SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92896; File No. SR-MEMX-2021-11)

September 8, 2021

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

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 August 31, 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 September 1, 2021. The text of the proposed rule change is provided in Exhibit 5.

---

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

2 17 CFR 240.19b-4.

3 See Exchange Rule 1.5(p).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) include an additional Liquidity Provision Tier applicable to the rebates 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") and modify the required criteria under the existing Liquidity Provision Tier; (ii) introduce a tiered pricing structure for the Displayed Liquidity Incentive ("DLI") by including an additional DLI Tier and reducing the rebate provided under the existing DLI; (iii) increase the fee under the Liquidity Removal Tier for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"); and (iv) reduce the standard rebate for executions of Added Displayed 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 16% 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 3% of the overall market share.[5] 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.

Liquidity Provision Tiers

Currently, the Exchange provides a standard rebate of $0.0031 per share for executions of Added Displayed Volume, which the Exchange is proposing to reduce to $0.0028 per share, as further described below. The Exchange also currently offers, in addition to other incentives, a Liquidity Provision Tier in which a Member may receive an enhanced rebate of $0.00335 per share for executions of Added Displayed Volume by achieving an ADAV[6] of at least 15,000,000

[4] Market share percentage calculated as of August 30, 2021. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

[5] Id.

[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.

shares. Now, the Exchange proposes to rename the existing Liquidity Provision Tier to Liquidity Provision Tier 1, modify the required criteria under Liquidity Provision Tier 1, and add a new Liquidity Provision Tier 2. Specifically, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 1 such that a Member would now qualify for Liquidity Provision Tier 1 by achieving an ADAV of at least 0.20% of the TCV.[7] Members that qualify for Liquidity Provision Tier 1 would continue to receive an enhanced rebate of $0.00335 per share for executions of Added Displayed Volume and a rebate of 0.05% 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.[8] The Exchange believes that basing qualification for Liquidity Provision Tier 1 (and proposed new Liquidity Provision Tier 2, as described below) on an ADAV threshold that is a percentage of the TCV, rather than an ADAV threshold that is a specified number of shares, as it is today, is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate from month to month. The Exchange further believes that several Members that currently qualify for Liquidity Provision 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 based on

---

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.

8 The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the new description "Added displayed volume, Liquidity Provision Tier 1" with a Fee Code of "B1", "D1" or "J1", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier 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.

overall equities volumes in recent months and that others may still qualify for an enhanced—albeit slightly lower—rebate under the proposed new Liquidity Provision Tier 2, as described below.

The Exchange is also proposing to add a new Liquidity Provision Tier 2 in which it will provide an enhanced rebate of $0.0031 per share for executions of Added Displayed Volume for Members that qualify for Liquidity Provision Tier 2 by achieving an ADAV of at least 0.10% of the TCV.[9] The Exchange proposes to provide Members that qualify for Liquidity Provision Tier 2 a rebate of 0.05% of the total dollar volume 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 applicable to such executions for all Members (i.e., including those that do not qualify for any Liquidity Provision Tier). The proposed Liquidity Provision Tier 2 is designed to encourage Members to maintain or increase their orders that add liquidity on the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume, 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. Further, the proposed new Liquidity Provision Tier 2 would provide Members that would not qualify for Liquidity Provision Tier 1 with an opportunity to still qualify for an enhanced—albeit slightly lower—rebate for executions of Added Displayed Volume in a manner that, coupled with the higher enhanced rebate provided under Liquidity Provision Tier 1, provides increasingly higher benefits for satisfying increasingly more stringent criteria.

