 9300 Series (Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review)*

Currently, FINRA rules require that when a hearing panel or hearing officer decision is on appeal or review before the NAC, any sanctions imposed by the hearing panel or hearing officer decision, including bars and expulsions, are automatically stayed and not enforced against the respondent during the pendency of the appeal or review proceeding.<sup>8</sup> In turn, the filing of an application for Commission review stays the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting a final FINRA disciplinary action.<sup>9</sup>

In the Notice, FINRA expressed concern about customers who could engage in securities transactions with

<sup>7</sup> See Notice at 20745.

The proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal rule set incorporates the Rule 9200 Series and Rule 9300 Series and Rule 9556 by reference, and the CAB rule set incorporates Rules 1011, 1017 and 8312 and the Rule 9200 Series, Rule 9300 Series and Rule 9500 Series by reference. In addition, FINRA is proposing corresponding amendments to CAB Rule 111, to reflect that a CAB would be subject to IM-1011-3, and amendments to Funding Portal Rule 900(b) to require heightened supervision during the time an eligibility request is pending. See Notice at note 61.

<sup>8</sup> See FINRA Rules 9311(b) and 9312(b). In contrast, an appeal to the NAC or a call for NAC review does not stay a decision, or that part of a decision, that imposes a permanent cease and desist order. See FINRA Rules 9311(b) and 9312(b).

<sup>9</sup> See FINRA Rule 9370(a).

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

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

<sup>3</sup> See Exchange Act Release No. 88600 (Apr. 8, 2020), 85 FR 20745 (Apr. 14, 2020) (File No. SR-FINRA-2020-011) ("Notice").

<sup>4</sup> See letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated May 27, 2020.

<sup>5</sup> See letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated July 2, 2020 ("FINRA Letter"). The FINRA Letter is available at the Commission's website at <https://www.sec.gov/comments/sr-firra-2020-011/srfinra2020011-7399761-219028.pdf>.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).