SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100469; File No. SR-MEMX-2024-26)

July 9, 2024

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

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 June 28, 2024, 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 July 1, 2024. 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

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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).

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 purpose of the proposed rule change is to amend the Fee Schedule to: (1) adopt a new tier under the Liquidity Provision Tiers; (2) modify the required criteria under Liquidity Provision Tiers 2, 3, and 4; (3) modify NBBO Setter Tier 1 by modifying the required criteria under such tier; and (4) eliminate the DLI Additive Rebate, each as further described below.

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 16.1% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.1% of the overall market share.[5] The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add

4 Market share percentage calculated as of June 26, 2024. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

5 Id.

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 New Liquidity Provision Tier

The Exchange currently provides a standard rebate of $0.0015 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume"). The Exchange also currently offers Liquidity Provision Tiers 1-5, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 1, and the current Liquidity Provision Tiers 1, 2, 3, 4 and 5 would be renumbered as Liquidity Provision Tiers 2, 3, 4, 5 and 6 (hereinafter referred to as such). The applicable rebates and required criteria under Liquidity Provision Tiers 2, 3, 4, 5 and 6, would remain unchanged, except for the required criteria under Liquidity Provision Tiers 2, 3, and 4, which the Exchange is proposing to modify, as further described below.

Under the proposed new Liquidity Provision Tier 1, the Exchange will provide an enhanced rebate of $0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving either: (1) an ADAV[6] (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV[7], or (2) a Step-Up ADAV[8] June 2024 (excluding Retail Orders) that is equal to or greater than 0.07% of the TCV in securities priced at or above $1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share.[9] Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 1 will expire no later than December 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. Finally, the Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 1 a rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is currently applicable to such executions for all Members.

The proposed new Liquidity Provision Tier 1 is designed to encourage Members to maintain or increase their order flow that adds displayed liquidity to the Exchange in order to

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6 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 "Displayed ADAV" means ADAV with respect to displayed orders.

7 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. The pricing for the proposed new Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 1" with a Fee Code of "B1", "D1", "J1", or "I1", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange also notes that the pricing for Liquidity Provision Tiers 2-5 will be referred to under the existing applicable descriptions and Fee Codes, and the pricing for Liquidity Provision Tier 6 will be referred to by the Exchange under the new description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6", "J6", or "I6" as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

8 As set forth on the Fee Schedule, "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

9 The Exchange is also proposing to include a new note under the Notes section of the Fee Schedule that clarifies to the extent any tiers have required criteria that applies only to securities priced at or above $1.00 per share (as seen in criteria (2) of the proposed Liquidity Provision Tier 1), the Exchange determines whether a security should be included in the calculation of the ADV, ADAV, or TCV, as applicable, in securities priced at or above $1.00 per share by utilizing the closing price of the security on the date of execution.

qualify for the proposed enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants.

Modify Liquidity Provision Tiers 2-4

The Exchange is also proposing to modify the required criteria under Liquidity Provision Tiers 2, 3, and 4. First, with respect to Liquidity Provision Tier 2 (previously named Liquidity Provision Tier 1, as described above), the Exchange currently provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 per share for Members that qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV[10] that is equal to or greater than 6,000,000 shares. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.40% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is equal to or greater than 6,000,000 shares. Thus, such proposed change would decrease the ADAV requirement in criteria (1) and modify alternative criteria (2) by excluding securities priced below \$1.00 from the TCV calculation. In other words, previously, a Member qualified for criteria (2) of the tier by achieving an ADAV of 0.30% of the total TCV (as well as a Non-Displayed ADAV of at least 6,000,000 shares), and now the Exchange is proposing that a Member would qualify for such criteria (2) by achieving an ADAV

[10] As set forth on the Fee Schedule, "Non-Displayed ADAV" means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

of 0.30% of the TCV only in securities priced at or above $1.00 per share (again, as well as a Non-Displayed ADAV of at least 6,000,000 shares).[11] The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 3 (previously named Liquidity Provision Tier 2, as described above), the Exchange currently provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.20% of the TCV and an ADV[12] that is equal to or greater than 0.35% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 3 such that Members qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share and an ADV that is equal to or greater than 0.40% of the TCV in securities priced at or above $1.00 per share; or (2) a Step-Up ADAV from June 2024 (excluding Retail Orders) that is equal to or greater than 0.05% of the TCV in securities priced at or above $1.00 per share and an ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share; or (3) an ADAV that is equal to or greater than 0.30% of the TCV. Thus, such proposed change would modify the existing criteria as well as add two alternative criteria. First, the Exchange is proposing to modify the existing criteria (now alternative criteria (1)) by excluding securities priced below $1.00 from the TCV calculation in the ADAV requirement, and increasing the ADV requirement from 0.35% to 0.40% of the TCV, again excluding securities priced below

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11 To clarify, in calculating a Member's ADAV for purposes of achieving criteria (2) of Liquidity Provision Tier 2, the Exchange will include executions in securities priced below $1.00.

12 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.