9 The pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the new description "Added displayed volume, Liquidity Provision Tier 2" with a Fee Code of "B2", "D2" or "J2", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

The Exchange notes that the rebates provided for executions of Added Displayed Volume under the Liquidity Provision Tiers, including the current rebate under Liquidity Provision Tier 1 (i.e., $0.00335 per share) and the proposed rebate under Liquidity Provision Tier 2 (i.e., $0.0031 per share), are comparable to, and competitive with, the rebates for executions of liquidity-adding displayed orders provided by at least one other exchange under similar volume-based tiers.[10]

The Exchange also proposes to amend the Fee Schedule to rename the "Liquidity Provision Tier" heading to "Liquidity Provision Tiers" to reflect the addition of a second tier and to reorganize the information related to such tiers, including the applicable rebates and required criteria, into a table format. The Exchange believes that utilizing a table format for its tiered pricing will make the Fee Schedule easier for Members to navigate and understand.

DLI Tiers

The Exchange is also proposing to introduce a tiered pricing structure for the DLI by including an additional DLI Tier and reducing the rebate provided under the existing DLI. As noted in the Exchange's proposal to adopt the DLI, the DLI is intended to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement[11]) in a large number of securities,

---

10 See the Cboe BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which reflects rebates provided under "Add Volume Tiers"—tiers based on a member achieving certain ADAV thresholds—ranging from $0.0025 to $0.0031 per share for adding displayed liquidity to the Cboe BZX exchange.

11 As set forth on the Fee Schedule, "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%. As set forth on the Fee Schedule, "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

generally, and in the DLI Target Securities,[12] in particular (i.e., through the applicable securities requirements[13]), 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, and committing capital to support the execution of orders.[14]

Currently, the Exchange provides an enhanced rebate of $0.0036 per share for executions of Added Displayed Volume for Members that qualify for the DLI by achieving an NBBO Time of at least 25% in an average of at least 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month.[15] Now, the Exchange proposes to rename the existing DLI to DLI Tier 2, reduce the rebate provided under DLI Tier 2, and add a new DLI Tier 1. Specifically, the Exchange proposes to reduce the rebate provided under DLI Tier 2 for executions of Added Displayed Volume from $0.0036 per share to $0.0035 per share.[16] The Exchange does not propose to change the required criteria for a Member to qualify for DLI

---

12 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.

13 As set forth on the Fee Schedule, "securities requirement" means the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day.

14 See Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07).

15 Under the existing DLI (which the Exchange is proposing to rename to DLI Tier 2), each of the 250 securities requirement and the 75 DLI Target Securities requirement is a "securities requirement" as that term is used on the Fee Schedule for purposes of determining a Member's qualification.

16 The pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the new 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.

Tier 2 or the rebate provided under DLI Tier 2 for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (i.e., 0.05% of the total dollar value of the transaction).

Additionally, the Exchange is proposing to add a new DLI Tier 1 in which it will provide an enhanced rebate of $0.0036 per share for executions of Added Displayed Volume for Members that qualify for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 of which must be DLI Target Securities, per trading day during the month.[17] The Exchange proposes to provide Members that qualify for DLI Tier 1 a rebate of 0.05% of the total dollar volume 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 applicable to such executions for all Members (i.e., including those that do not qualify for any DLI Tier). The Exchange notes that the same definitions and notes currently set forth under the "Displayed Liquidity Incentive" heading on the Fee Schedule and the calculation methodologies that are applicable to the existing DLI (proposed to be renamed to DLI Tier 2) would similarly apply to the proposed new DLI Tier 1.[18]

As is the case through the applicable quoting requirement and securities requirements under the existing DLI Tier 2, the proposed new DLI Tier 1 is designed to enhance market quality both in a broad manner with respect to all securities traded on the Exchange, through the

---

17 Under the proposed new DLI Tier 1, each of the 1,000 securities requirement and the 125 DLI Target Securities requirement is a "securities requirement" as that term is used on the Fee Schedule for purposes of determining a Member's qualification. The pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the new 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.

