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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93554; File No. SR-MEMX-2021-16]

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

November 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 29, 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[3] (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 November 1, 2021. 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,

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Exchange Rule 1.5(p).

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 purpose of the proposed rule change is to amend the Fee Schedule to: (i) adopt a new Targeted Step-Up Tier to provide an additive rebate applicable to executions of orders (other than displayed Retail Orders[4]) in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, "Added Volume"); (ii) modify the required criteria under Liquidity Removal Tier 1; (iii) reduce the rebates provided under DLI Tier 1 and DLI Tier 2 for executions of displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume"); and (iv) increase the standard fee for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume").

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange

4 A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

5 Market share percentage calculated as of October 28, 2021. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 4% of the overall market share.[6] The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Adoption of Targeted Step-Up Tier 1

The Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as Targeted Step-Up Tier 1, in which the Exchange will provide an additive rebate applicable to executions of orders (other than displayed Retail Orders) in securities priced at or above $1.00 per share that add liquidity to the Exchange (i.e., Added Volume) for Members that meet at least one of two specified volume thresholds across a specified list of securities, referred to by the Exchange as the Targeted Step-Up Securities,[7] as further described below.

Currently, the Exchange provides various rebates to Members for executions of Added Volume ranging from $0.0020 per share to $0.0036 per share based on the type of order (e.g., displayed, non-displayed, midpoint peg) and whether a Member qualifies for one of the

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6 Id.

7 As proposed, the term "Targeted Step-Up Securities" means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website. The Exchange anticipates that the initial Targeted Step-Up Securities list will include between 30 and 50 securities. The Exchange will not remove a security from the Targeted Step-Up Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange).

Exchange's existing pricing tiers.[8] The Exchange now proposes to adopt Targeted Step-Up Tier 1 in which it will provide an additive rebate of $0.0002 per share for all executions of Added Volume in a particular month for a Member that qualifies for such tier in that month by achieving: (1) a Step-Up ADAV[9] from October 2021 that is equal to or greater than 0.05% of the TCV[10] in the Targeted Step-Up Securities; or (2) an ADAV that is equal to or greater than 0.08% of the TCV in the Targeted Step-Up Securities.[11] To determine if a Member meets either of these volume thresholds, the Exchange will aggregate a Member's ADAV across all Targeted Step-Up Securities for a given month.[12] The $0.0002 per share additive rebate will be provided in addition to the rebate that is otherwise applicable to each of a qualifying Member's orders that constitutes Added Volume (including a rebate provided under another pricing tier).[13]

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8 The Exchange notes that it is proposing herein to reduce the rebate of $0.0036 per share provided under DLI Tier 1 to $0.0035 per share, as further described below, so after giving effect to the changes proposed herein the range of rebates provided for executions of Added Volume would be from $0.0020 per share to $0.0035 per share.

9 As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

10 As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

11 This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description "Targeted Step-Up Tier 1" with a Fee Code of "X" to be appended to the otherwise applicable Fee Code for qualifying executions (which include Fee Codes "B", "D", "J", "B1", "D1", "J1", "B2", "D2", "J2", "Bq1", "Dq1", "Jq1", "Bq2", "Dq2", "Jq2", "H" and "M"). The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier (including the Targeted Step-Up Tier 1) for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

12 For example, if a Member achieved an ADAV of 0.01% of the TCV in each of eight different Targeted Step-Up Securities in a particular month, such Member would qualify for the Targeted Step-Up Tier in that month because it would have achieved an ADAV that is equal to 0.08% of the TCV in the Targeted Step-Up Securities.

