

of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder.<sup>3</sup> On February 1, 2021, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> a longer time period was designated within which to act on the proposed rule change.<sup>5</sup> On March 18, 2021, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On June 11, 2021, pursuant to Section 19(b)(2) of the Exchange Act,<sup>8</sup> a longer time period was designated for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change.<sup>9</sup> On August 18, 2021, after consideration of the record for the proposed rule change, the Division of Trading and Markets (“Division”), pursuant to delegated authority,<sup>10</sup> issued an order disapproving the proposed rule change (“Disapproval Order”).<sup>11</sup>

Pursuant to Rule 430 of the Commission’s Rules of Practice,<sup>12</sup> on August 25, 2021, the Exchange filed a notice of intention to petition for review of the Disapproval Order, and on September 1, 2021, the Exchange filed a petition for review of the Disapproval Order. Pursuant to Rule 431(e) of the Commission Rules of Practice,<sup>13</sup> a notice of intention to petition for review results in an automatic stay of the action by delegated authority.

Pursuant to Rule 431 of the Commission’s Rules of Practice,<sup>14</sup> the Exchange’s petition for review of the Disapproval Order is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Disapproval Order on or before February 3, 2022.

For the reasons stated above, it is hereby:

*Ordered* that the Exchange’s petition for review of the Division’s action to disapprove the proposed rule change by delegated authority is *granted*; and

It is further *ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before February 3, 2022.

It is further *ordered* that the automatic stay of delegated action pursuant to Commission Rule of Practice 431(e) is hereby discontinued.

The order disapproving the proposed rule change (File No. SR-NYSE-2020-96) shall remain in effect.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-224, OMB Control No. 3235-0217]

### Proposed Collection; Comment Request; Extension: Rule 17e-1

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“Paperwork Reduction Act”), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17e-1 (17 CFR 270.17e-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the “Investment Company Act”) deems a remuneration as “not exceeding the usual and customary broker’s commission” for purposes of Section 17(e)(2)(A) of the Investment Company Act (15 U.S.C. 80a-17(e)(2)(A)) if, among other things, a registered investment company’s (“fund’s”) board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule

during the preceding quarter complied with the established procedures (“review requirement”). Rule 17e-1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board (“recordkeeping requirement”). The review and recordkeeping requirements under rule 17e-1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker’s commission. Without the recordkeeping requirement, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e-1.

Based upon an analysis of fund filings on Form N-CEN, approximately 1,640 funds report reliance on rule 17e-1. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e-1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e-1 to be approximately 82,000 hours.<sup>1</sup> We further estimate that, of these:

- 60 percent (49,200 hours) are spent by senior accountants, at an estimated hourly wage of \$221,<sup>2</sup> for a total of approximately \$10,873,200 per year;<sup>3</sup>
- 30 percent (24,600 hours) are spent by in-house attorneys at an estimated

<sup>1</sup> 1,640 funds × 50 hours per fund = 82,000 hours.

<sup>2</sup> The Commission’s estimates concerning the allocation of burden hours and the relevant wage rates are based on consultations with industry representatives and on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figures are also based on published rates for senior accountants and in-house attorneys, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding effective hourly rates of \$221 and \$425, respectively. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

<sup>3</sup> 49,200 hours × \$221 per hour = \$10,873,200.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90677 (December 15, 2020), 85 FR 83119 (December 21, 2020).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 91025 (February 1, 2021), 86 FR 8420 (February 5, 2021).

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

<sup>7</sup> See Securities Exchange Act Release No. 91359 (March 18, 2021), 86 FR 15734 (March 24, 2021).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 92154 (June 11, 2021), 86 FR 32301 (June 17, 2021).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> See Securities Exchange Act Release No. 92700 (August 18, 2021), 86 FR 47351 (August 24, 2021).

<sup>12</sup> 17 CFR 201.430.

<sup>13</sup> 17 CFR 201.431(e).

<sup>14</sup> 17 CFR 201.431.

hourly wage of \$425, for a total of approximately \$10,455,000 per year;<sup>4</sup> and

- 10 percent (8,200) are spent by the funds' board of directors at an hourly cost of \$4,770, for a total of approximately \$39,114,000 per year.<sup>5</sup>

Based on these estimated wage rates, the total cost to the industry of the hour burden for complying with the review and recordkeeping requirements of rule 17e-1 is approximately \$60,442,200.<sup>6</sup> The Commission staff estimates that there is no cost burden associated with the information collection requirement of rule 17e-1 other than this cost.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e-1 is mandatory. The information provided under rule 17e-1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

<sup>4</sup> 24,600 hours × \$425 per hour = \$10,455,000.

<sup>5</sup> 8,200 hours × \$4,770 per hour = \$39,114,000. The estimate for the cost of board time as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

<sup>6</sup> \$10,873,200 + \$10,455,000 + \$39,114,000 = \$60,442,200.

Dated: January 10, 2022.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93927; File No. SR-MEMX-2021-19]

### Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Establish a Monthly Membership Fee

January 7, 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 December 28, 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, II, and III below, which Items have been prepared by the Exchange. 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 the Exchange's fee schedule applicable to Members<sup>3</sup> (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on January 3, 2022. 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 Exchange is proposing to establish a Monthly Membership Fee for Members of the Exchange of \$200. The Monthly Membership Fee is proposed to be assessed to each active Member at the close of business on the first day of each month. For example, the Monthly Membership Fee for January 2022 will be assessed to all active Members at the close of business on January 3, 2022, the first business day of the month.

However, if a Member is pending a voluntary termination of rights as a Member pursuant to Rule 2.8 prior to the time any Monthly Membership Fee will be assessed (*i.e.*, the close of business on January 3, 2022) and the Member does not utilize the facilities of the Exchange while such voluntary termination of rights is pending, then the Member will not be obligated to pay the Monthly Membership Fee, as such Member will not be considered to have an "active" Membership. The Exchange believes this to be appropriate because there are several pre-conditions and then a 30-day waiting period before a voluntary resignation shall take effect pursuant to Rule 2.8.

As proposed, the Monthly Membership Fee for a firm will not be prorated, which the Exchange believes is reasonable based on the frequency that the fee is assessed (*i.e.*, monthly instead of applying to a longer period) and the relatively low proposed fee of \$200 for the Monthly Membership Fee.

The Exchange does not presently contemplate proposing any application fees, trading rights or trading permit fees, market participant identifier ("MPID") fees or so-called "headcount" fees.

To reflect the implementation of the Monthly Membership Fee proposed herein, the Exchange also proposes to delete the following sentence from the Fee Schedule: "MEMX does not charge for membership, market data products, physical connectivity or application sessions." The Exchange notes that it is not proposing to adopt fees for market data products at this time. The Exchange further notes that it is separately filing a proposal to adopt fees for physical connectivity and application sessions (with the same implementation date as the proposed changes in this filing) and that such separate proposal will also propose to

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

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

<sup>3</sup> See Exchange Rule 1.5(p).