18 See supra note 14.

1,000 securities requirement, and in a targeted manner with respect to certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the DLI Target Securities), through the 125 DLI Target Securities requirement. The purpose of reducing the rebate provided under the existing DLI Tier 2 (i.e., from $0.0036 per share to $0.0035 per share) and providing a higher rebate under the proposed new DLI Tier 1—which is the same as the current rebate provided under the existing DLI Tier 2 (i.e., $0.0036 per share)—is to incentivize Members that consistently quote on the Exchange to strive to do so in a larger number of securities, generally, and in a larger number of DLI Target Securities, in particular, in a manner that provides increasingly higher benefits for satisfying increasingly more stringent criteria. Thus, the DLI Tiers are not dissimilar from volume-based incentives that have been widely adopted by exchanges, including the Exchange, in that the DLI Tiers are designed to encourage Members that quote on the Exchange to maintain or increase their quoting activity on the Exchange by providing an incremental incentive for Members to strive for higher tier levels, 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. Through the enhanced rebates provided to Members that qualify for the DLI Tiers, the Exchange hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO for a large number of securities, generally, including the DLI Target Securities, in particular.

The Exchange also proposes to amend the Fee Schedule to rename the "Displayed Liquidity Incentive" heading to "Displayed Liquidity Incentive Tiers" to reflect the introduction of a tiered pricing structure for the DLI and the addition of a second tier and to reorganize the information related to such tiers, including the applicable rebates and required criteria, into a table format. As noted above, the Exchange believes that utilizing a table format for its tiered pricing will make the Fee Schedule easier for Members to navigate and understand.

Increased Fee Under Liquidity Removal Tier

Currently, the Exchange charges a standard fee of $0.0028 per share for executions of Removed Volume. The Exchange also currently offers a Liquidity Removal Tier in which qualifying Members are charged a lower fee of $0.00265 per share for executions of Removed Volume. Now, the Exchange proposes to rename the existing Liquidity Removal Tier to Liquidity Removal Tier 1 and to increase the fee charged under Liquidity Removal Tier 1 for executions of Removed Volume to $0.0027 per share.[19] The Exchange does not propose to change the required criteria for a Member to qualify for Liquidity Removal Tier 1 or the fee charged under Liquidity Removal Tier 1 for executions of orders in securities priced below $1.00 per share that remove liquidity from the Exchange (i.e., 0.05% of the total dollar value of the transaction).

The purpose of increasing the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 is 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 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. The Exchange notes that despite the modest increase proposed herein, the proposed fee charged under Liquidity

19 The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the new description "Removed volume from MEMX Book, Liquidity Removal Tier 1" with a Fee Code of "R1" to be provided by the Exchange on the monthly invoices provided to Members.

Removal Tier 1 for executions of Removed Volume (i.e., $0.0027 per share) remains lower than, and competitive with, the fee charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.[20]

The Exchange also proposes to amend the Fee Schedule to reorganize the information related to Liquidity Removal Tier 1, including the applicable rebate and required criteria, into a table format. As noted above, the Exchange believes that utilizing a table format for its tiered pricing will make the Fee Schedule easier for Members to navigate and understand.

Reduced Standard Rebate for Added Displayed Volume

Lastly, the Exchange proposes to reduce the standard rebate for executions of Added Displayed Volume. Currently, the Exchange provides a standard rebate of $0.0031 per share for executions of Added Displayed Volume. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume to $0.0028 per share.[21] The Exchange notes that executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange will continue to receive the standard rebate applicable to such executions (i.e., 0.05% of the total dollar value of the transaction).

The purpose of reducing the standard rebate for executions of Added Displayed Volume is also for business and competitive reasons, as the Exchange believes the reduction of such

---

20 See the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a fee charged under "Remove Volume Tiers"—tiers based on a member achieving certain step-up ADAV and ADV volume thresholds—of $0.00275 per share for removing volume from the Cboe EDGX exchange.