13 As defined above, Added Volume does not include executions of displayed Retail Orders in securities priced at or above $1.00 per share that add liquidity to the Exchange (such

The purpose of the proposed Targeted Step-Up Tier 1 is to encourage Members to increase their volume on the Exchange in certain specified securities for which the Exchange seeks to become a more competitive trading venue (i.e., the Targeted Step-Up Securities). As a general matter, the Targeted Step-Up Securities are higher-priced and actively-traded names, many of which are actively-traded ETPs or components thereof, and the Exchange believes that increased participation in the trading of these securities would increase the diversity of securities actively traded on the Exchange as well as the notional market share traded on the Exchange, which would accrue benefits to all Members through deeper and more diversified liquidity on the Exchange. As such, the Exchange is seeking to improve its market quality, and thus increase its attractiveness as a trading venue, with respect to the Targeted Step-Up Securities by providing an incentive to Members to increase their order flow in such securities to the Exchange. Through the proposed additive rebate for executions of Added Volume for Members that qualify for the Targeted Step-Up Tier 1, the Exchange hopes to provide improved trading conditions on the Exchange with respect to the Targeted Step-Up Securities through increased execution opportunities and deeper liquidity in such securities resulting from such increased order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

The Exchange notes that the Targeted Step-Up Tier 1 is similar to other volume-based incentives and discounts, which have been widely adopted by exchanges, including the Exchange. More specifically, the Exchange believes the Targeted Step-Up Tier 1 is comparable

orders, "Added Displayed Retail Volume"). The Exchange notes that the highest rebate that it currently provides with respect to any transaction effected on the Exchange is \$0.0037 per share, which is for executions of Added Displayed Retail Volume. The Exchange is not seeking with this proposal to provide a rebate that is higher than such current maximum rebate, and thus, as proposed, the additive rebate provided under the Targeted Step-Up Tier would not apply to executions of Added Displayed Retail Volume as such transactions already receive a rebate of \$0.0037 per share.

to the Exchange's Displayed Liquidity Incentive ("DLI") Tiers[14] as well as other pricing tiers adopted by other exchanges that provide an enhanced rebate or supplemental incentive for firms that achieve a specified volume threshold in a specified group of securities.[15]

Modified Criteria Under Liquidity Removal Tier 1

The Exchange is also proposing to modify the required criteria under Liquidity Removal Tier 1. Currently, the Exchange charges a standard fee of $0.0028 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (i.e., Removed Volume), which the Exchange is proposing to increase to $0.0029 per share, as further described below. The Exchange also currently offers a Liquidity Removal Tier 1 in which qualifying Members are charged a lower fee of $0.0027 per share for executions of Removed Volume by achieving: (1) a Step-Up ADAV from July 2021 that is equal to or greater than 0.05% of the TCV; or (2) an ADV[16] that is equal to or greater than 0.30% of the TCV.

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[14] The Exchange's DLI Tiers provide an enhanced rebate for executions of Added Displayed Volume for Members that promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a broad base of securities, generally, and in a targeted group of securities (the "DLI Target Securities"), in particular. See the Exchange's Fee Schedule (available at https://info.memxtrading.com/fee-schedule/) for additional details regarding the Exchange's DLI Tiers. See also Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

[15] Cboe BZX Exchange, Inc. ("Cboe BZX") currently provides an additive rebate of $0.0001 or $0.0002 per share for executions of Tape B securities for market participants that meet certain quoting and trading requirements in a specified number of securities included on a list of securities determined by Cboe BZX, including both Cboe BZX listed securities and non-Cboe BZX listed securities for which Cboe BZX wants to incentivize additional participation. See the Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/); see also Securities Exchange Act Release No. 93405 (October 22, 2021), 86 FR 59763 (October 28, 2021) (SR-BX-2021-047) (notice of filing and immediate effectiveness of fee changes adopted by Nasdaq BX, Inc., including the adoption of an enhanced market quality program focused on specified Tape A and Tape B securities).

[16] As set forth on the Fee Schedule, "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

Thus, Liquidity Removal Tier 1 provides an opportunity for a Member to qualify for a lower fee for executions of Removed Volume where such Member either increases its ADAV on the Exchange by a specified amount over a baseline month or achieves a specified ADV on the Exchange. The Exchange notes that Liquidity Removal Tier 1 is designed to encourage Members that add liquidity on the Exchange to increase their order flow, which benefits all Members by providing greater execution opportunities on the Exchange.

