

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100112; File No. SR-MEMX-2024-16)

May 13, 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 April 30, 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 Members³ (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 May 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

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) increase the maximum combined rebate per share provided by the Exchange; (2) modify the Liquidity Provision Tiers by modifying the required criteria under both Liquidity Provision Tiers 1 and 2; (3) modify Liquidity Removal Tier 1 by modifying the required criteria under such tier; (4) modify Non-Display Add Tier 1 by modifying the required criteria under such tier; (5) modify NBBO Setter Tier 1 by modifying the required criteria under such tier; (6) modify Cross Asset Tier 2 by modifying the required criteria under such tier; and (7) modify the DLI Additive Tier by modifying the required criteria under such tier to correspond with the proposed changes to Liquidity Provision Tiers 1 and 2, 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% of the total market share of executed volume of equities trading.⁴

⁴ Market share percentage calculated as of April 30, 2024. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

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 2.4% 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.

Maximum Combined Rebate Per Share

The Exchange offers various volume-based tiers which provide qualifying Members with enhanced or additive rebates (which apply in addition to the otherwise applicable rebate) with respect to qualifying executions where certain volume criteria and thresholds are met. The Exchange caps the maximum combined rebate which a Member can achieve when such Member achieves one or more additive rebates. Currently, the Exchange provides a maximum combined rebate of \$0.0036 per share. Now, the Exchange proposes to increase the maximum combined rebate per share to \$0.0037. Specifically, the Exchange will modify the final bullet in the “Notes” section of its Fee Schedule to change the maximum combined rebate per share from \$0.0036 to \$0.0037.

The Exchange believes that increasing the maximum combined rebate per share will

⁵ Id.

encourage market participants to strive to achieve the criteria under one or more additive rebate tiers by raising the rebate cap applicable to such tiers. The Exchange offers three additive rebates, namely, the NBBO Setter Tier (further explained below), the Tape B Volume Tier (which provides an additive rebate for executions of Added Displayed Volume⁶ excluding Retail Orders in securities priced over \$1.00 per share), and the DLI Additive Rebate (which provides an additive rebate for qualifying Members' executions of Added Displayed Volume other than Retail Orders that otherwise qualify for the applicable rebate under Liquidity Provision Tier 1 or Liquidity Provision Tier 2 as well as the applicable criteria under DLI Additive Rebate Tier 1). The Exchange believes that the increase in the maximum combined rebate provides an incremental incentive for Members to strive for higher volume thresholds to receive additional enhanced rebates which otherwise would have been capped at a lower rebate per share 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. The Exchange believes that the maximum combined rebate, as modified by the proposed changes described above, 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.

Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0015 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 per share. The Exchange also

⁶ The base rebate 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 execution reports.

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 such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under Liquidity Provision Tier 1 and modifying the required criteria under Liquidity Provision Tier 2, as further described below.

First, with respect to Liquidity Provision Tier 1, 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 ADAV⁷ (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV⁸; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV⁹ that is equal to or greater than 7,000,000 shares.¹⁰ The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 1 such that a Member would qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 6,000,000 shares. Thus, such proposed change would keep criteria (1) intact and decrease the Non-Displayed ADAV requirement in criteria (2) from 7,000,000 shares to 6,000,000 shares. The Exchange is not proposing to change the rebate

⁷ 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.

⁸ 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.

⁹ 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).

¹⁰ The pricing for 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” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

provided under such tier.

With respect to Liquidity Provision Tier 2, 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: (1) an ADAV that is equal to or greater than 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) an ADAV that is equal to or greater than 0.35% of the TCV.¹¹ Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 2 such that Members qualify for such tier by achieving (1) an ADAV that is equal to or greater than 0.20% of the TCV and (2) an ADV¹² that is equal to or greater than 0.35% of the TCV. Thus, such proposed change would replace the existing criteria for Liquidity Provision Tier 2 with new criteria. 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 1 and 2 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

¹¹ The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing 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.

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.

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.

Liquidity Removal Tier 1

The Exchange currently charges a standard fee of \$0.0030 per share 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 also currently offers Liquidity Removal Tiers under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify Liquidity Removal Tier 1 by changing the required criteria under such tier. Currently, a Member qualifies for Liquidity Removal Tier 1 by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.60% of the TCV; or (2) a Remove ADV¹³ that is equal to or greater than 0.30% of the TCV.¹⁴ Now, the Exchange proposes to modify Liquidity Removal Tier 1 such that a Member qualifies for such tier by achieving (1) an ADV that is equal to or greater than 0.70% of the TCV; or (2) a Remove ADV that is equal to or greater than 0.35% of the TCV. Specifically, the Exchange is changing the ADV percentage in criteria (1) to 0.70% and changing the Remove ADV percentage in criteria (2) to 0.35%. The Exchange is not proposing to change the rebate provided under such tier.