21 The standard pricing for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on the execution reports provided to Members.

rebate would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the modest reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume (i.e., $0.0028 per share) remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[22]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[23] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[24] 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

---

22 See, e.g., the Nasdaq PSX equities trading fee schedule on its public website (available at http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing), which reflects a standard rebate of $0.0020 per share to add displayed liquidity in securities priced at or above $1.00 per share; the NYSE Arca equities trading fee schedule on its public website (available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf)), which reflects a standard rebate of $0.0020 per share to add displayed liquidity in securities priced at or above $1.00 per share.

23 15 U.S.C. 78f.

24 15 U.S.C. 78f(b)(4) and (5).

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."[25]

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 their order flow to the Exchange and to enhance market quality to the benefit of all Members and market participants.

The Exchange believes the proposed Liquidity Provision Tier 2 is reasonable because it would provide Members with an additional incentive to achieve a certain volume threshold on the Exchange. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) the value to an exchange's market quality;

---

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

(ii) associated higher levels of market activity, such as high levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes the proposed Liquidity Provision Tier 2 is equitable and not unfairly discriminatory for these same reasons, as it is available to all Members and is designed to encourage Members to maintain or increase their orders that add liquidity on 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. Moreover, the Exchange believes the proposed Liquidity Provision Tier 2 is a reasonable means to incentivize such increased activity, as it provides Members with an additional opportunity to qualify for an enhanced rebate for executions of Added Displayed Volume with less stringent criteria than Liquidity Provision Tier 1.

Additionally, the Exchange believes the proposed enhanced rebate for executions of Added Displayed Volume under Liquidity Provision Tier 2 (i.e., $0.0031 per share) is reasonable, in that it represents only a modest increase from the proposed standard rebate for such executions (i.e., $0.0028 per share) and is the same as the current standard rebate for such executions. Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to provide an enhanced rebate for executions of Added Displayed Volume to Members that qualify for the Liquidity Provision Tier 2 in comparison with the standard rebate for such executions in recognition of the benefits that such Members provide to the Exchange and market participants, as described above, particularly as the magnitude of the enhanced rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve.

The Exchange believes the proposed change to modify the required criteria for Liquidity Provision Tier 1 from an ADAV of at least 15,000,000 shares to an ADAV of at least 0.20% of the TCV is reasonable because, as noted above, the Exchange believes that basing qualification for the Liquidity Provision Tiers on an ADAV threshold that is a percentage of the TCV, rather than an ADAV threshold that is a specified number of shares, is appropriate so that the threshold is variable based on overall volumes in the equities industry, which fluctuate from month to month. The Exchange further believes the proposed new criteria is equitable and non-discriminatory because all Members will continue to be eligible to qualify for Liquidity Provision Tier 1 and have the opportunity to receive the corresponding enhanced rebate if such criteria is achieved. Additionally, as noted above, the Exchange believes that several Members that currently qualify for Liquidity Provision 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 based on overall equities volumes in recent months. The Exchange notes that should a Member not meet the proposed new criteria for Liquidity Provision Tier 1, such Member would merely not receive that corresponding enhanced rebate, and such Member would still have an opportunity to qualify for an enhanced—albeit slightly lower—rebate for executions of Added Displayed Volume under the proposed Liquidity Provision Tier 2, which has less stringent criteria, as described above.

The Exchange further believes that the proposed new criteria for Liquidity Provision Tier 1 and the proposed criteria and rebate for Liquidity Provision Tier 2 are reasonable, in that the proposed new criteria for Liquidity Provision Tier 1 is incrementally more difficult to achieve than that for Liquidity Provision Tier 2, and thus, Liquidity Provision Tier 1 appropriately offers a higher rebate commensurate with the corresponding higher volume threshold. Therefore, the Exchange believes the Liquidity Provision Tiers, as proposed, are consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate. The Exchange further believes that the rebates provided under the Liquidity Provision Tiers, as proposed, including the current rebate for Liquidity Provision Tier 1 (i.e., $0.00335 per share) and the proposed rebate for Liquidity Provision Tier 2 (i.e., $0.0031 per share), are reasonable because, as noted above, such rebates are comparable to, and competitive with, the rebates for executions of liquidity-adding displayed orders provided by at least one other exchange under similar volume-based tiers.[26]