Now, the Exchange proposes to modify the required criteria under Liquidity Removal Tier 1 such that a Member would now qualify by achieving: (1) a Step-Up ADAV from October 2021 that is equal to or greater than 0.05% of the TCV; or (2) an ADV that is equal to or greater than 0.55% of the TCV. Thus, such proposed changes would update the Step-Up ADAV threshold to reference a more recent baseline month (but keep the volume threshold the same) and modestly increase the ADV threshold, each of which is designed to encourage additional order flow to the Exchange. The Exchange is not proposing to modify the fees associated with Liquidity Removal Tier 1. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that Liquidity Removal Tier 1, as modified, would continue to be available to all Members and provide Members an opportunity to pay a lower fee for executions of Removed Volume. Additionally, the Exchange believes that several Members that currently qualify for Liquidity Removal Tier 1 would continue to qualify under the proposed new criteria, which the Exchange believes does not represent a significant departure from the criteria currently required under such tier.

Reduced Rebates Under DLI Tiers

The Exchange is also proposing to reduce the rebates provided under DLI Tier 1 and DLI Tier 2. The DLI Tiers are designed to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, generally, and in the DLI Target Securities,[17] in particular, thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, including the DLI Target Securities specifically, and committing capital to support the execution of orders.

Currently, the Exchange provides enhanced rebates of $0.0036 per share under DLI Tier 1 and $0.0035 per share under DLI Tier 2 for executions of Added Displayed Volume for Members that qualify for such tiers.[18] Now, the Exchange proposes to reduce the rebate provided under DLI Tier 1 to $0.0035 per share and the rebate provided under DLI Tier 2 to $0.0034 per share. The Exchange is not proposing to modify the required criteria for a Member to qualify for DLI Tier 1 or DLI Tier 2, nor is the Exchange proposing to change the rebates provided under such tiers for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange. The purpose of reducing the enhanced rebates provided under DLI Tier 1 and DLI Tier 2 for executions of Added Displayed Volume is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above.

Increased Standard Fee for Removed Volume

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17 As set forth on the Fee Schedule, "DLI Target Securities" means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website.

18 The pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, DLI Tier 1" with a Fee Code of "Bq1", "Bq1" or "Jq1", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, DLI Tier 2" with a Fee Code of "Bq2", "Dq2" or "Jq2", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

Lastly, the Exchange proposes to increase the standard fee charged for executions of Removed Volume. Currently, the Exchange charges a standard fee of $0.0028 per share for executions of Removed Volume.[19] The Exchange now proposes to increase the standard fee charged for executions of Removed Volume to $0.0029 per share. The purpose of increasing the standard fee for executions of Removed Volume is also for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's transaction pricing, which provides various rebates for liquidity-adding orders (including the additive rebate for executions of Added Volume under the Targeted Step-Up Tier 1 proposed herein), and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest increase proposed herein, the Exchange's standard fee for executions of Removed Volume remains lower than, and competitive with, the standard fee to remove liquidity in securities priced at or above $1.00 per share charged by several other exchanges.[20]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

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19 The standard fee for Removed Volume is referred to by the Exchange on the Fee Schedule under the description "Removed volume from MEMX Book" with a Fee Code of "R" assigned by the Exchange.

20 See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share; the Cboe EDGX Exchange, Inc. equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share; The Nasdaq Stock Market LLC price list on its public website (available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2), which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share.

Section 6 of the Act,[21] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[23]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange in the Targeted Step-Up Securities

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21 15 U.S.C. 78f.

22 15 U.S.C. 78f(b)(4) and (5).

23 Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

and more generally, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members.

