SECURITIES AND EXCHANGE COMMISSION
Release No. 34-89926

September 18, 2020

Order Granting Application of MEMX LLC for a Limited Exemption from Exchange Act Rule 10b-10(a)(2)(i)(A) pursuant to Rule 10b-10(f)

I.   Introduction

By letter dated September 18, 2020 ("the Application"), MEMX LLC ("MEMX" or the "Exchange") requests a limited exemption from the requirements of Rule 10b-10(a)(2)(i)(A) under the Securities Exchange Act of 1934 ("Exchange Act") on behalf of Members[1] that execute trades on the Exchange for their customers. As discussed in the Application, MEMX will operate a fully automated electronic order book with a continuous, automated matching function that will provide for strict price-time priority execution ("Trading System").[2] The order book and MEMX's rules provide for post trade anonymity through settlement for trades executed through MEMX.[3]

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[1]   Unless otherwise defined in this order, defined terms used have the same meaning as described in MEMX's Rules.

[2]   See MEMX Rule 11.9. MEMX represents that the Exchange's rules do not provide for any special order type that would be an exception to the strict price-time priority handling of orders as set forth in MEMX Rule 11.9.

[3]   As explained in the Application, the Exchange does not request an exemption from Rule 10b-10(a)(2)(i)(A) for when it reveals the identity of a Member or a Member's clearing firm: (i) for regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Registered Clearing Agency (such as the National Securities Clearing Corporation) ceases to act for a Member or the Member's clearing firm, and determines not to guarantee the settlement of the Member's trades. See MEMX Rule 11.13(e).

II.   Background[4]

a.   The Exchange

MEMX is registered as a national securities exchange under Section 6 of the
Exchange Act.[5] The Members of the Exchange consist of those broker-dealers admitted
to Membership and entitled to enter orders in, and receive executions through, the
Exchange's order book or otherwise.

The Exchange will operate an order book for orders with a continuous, automated
matching function, in compliance with the Exchange's rules and Regulation NMS under
the Act.[6] Liquidity will be derived from orders to buy and orders to sell submitted to the
Exchange electronically by its Members from remote locations.

The order book and the Exchange's rules will provide for strict price-time priority
execution. Under MEMX Rule 11.9, orders will be prioritized on a strict price-time
basis, first by price, then by time. Incoming orders are first matched for execution
against orders in the MEMX order book. Orders that cannot be executed are eligible for
routing to away trading centers, if consistent with the terms of the orders.[7] All trades will
be executed through the Exchange's Trading System on an anonymous basis. The

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[4]   Background information is derived from the Application.

[5]   See In the Matter of the Application of: MEMX LLC for Registration as a
        National Securities Exchange; Findings, Opinion, and Order of the Commission,
        Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[6]   See 17 CFR 242.600 et seq.

[7]   See MEMX Rule 11.11. The Exchange understands that the exemptive relief
        would not apply to any situation in which the Trading System routes an order to
        an away trading center for execution, as such executions would be governed by
        the rules of the away trading center.

transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System but shall not reveal the contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.[8]

The order book's matching system algorithm permits orders originated by a Member to execute against other orders from the same participant on the same basis as orders from other Members. In the order book's handling of displayed orders, which is based on strict price-time priority, a Member could receive an execution against itself, and under the Exchange's Rules, the Member would not know that it was the contra-side of the trade at the time of execution.

a. Rule 10b-10

Rule 10b-10 under the Exchange Act generally requires broker-dealers effecting a customer transaction in securities (other than U.S. savings bonds or municipal securities)[9] to provide a written notification to its customer, at or before completion of a securities transaction, that discloses information specific to the transaction. In particular, under Rule 10b-10(a)(2)(i)(A), when a broker-dealer acts as agent for a customer, for some other person, or for both a customer and some other person, the broker-dealer must disclose "[t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer" (the "Contra-Party Identity Requirement").

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[8]   Except for the conditions set forth in MEMX Rule 11.13(e). See supra note 3.

[9]   Municipal securities are subject to the transaction confirmations requirements under Rule G-15 of the Municipal Securities Rulemaking Board.

III.   Relief Sought

As explained in the Application, trades are executed with total anonymity on MEMX, where the identity of the actual contra-party is not revealed when the trade is executed.[10] Because of this, Members will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Members would not be able to comply with the Contra-Party Identity Requirement of Rule 10b-10. To permit Members to utilize the Exchange without violating Rule 10b-10 under the Exchange Act, on behalf of its Members, is seeking an exemption under Rule 10b-10(f) from the Contra-Party Identity Requirement of Rule 10b-10 when Members execute transactions at MEMX, as described in the Application.

IV.   Conclusion

Based on the facts and representations contained in the Application, we find that it is appropriate and in the public interest and consistent with the protection of investors to grant the Exchange, on behalf of its Members, a limited exemption from the Contra-Party Identity Requirement in Rule 10b-10(a)(2)(i)(A).

IT IS HEREBY ORDERED, pursuant to Rule 10b-10(f) of the Exchange Act, that Members, based on the representations and facts contained in the Application, are exempt from the requirements of Rule 10b-10(a)(2)(i)(A) of the Exchange Act, to the extent that Members execute trades for their customers on the Exchange using the MEMX Trading

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[10]   Except for the conditions set forth in MEMX Rule 11.13(e). See supra note 3.

System. This exemption is limited to trades that Members execute on MEMX using the post trade anonymity feature described in the Application.[11]

The foregoing exemption is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier
Assistant Secretary

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[11] This exemption does not apply: (a) to orders routed to an away trading center for execution; (b) under the circumstances described in note 3 supra; or (c) if the functionality of MEMX's order book were to be changed to allow a broker-dealer to select or influence against whom its orders will be executed as described in the Application on page 5 and note 12.

[12] 17 CFR 200.30-3(32).