¹³ As set forth on the Fee Schedule, “Remove ADV” means ADV with respect to orders that remove liquidity.

¹⁴ The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing 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. 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 provides the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and only designates 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.

The proposed changes to the Liquidity Removal Tiers are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed discounted fee for executions of Removed Volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

Non-Display Add Tier 1

The Exchange currently offers Non-Display Add Tiers 1-4 under which a Member may receive an enhanced rebate for executions of Added Non-Displayed Volume in securities priced at or above \$1.00 per share by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Non-Display Add Tiers by changing the criteria under Non-Display Add Tier 1. Currently, under Non-Display Add Tier 1, the Exchange provides an enhanced rebate of \$0.0028 per share for executions of Added Non-Displayed Volume in securities priced at or above \$1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 8,000,000 shares.¹⁵ Now, the Exchange proposes to provide the same rebate for executions of Added Non-Displayed Volume in securities priced at or above \$1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 6,000,000 shares. The Exchange is not proposing to change the rebate provided under such tier.

¹⁵ The pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added non-displayed volume, Non-Display Add Tier 1" with a Fee Code of "H1", "M1" or "P1", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

The purpose of lowering the Non-Displayed ADAV requirement to achieve Non-Display Add Tier 1 is to facilitate Members' ability to qualify for the rebate for executions of Added Non-Displayed Volume. The Exchange believes that more Members will be able to qualify for the rebate at the lower Non-Displayed ADAV share requirement, which the Exchange believes may encourage Members to maintain or increase their order flow. The Exchange believes that this will contribute to a deeper and more robust and well-balanced market ecosystem to the benefit of all Members and market participants. The Exchange believes that the Non-Display Add Tiers, as modified by the proposed changes described above, reflect 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. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Non-Displayed Volume provided under each of the Non-Display Add Tiers is 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 B¹⁶ (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)¹⁷ by achieving: (1) an ADAV

¹⁶ The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

¹⁷ 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

with respect to orders with Fee Code B that is equal to or greater than 0.10% of the TCV; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.05% of the TCV or 5,000,000 shares and a Step-Up ADAV with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member's March 2024 ADAV with respect to orders with a Fee Code B. 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 (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV. The Exchange will also delete the reference in the footnote to the NBBO Setter Tier portion of the fee schedule which references the expiration of existing criteria (2) no later than September 30, 2024; since existing criteria (2) of the NBBO Setter Tier is being fully deleted and replaced with a new criteria (2), this footnote is no longer relevant. 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 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 changes reflect 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

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.

flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members.

Cross Asset Tiers

The Exchange currently offers Cross Asset Tiers 1, 2, and 3 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume in securities priced at or above \$1.00 per share by achieving the corresponding required volume criteria for such tier on the Exchange's equity options platform, MEMX Options. The Exchange now proposes to change the required criteria by which a Member may qualify for Cross Asset Tier 2, as described below.

Currently the Exchange provides an enhanced rebate of \$0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV¹⁸ in the Market Maker¹⁹ capacity that is equal to or greater than 150,000 contracts on MEMX Options. Now, the Exchange proposes to modify the required criteria under Cross Asset Tier 2 such that a Member would qualify for such tier by achieving an Options ADAV in the Market Maker capacity that is equal to or greater than 125,000 contracts on MEMX Options.

The proposed new criteria for Cross Asset Tier 2 is designed to facilitate additional Members to meet the Options ADAV requirements for such tier. The Exchange believes that the lowered requirements to meet the tier will incentivize Members to maintain or increase their order flow to the MEMX Options Exchange in the Market Maker capacity. The Exchange also

¹⁸ As set forth on the Fee Schedule, a Member's "Options ADAV" for purposes of equities pricing means the average daily added volume calculated as a number of contracts added on MEMX Options per day by the Member, which is calculated on a monthly basis.