The Exchange believes that the proposed Targeted Step-Up Tier 1 is reasonable because it would provide Members with an additional incentive to achieve certain volume thresholds on the Exchange. As noted above, volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are equitable and not unfairly discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposed Targeted Step-Up Tier 1 is equitable and not unfairly discriminatory for these same reasons, as it is available to all Members and is designed to encourage Members to increase their order flow in the Targeted Step-Up Securities to the Exchange, thereby contributing to a deeper and more liquid market in such securities and a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, as described above.

The Exchange also believes that including qualification criteria for Targeted Step-Up Tier 1 that is based on achieving a volume threshold in certain specified securities (i.e., the Targeted Step-Up Securities) is reasonable, equitable, and non-discriminatory because, as noted above, the Exchange is seeking to improve its market quality, and thus increase its attractiveness as a trading venue, with respect to such securities by incentivizing Members to increase their order flow in such securities to the Exchange. In turn, the Exchange believes such increased order flow would provide increased execution opportunities and deeper liquidity in such securities and that the resulting increased participation in the trading of these securities would increase the diversity of securities actively traded on the Exchange as well as the notional market share traded on the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. Additionally, the Exchange notes that the Targeted Step-Up Tier 1 is comparable to the Exchange's DLI Tiers, as well as other pricing tiers adopted by other exchanges that provide an enhanced rebate or supplemental incentive for firms that achieve a specified volume threshold in a specified group of securities.[24]

The Exchange believes the required criteria for the Targeted Step-Up Tier 1 are reasonable, as they provide two different types of volume thresholds that a Member may choose from in order to receive the corresponding additive rebate (i.e., a Step-Up ADAV threshold and an ADAV threshold), and the Exchange believes such criteria are attainable for many market participants and are reasonably related to the enhanced market quality that the Targeted Step-Up Tier 1 is designed to promote, as described above. The Exchange also notes that the proposed tier/rebate would not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the proposed tier, the Member would merely not receive the corresponding proposed additive rebate.

The Exchange also believes the proposed additive rebate for executions of Added Volume under Targeted Step-Up Tier 1 (i.e., $0.0002 per share) is reasonable, in that it represents only a modest addition to the rebates otherwise applicable to executions of Added Volume and, in conjunction with the other changes proposed herein, would not provide for a rebate that is higher than the current maximum rebate provided by the Exchange. Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to provide such additive rebate for executions of Added Volume to Members that qualify for the Targeted Step-Up Tier 1 in recognition of the benefits that such Members provide to the market quality in the Targeted Step-Up Securities and more generally on the Exchange, as described above, particularly as the magnitude of the additive rebate is not

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24 See supra notes 14-15.

unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. Additionally, the Exchange believes it is reasonable, equitable, and non-discriminatory to provide the additive rebate for executions of all Added Volume but not for executions of Added Displayed Retail Volume because, as noted above, the Exchange currently provides its maximum enhanced rebate of $0.0037 per share for executions of Added Displayed Retail Volume, and the Exchange does not seek to provide for a rebate that is higher than such current maximum with this proposal.[25]

The Exchange believes the proposed changes to modify the required criteria under Liquidity Removal Tier 1 are reasonable because, as noted above, such changes are intended to update the Step-Up ADAV threshold to reference a more recent baseline month and to modestly increase the ADV threshold, each of which is designed to encourage the submission of additional order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange also believes the proposed new criteria are equitable and non-discriminatory because all Members will continue to be eligible to meet such criteria and qualify for Liquidity Removal Tier 1, and therefore, have the opportunity to pay a lower fee for executions of Removed Volume. Additionally, as noted above, the Exchange believes that several Members that currently qualify for Liquidity Removal Tier 1 would continue to qualify under the proposed new criteria, which the Exchange believes does not represent a significant departure from the criteria currently required under such tier. The Exchange also believes that the lower fee charged under Liquidity Removal Tier 1, which the Exchange is not proposing to change, continues to be commensurate with the proposed new criteria. That is, such discounted fee reasonably reflects the difficulty in achieving the corresponding criteria as modified.

