

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT of 1934**  
**Release No. 34-96788 / February 1, 2023**

**In the Matter of the**

MEMX LLC

**Regarding an Order Disapproving a**

Proposed Rule Change, as Modified by  
Amendment No. 1, to Establish a Retail  
Midpoint Liquidity Program (File No. SR-  
MEMX-2021-10)

**ORDER SCHEDULING  
FILING OF STATEMENTS ON  
REVIEW**

On August 18, 2021, MEMX LLC (“MEMX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to establish a Retail Midpoint Liquidity Program. The proposed rule change was published for comment in the Federal Register on September 8, 2021.<sup>3</sup> On October 19, 2021, the Division of Trading and Markets (“Division”), for the Commission pursuant to delegated authority,<sup>4</sup> designated a longer period within which to 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>5</sup> On December 7, 2021, the Division, for the Commission pursuant to delegated authority,<sup>6</sup>

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<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. 92844 (Sept. 1, 2021), 86 FR 50411 (Sept. 8, 2021).

<sup>4</sup> See 17 CFR 200.30-3(a)(31).

<sup>5</sup> See Securities Exchange Act Release No. 93383 (Oct. 19, 2021), 86 FR 58964 (Oct. 25, 2021).

<sup>6</sup> See 17 CFR 200.30-3(a)(57).

instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.<sup>8</sup>

On January 27, 2022, MEMX filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.<sup>9</sup> On February 14, 2022, the Division, for the Commission pursuant to delegated authority,<sup>10</sup> published for comment notice of Amendment No. 1 and designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.<sup>11</sup> The Commission received comment letters on the proposed rule change.<sup>12</sup>

On May 6, 2022, the Division, for the Commission pursuant to delegated authority,<sup>13</sup> issued an order disapproving the proposed rule change, as modified by Amendment No. 1.<sup>14</sup> On May 10, 2022, the Assistant Secretary of the Commission notified MEMX that, pursuant to Commission Rule of Practice 431,<sup>15</sup> the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority was stayed until the Commission orders otherwise.<sup>16</sup>

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<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 93727 (Dec. 7, 2021), 86 FR 70874 (Dec. 13, 2021).

<sup>9</sup> MEMX provided a copy of Amendment No. 1 to the Commission as a comment letter. MEMX also posted Amendment No. 1 to MEMX's website. See <https://info.memxtrading.com/wp-content/uploads/2022/01/SR-MEMX-2021-10-Amendment-No.-1.pdf>. Due to a technological error, MEMX's comment letter providing a copy of Amendment No. 1 was not posted in the relevant comment file. See Securities Exchange Act Release No. 96005 (Oct. 7, 2022), 87 FR 63016 (Oct. 18, 2022). As discussed in the order disapproving the proposed rule change referred to below, the Commission previously considered Amendment No. 1. See also *infra* note 11 and accompanying text.

<sup>10</sup> See 17 CFR 200.30-3(a)(12) and (57).

<sup>11</sup> See Securities Exchange Act Release No. 94189 (Feb. 8, 2022), 87 FR 8305 (Feb. 14, 2022).

<sup>12</sup> Comments received on the proposal are available at <https://www.sec.gov/comments/sr-memx-2021-10/srmemx202110.htm>.

<sup>13</sup> See 17 CFR 200.30-3(a)(12).

<sup>14</sup> See Securities Exchange Act Release No. 94866 (May 6, 2022), 87 FR 29193 (May 12, 2022).

<sup>15</sup> See 17 CFR 201.431.

<sup>16</sup> See Letter from J. Matthew DeLesDernier, Assistant Secretary, Commission, to Anders Franzon, General Counsel, MEMX, dated May 10, 2022, available at <https://www.sec.gov/rules/sro/memx/2022/34-94866-letter-from-assistant-secretary-051022.pdf>.

Accordingly, IT IS ORDERED, pursuant to Commission Rule of Practice 431, that on or before March 3, 2023, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

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 SR-MEMX-2021-10 shall remain in effect pending the Commission's review.

By the Commission.

Sherry R. Haywood

Assistant Secretary