The Exchange also believes that it is reasonable, consistent with an equitable allocation of fees and rebates, and not unfairly discriminatory to provide Members that qualify for the proposed Liquidity Provision Tier 2 a rebate of 0.05% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add liquidity to the Exchange, as this is the same rebate that would be applicable to such executions for all Members (i.e., including those that do not qualify for any Liquidity Provision Tier), which is also the case under the Exchange's current pricing.

As noted above, the DLI Tiers are not dissimilar from volume-based incentives that have been widely adopted by exchanges, including the Exchange's Liquidity Provision Tiers described above, in that the DLI Tiers are designed to encourage Members that quote on the Exchange to maintain or increase their quoting activity on the Exchange by providing an incremental incentive for Members to strive for higher tier levels by achieving the applicable quoting requirement in a larger number of securities, generally, and in a larger number of DLI Target Securities, in particular, in a manner that provides increasingly higher benefits for

---

[26] See supra note 10.

satisfying increasingly more stringent criteria. Thus, the Exchange believes the proposed new DLI Tier 1 is equitable and not unfairly discriminatory for the same reasons described above with respect to the Liquidity Provision Tiers, as it is available to all Members and is designed to encourage Members to promote price discovery and market quality both in a broad manner with respect to all securities traded on the Exchange, through the 1,000 securities requirement, and in a targeted manner with respect to certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the DLI Target Securities), through the 125 DLI Target Securities requirement, 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, and committing capital to support the execution of orders. Moreover, the Exchange believes the addition of proposed DLI Tier 1 is a reasonable means to incentivize such increased activity, as it provides Members with an additional opportunity to qualify for an enhanced rebate for executions of Added Displayed Volume.

The Exchange further believes that the proposed reduced rebate for DLI Tier 2 and the proposed criteria and rebate for DLI Tier 1 are reasonable, in that the proposed criteria for DLI Tier 1 is incrementally more difficult than that for DLI Tier 2, and thus, appropriately offers a higher rebate commensurate with the more stringent securities requirements. Therefore, the Exchange believes the DLI Tiers, as proposed, are consistent with an equitable allocation of fees and rebates, as the more stringent criteria correlates with the corresponding tier's higher rebate.

Additionally, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to provide an enhanced rebate for executions of Added Displayed Volume to Members that qualify for the DLI Tier 1 in comparison with the standard rebate for such executions in recognition of the benefits that such Members provide to the Exchange and market participants, as described above, particularly as the magnitude of the enhanced rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. The Exchange notes that the proposed enhanced rebate provided under the DLI Tier 1 is the same as the current rebate provided under the existing DLI Tier 2 (i.e., $0.0036 per share), and thus, is reasonable. The Exchange further notes that Members that do not meet the proposed DLI Tier 1's requirements may still qualify for an enhanced rebate that is higher than the standard rebate for executions of Added Displayed Volume through the existing DLI Tier 2, which has less stringent securities requirements, or the Liquidity Provision Tiers, which do not require a Member to consistently quote at the NBBO across a broad range of securities.

The Exchange believes that it is reasonable, consistent with an equitable allocation of fees and rebates, and not unfairly discriminatory to provide Members that qualify for the proposed new DLI Tier 1 a rebate of 0.05% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add liquidity to the Exchange, as this is the same rebate that would be applicable to such executions for all Members (i.e., including those that do not qualify for any DLI Tier), which is also the case under the Exchange's current pricing.