The Exchange believes that the proposed changes to reduce the enhanced rebates

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[25] See supra note 13.

provided for executions of Added Displayed Volume under DLI Tier 1 and DLI Tier 2 and to increase the standard fee charged for executions of Removed Volume are reasonable, equitable, and consistent with the Act because such changes are designed to generate additional revenue and decrease the Exchange's expenditures with respect to its transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, as described above.

The Exchange believes that the proposed reduced rebates for executions of Added Displayed Volume provided under DLI Tier 1 and DLI Tier 2 (i.e., $0.0035 per share and $0.0034 per share, respectively) are reasonable and appropriate because such rebates represent only a modest reduction (i.e., $0.0001 per share) from the current enhanced rebates provided under such tiers (i.e., $0.0036 per share and $0.0035 per share, respectively). Additionally, the Exchange believes that such rebates are equitably allocated and not unfairly discriminatory because they will continue to apply equally to all Members, in that all Members will continue to have the opportunity to achieve the required criteria under the DLI Tiers, which the Exchange is not proposing to modify with this proposal, and in turn, qualify for an enhanced rebate for executions of Added Displayed Volume. The Exchange further believes that such rebates are reasonable and equitably allocated, in that the rebate provided under DLI Tier 1 will remain higher than the rebate provided under DLI Tier 2 commensurate with the more stringent criteria of DLI Tier 1 than of DLI Tier 2.

Similarly, the Exchange believes that the proposed increased standard fee charged for executions of Removed Volume (i.e., $0.0029 per share) is reasonable and appropriate because it represents only a modest increase (i.e., $0.0001 per share) from the current standard fee charged for executions of Removed Volume (i.e., $0.0028 per share) and, as noted above, remains lower than, and competitive with, the standard fee to remove liquidity in securities priced at or above

$1.00 per share charged by several other exchanges.[26] The Exchange further believes that the proposed increased standard fee charged for executions of Removed Volume is equitably allocated and not unfairly discriminatory because it will apply equally to all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[27] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to enhance market quality on the Exchange in the Targeted Step-Up Securities, and to encourage Members to maintain or increase their order flow on the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders in the Targeted Step-Up Securities and more generally, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[28]

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[26] See supra note 20.

[27] 15 U.S.C. 78f(b)(4) and (5).

[28] See supra note 23.

Intramarket Competition

The Exchange believes that the proposal would incentivize Members to promote price discovery and market quality by increasing their participation in the Targeted Step-Up Securities on the Exchange, and to and maintain or increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the Targeted Step-Up Tier 1, and thus receive the corresponding additive rebate for executions of Added Volume, or to qualify for the Liquidity Removal Tier, and thus receive the corresponding reduced fee for executions of Removed Volume, would be available to all Members that meet the associated requirements in any month. As noted above, the Exchange believes the criteria under Targeted Step-Up Tier 1 are attainable for many market participants and are reasonably related to the enhanced market quality that such tier is designed to promote. Further, as noted above, the Exchange also believes that the proposed new criteria for Liquidity Removal Tier 1 are attainable for several Members and that the respective current reduced fee charged under such tier is reasonably related to the enhanced market quality that such tier is designed to promote. As such, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Volume, Added Displayed Volume, and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes are competitive proposals through which the Exchange is seeking to encourage additional order flow on the Exchange and to promote market quality through pricing incentives that are comparable to, and competitive with, pricing programs in place at other exchanges,[29] as well as to generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure and its operations generally. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar incentives to market participants that enhance market quality and/or achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current

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29 See supra notes 15 and 20.

regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[30] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'….".[31] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[32] and Rule 19b-4(f)(2)[33] thereunder.

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

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30 See supra note 23.

31 NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

32 15 U.S.C. 78s(b)(3)(A)(ii).

33 17 CFR 240.19b-4(f)(2).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2021-16 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-2021-16. This file number should be included on the subject line if e-mail 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, D.C. 20549 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 SR-MEMX-2021-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,
Assistant Secretary.

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[34] 17 CFR 200.30-3(a)(12).