¹⁹ As set forth on the MEMX Options Fee Schedule, "Market Maker" applies to any order for the account of a registered Market Maker. "Market Maker" shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

believes that the new criteria will encourage greater participation on MEMX Equities by making it easier for Members to qualify for Cross Asset Tier 2 via their Options ADAV, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

Displayed Liquidity Initiative (“DLI”) Additive Rebate

The Exchange currently offers the DLI Additive Rebate Tier 1 under which a Member may receive an additive rebate 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 otherwise qualify for the applicable rebate under Liquidity Provision Tier 1 or Liquidity Provision Tier 2 as well as the applicable criteria under DLI Tier 1.²⁰ The Exchange now proposes to modify the DLI Additive Rebate Tier 1 by updating the required applicable criteria under Liquidity Provision Tiers 1 and 2 in accordance with this proposal. The purpose of these changes is to update the criteria to match the proposed changes to the applicable criteria under Liquidity Provision Tiers 1 and 2 which have been described above.

Currently, under DLI Additive Rebate Tier 1, the Exchange provides an additive rebate of \$0.00005 per share for executions of Added Displayed Volume that first meet the criteria under DLI Tier 1, which include achieving: (1) an NBBO time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV that is equal to or greater than 0.10% of the TCV,²¹ as well as the applicable criteria under Liquidity Provision Tier 1 or Liquidity Provision Tier 2. Under Liquidity Provision Tier 1, the Exchange is now

²⁰ This pricing is referred to by the Exchange on the Fee Schedule under the existing description “DLI Additive Rebate” with a Fee Code of “q” to be appended to the otherwise applicable Fee Code for qualifying executions.

²¹ The enhanced rebate provided under DLI Tier 1 is \$0.0031 per share for executions of Added Displayed Volume.

proposing (as described above) Members will received the enhanced rebate 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 that is equal to or greater than 6,000,000 shares. Thus, now, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 1 criteria described above. Under Liquidity Provision Tier 2, the Exchange is now proposing (as described above) that Members will receive the enhanced rebate by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and (2) an ADV that is equal to or greater than 0.35% of the TCV. Thus, now, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 2 criteria described above. Again, the Exchange notes that Members qualify for the DLI Additive rebate by achieving both the criteria under DLI Tier 1 and either Liquidity Provision Tier 1 or Liquidity Provision Tier 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²³ 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

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4) and (5).

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.”²⁴

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, as well as to the Exchange’s equity options platform, MEMX Options, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange and on MEMX Options 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

²⁴ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 raising the maximum combined rebate is reasonable, equitable, and not unfairly discriminatory as all Members are equally eligible to achieve rebates up to the maximum combined rebate on the Exchange. The Exchange believes that increasing the maximum rebate which Members can achieve will incentivize Members to maintain or increase their order flow to the Exchange, in order to qualify for multiple additive rebates offered by the Exchange, thus increasing liquidity and contributing to a deeper and more liquid market ecosystem on the Exchange. The Exchange believes that the Liquidity Provision Tiers 1 and 2, the Liquidity Removal Tier, the Non-Display Add Tier 1, the NBBO Setter Tier 1, Cross-Asset Tier 2, and DLI Additive Rebate, each as modified by the proposed changes to the required criteria under each such 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 (and in the case of the Cross Asset Tiers, MEMX Options), 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, non-displayed, liquidity-adding, liquidity-removing, 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 also believes that the proposed changes to the criteria for Cross Asset Tier 2 are reasonable, equitably allocated and non-discriminatory with respect to all Members, as the

ability to achieve the new criteria is available to all Members. Membership on MEMX Options is available to all market participants which would provide them with access to the benefits on MEMX Options provided by the proposal, even where a member of MEMX Options is not necessarily eligible for the proposed enhanced rebates on the Exchange. The Exchange also believes, as stated above, that the new criteria in Cross-Asset Tier 2 will encourage greater participation on MEMX Equities by qualifying participants, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

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 Act²⁵ 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, and to MEMX Options, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the

²⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”²⁶

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 removing, and/or NBBO setting orders to both the Exchange and MEMX Options, 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 higher maximum combined rebate and each of the proposed modified Liquidity Provision Tiers 1 and 2, the Liquidity Removal Tier, the Non-Display Add Tier 1, the NBBO Setter Tier 1, Cross-Asset Tier 2, and DLI Additive Rebate would be available to all Members that meet the associated volume requirements in any month. 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 purposes of the Act.

Intermarket Competition

²⁶ See supra note 24.

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 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.”²⁷

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’”²⁸ 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 Act²⁹ and Rule 19b-4(f)(2)³⁰ thereunder.

²⁷ Id.

²⁸ 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)).

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 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 (<https://www.sec.gov/rules/sro.shtml>);
or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-16 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-2024-16. This file number should be included on the subject line if email 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 (<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-2024-16 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.³¹

Sherry R. Haywood,
Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).