The Exchange believes that the proposed changes to increase the fee charged under Liquidity Removal Tier 1 for executions of Removed Volume and to reduce the standard rebate for executions of Added Displayed 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 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 further believes that the proposed increased fee charged under Liquidity Removal Tier 1 for executions of Removed Volume (i.e., $0.0027 per share) is reasonable and appropriate because it continues to provide an opportunity for Members to qualify for a fee that is lower than the standard fee for executions of Removed Volume, it represents only a modest increase from the current fee charged under Liquidity Removal Tier 1 for executions of Removed Volume (i.e., $0.00265 per share) and, as noted above, remains lower than, and competitive with, the fee charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.[27] Additionally, the Exchange believes that such proposed fee is equitably allocated and not unfairly discriminatory because it will continue to apply equally to all Members, in that all Members will continue to have the opportunity to achieve the tier's required criteria, which the Exchange is not proposing to modify with this proposal, and in turn, qualify for a lower fee for executions of Removed Volume.

Similarly, the Exchange believes that the proposed reduced standard rebate for executions of Added Displayed Volume (i.e., $0.0028 per share) is reasonable and appropriate because it represents only a modest decrease from the current standard rebate for executions of Added Displayed Volume (i.e., $0.0031 per share) and, as noted above, remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of orders in

---

[27] See supra note 20.

securities priced at or above $1.00 per share that add displayed liquidity.[28] The Exchange further believes that the proposed increased fee charged under Liquidity Removal Tier 1 for executions of Removed Volume and the proposed reduced standard rebate for executions of Added Displayed Volume are equitably allocated and not unfairly discriminatory because they both will apply equally to all Members.

Lastly, the Exchange believes that the proposed changes to rename the Exchange's pricing tiers and section headings on the Fee Schedule to reflect tier numbering and the addition of new tiers, and to reorganize the information related to the Exchange's tiered pricing, including the applicable rebates and required criteria, into a table format are reasonable, equitable, and non-discriminatory because such changes are designed to ensure the Fee Schedule clearly reflects the Exchange's pricing structure and to make the Fee Schedule easier for Members to navigate and understand.

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[29] 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.

---

[28] See supra note 22.

[29] 15 U.S.C. 78f(b)(4) and (5).

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 a large number of securities, generally, and in the DLI Target Securities, in particular, 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, 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."[30]

Intramarket Competition

The Exchange believes that the proposal would incentivize 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, including the DLI Target Securities, to and maintain or increase their order flow on 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, 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

---

30 See supra note 25.

participants. The opportunity to qualify for the Liquidity Provision Tiers and the DLI Tiers, and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume, would be available to all Members that meet the associated requirements in any month. Further, as noted above, the Exchange believes that the proposed new criteria for Liquidity Provision Tier 1, as well as the proposed new Liquidity Provision Tier 2 which has less stringent criteria, are attainable for several Members and that the respective enhanced rebates provided under such tiers are reasonably related to the enhanced market quality that such tiers are designed to promote. Similarly, the Exchange believes that the proposed DLI Tier 1's requirements, as well as the existing DLI Tier 2's requirements, are attainable for several Members that actively quote on exchanges and that the respective enhanced rebates provided under such tiers are reasonably related to the enhanced market quality that such tiers are designed to promote. Additionally, the proposed increased fee charged under Liquidity Removal Tier 1 for executions of Removed Volume and the proposed reduced standard rebate for executions of Added Displayed Volume would apply equally to all Members. 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 16%

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 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 and quoting activity 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 with respect to executions of Added Displayed Volume and Removed Volume,[31] 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

---

31 See supra notes 10, 20 and 22.

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."[32] 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'….".[33] 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[34] and Rule 19b-4(f)(2)[35] thereunder.

---

32 See supra note 25.

33 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)).

34 15 U.S.C. 78s(b)(3)(A)(ii).

35 17 CFR 240.19b-4(f)(2).

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2021-11 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-2021-11. 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, DC 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-2021-11 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.[36]

J. Matthew DeLesDernier
Assistant Secretary

36 17 CFR 200.30-3(a)(12).