$1.00 from the TCV calculation. The two additional alternative criteria are proposed criteria (2), which includes a combined Step-Up ADAV and ADAV requirement, and proposed criteria (3), which includes an ADAV requirement. The Exchange is not proposing to change the rebate provided under such tier. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 3 will expire no later than December 31, 2024, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

With respect to Liquidity Provision Tier 4 (previously named Liquidity Provision Tier 3, as described above), the Exchange currently provides an enhanced rebate of $0.0030 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.175% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 4 such that Members qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share; or (2) an ADAV that is equal to or greater than 0.175% of the TCV. Thus, such proposed change would add alternative criteria (1) and keep the existing criteria intact as alternative criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

The Exchange believes that the tiered pricing structure for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tiers 2, 3, and 4 provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter Tier

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of $0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in securities priced at or above $1.00 per share that establish the NBBO and have a Fee Code B[13] (such orders, "Setter Volume"), and an additive rebate of $0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (i.e., Fee Codes D and J)[14] by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV in securities priced at or above $1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over $1.00 per share.[15] Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 such that a Member would now qualify for such tier by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in

13 The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

14 The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

15 The pricing is referred to by the Exchange on the Fee Schedule under the existing description "NBBO Setter Tier" with a Fee Code of "S1" to be appended to the otherwise applicable Fee Code for qualifying executions.

securities priced at or above $1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over $1.00 per share. Thus, such proposed change keeps the first alternative criteria intact with no changes but modifies the second alternative criteria by adding a requirement that a Member also achieve an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares.[16] The Exchange is not proposing to change the amount of the additive rebates provided under the NBBO Setter Tier 1.

The Exchange believes that the proposed modified criteria provides an incremental incentive for Members to strive for higher ADAV in NBBO setting orders (i.e. Fee Code B) on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange also believes that the criteria change reflects a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. The Exchange believes that the proposed modified criteria would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members.

DLI Additive Rebate

Lastly, the Exchange proposes to eliminate the DLI Additive Rebate. Currently, the

[16] The Exchange notes that the remainder of alternative criteria (2) under NBBO Setter Tier 1 was implemented on June 3, 2024. See Securities Exchange Act Release No. 100320 (June 12, 2024), 89 FR 51576 (June 18, 2024) (SR-MEMX-2024-24). In that filing, the Exchange indicated that it would determine whether a security meets the "priced at or above $1.00 per share" threshold for purposes of calculating the ADAV and TCV by using the prior day's closing price. The Exchange is proposing herein, however, to clarify with a note in the Notes section on the Fee Schedule, as described above, that it will determine whether a security is "priced at or above $1.00 per share" by using the closing price of the security on the date of execution.

Exchange offers a DLI Additive Rebate incentive that is applicable to DLI Tier 1, which provides an additive rebate of $0.0005 per share for executions of Added Displayed Volume for a Member that qualifies for DLI Tier 1 as well as either the criteria under the previous Liquidity Provision Tier 1 or Liquidity Provision Tier 2. The Exchange now proposes to eliminate such DLI Additive Rebate. The purpose of eliminating the DLI Additive Rebate is for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. For these reasons, the Exchange no longer wishes to, nor is it required to, maintain such tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[18] 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

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4) and (5).

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."[19]

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, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, 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 that the proposed new Liquidity Provision

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

Tier 1 is reasonable, equitable and not unfairly discriminatory for these same reasons, as it would provide Members with an additional incentive to achieve a certain volume threshold on the Exchange, is available to all Members on an equal basis, and, as noted above, is designed to encourage Members to maintain or increase their orders that add displayed liquidity to the Exchange in order to qualify for the enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange also believes the enhanced rebate for executions of Added Displayed Volume under the proposed new Liquidity Provision Tier 1 reflects a reasonable and equitable allocation of fees and rebates because it is higher than the rebates provided for such executions under Liquidity Provision Tiers 2-6, which have lower volume thresholds as their required criteria, and is commensurate with its required criteria and the market quality benefits it is designed to achieve, as described above.

The Exchange believes that Liquidity Provisions Tier 2, 3, and 4, and NBBO Setter Tier 1, each as modified by the proposed changes to the required criteria under each tier as described above, are reasonable, equitable and not unfairly discriminatory for these same reasons. Such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes the proposed change to eliminate the DLI Additive Rebate is reasonable because, as noted above, it would enable the Exchange to redirect the associated resources and funding into other incentives and tiers, and the Exchange is not required to maintain such incentive or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such incentive is also equitable and not unfairly discriminatory because it applies equally to all Members, in that the incentive would no longer be available for any Member.

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[20] 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 incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange

[20] 15 U.S.C. 78f(b)(4) and (5).

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."[21]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding, and/or NBBO setting orders to the Exchange,, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as 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 proposed new Liquidity Provision Tier 1 and the modified Liquidity Provision Tiers 2, 3, and 4 and NBBO Setter Tier 1 and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the elimination of the DLI Additive Rebate will apply to all Members equally. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

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21 See supra note 19.

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 16.1% 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 Displayed 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 represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. 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 pricing incentives to market participants.

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 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."[22] 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'….".[23] 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

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22 Id.

23 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)).

Act[24] and Rule 19b-4(f)(2)[25] 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 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-26 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-2024-26. This file number should be included on the subject line if email is used. To help the Commission process and

24 15 U.S.C. 78s(b)(3)(A)(ii).

25 17 CFR 240.19b-4(f)(2).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://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, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2024-26 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[26] 17 CFR 200.30-3(a)(12).