

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 76	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 07	Amendment No. (req. for Amendments *)
Filing by MEMX LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934			
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>
			Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>
Rule			
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>		
Description			
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).			
Proposal to amend the Exchange's fee schedule.			
Contact Information			
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.			
First Name *	Anders	Last Name *	Franzon
Title *	General Counsel		
E-mail *	afranzon@memx.com		
Telephone *	(551) 370-1003	Fax	
Signature			
Pursuant to the requirements of the Securities Exchange Act of 1934,			
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.			
(Title *)			
Date	06/01/2021	Counsel	
By	James Foley		
(Name *)		James Foley, jfoley@memx.com	
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.			

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “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 June 1, 2021.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Anders Franzon

James Foley

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

General Counsel
MEMX LLC
(551) 370-1003

Counsel
MEMX LLC
(551) 370-1042

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

a. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to (i) adopt a new pricing incentive (the “Displayed Liquidity Incentive” or “DLI”) designed to improve market quality on the Exchange in certain specific securities and more generally in the form of an enhanced rebate for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, “Added Displayed Volume”) for Members that meet certain minimum quoting requirements across a specified number of securities, as further described below; (ii) introduce a tiered pricing structure applicable to the rebates provided for executions of Added Displayed Volume; (iii) adopt an enhanced rebate for executions of Pegged Orders⁴ with a Midpoint Peg⁵ instruction in securities priced at or above \$1.00 per share (such orders, “Midpoint Peg Orders”) that add liquidity to the Exchange; (iv) increase the standard fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Volume”); and (v) reduce the standard rebate for executions of Added Displayed Volume.

⁴ Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the national best bid and/or offer (“NBBO”).

⁵ A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to midpoint of the NBBO. See Exchange Rule 11.6(h)(2).

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.⁶ 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.⁷

Adoption of Displayed Liquidity Incentive

The Exchange proposes to adopt a new pricing incentive, referred to by the Exchange as the “Displayed Liquidity Incentive” or “DLI”, in the form of an enhanced rebate for executions of Added Displayed Volume for Members that qualify for the DLI by meeting certain minimum quoting requirements across a specified number of securities, as further described below. The proposed DLI is designed to encourage Members to improve market quality on the Exchange in certain specific securities and more generally. As proposed, a Member will qualify for the DLI, and thus receive the

⁶ Market share percentage calculated as of May 27, 2021. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁷ Id.

proposed enhanced rebate for executions of Added Displayed Volume described below, if the Member's NBBO Time⁸ is at least 25% in an average of at least 250 securities, at least 75 of which must be DLI Target Securities,⁹ per trading day during the month. Under this proposal, the Exchange will determine on a daily basis the number of securities in which each of a Member's MPIDs meets the 25% NBBO Time requirement (the "quoting requirement") for that day. The Exchange will then aggregate the number of securities in which each of a Member's MPIDs meets the quoting requirement to determine the total number of securities in which such Member meets the quoting

⁸ As proposed, the term "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 ("NBB") or the national best offer ("NBO"). If an MPID has a displayed order of at least one round lot at both the NBB and the NBO, the quoting activity on each side will be aggregated and counted toward the NBBO Time. As an example, where a Member's MPID has a displayed order of at least one round lot at the NBB for 20% of the time during regular trading hours and a displayed order of at least one round lot at the NBO for 10% of the time during regular trading hours for a security, the Member's NBBO Time with respect to that MPID for that security would be 30%. Thus, it is possible for a single MPID to have an NBBO Time for a security of up to 200% for a particular day under this proposal. As proposed, the term "regular trading hours" refers to the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when the securities markets close early.

⁹ As proposed, the term "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. The Exchange anticipates that the initial DLI Target Securities list will include between 275 and 300 securities. The DLI Target Securities list will always include at least 75 securities and may be periodically updated by the Exchange, provided that the Exchange will not remove a security from the DLI Target Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange).

requirement for that day.¹⁰ However, a single security in which more than one of such Member's MPIDs meets the quoting requirement for that day will only be counted once for this purpose.¹¹ Additionally, as proposed, the quoting requirement with respect to a security must be met by a single MPID achieving the requisite NBBO Time for that day, and the NBBO Time of multiple MPIDs will not be aggregated to determine if the Member has met the quoting requirement in that security.¹²

As noted above, to qualify for the DLI, a Member must meet the quoting requirement in an average of at least 250 securities traded on the Exchange (the "250 securities requirement"), at least 75 of which must be DLI Target Securities (the "75 DLI Target Securities requirement"), per trading day during the month. Each of the 250 securities requirement and the 75 DLI Target Securities requirement is referred to under this proposal as a "securities requirement." The proposed DLI is designed to enhance market quality both in a broad manner with respect to all securities traded on the

¹⁰ For example, if a Member has four MPIDs and each MPID has an NBBO Time of 30% in a different security, this will count as four securities in which such Member has met the quoting requirement for that day.

¹¹ Thus, if a Member has two MPIDs that meet the quoting requirement in the same security for a particular day, this will only count as one security for purposes of determining the total number of securities in which such Member has met the quoting requirement for that day.

¹² As an example, assume that a Member has two MPIDs, and that MPID 1 has an NBBO Time of 15% and MPID 2 has an NBBO Time of 20% in the same security for a particular day. In this event, such Member would not meet the quoting requirement in that security for that day as it does not have an MPID with an NBBO Time of at least 25% in that security for that day. The Exchange notes that The Nasdaq Stock Market LLC ("Nasdaq") uses this same methodology when calculating the time that a member quotes at the NBBO under its Qualified Market Maker program. See *infra* note 17; see also Securities Exchange Act Release No. 77662 (April 20, 2016), 81 FR 24681, 24682 (April 26, 2016) (SR-NASDAQ-2016-051).

Exchange, through the 250 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 75 DLI Target Securities requirement. The number of DLI Target Securities in which a Member meets the quoting requirement will be counted toward both the 75 DLI Target Securities requirement and the 250 securities requirement. In order to determine whether a Member meets the applicable securities requirements during a month, the average number of securities in which such Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which each of such Member's MPIDs met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.¹³ The Exchange proposes to add notes to the Fee Schedule describing the criteria for determining whether a Member qualifies for the DLI and the related calculation methodologies described above.

In addition, the Exchange will exclude for purposes of determining qualification for the Displayed Liquidity Incentive: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours

¹³ As an example, in a month with 20 trading days, if a Member's MPIDs collectively satisfied the quoting requirement in 125 securities (of which 25 were DLI Target Securities) for ten of the trading days in the month, and collectively satisfied the quoting requirement in 375 securities (of which 125 were DLI Target Securities) for the other ten trading days in the month, such Member would meet the quoting requirement in an average of 250 securities (*i.e.*, $((125 \times 10) + (375 \times 10)) / 20$), inclusive of an average of 75 DLI Target Securities (*i.e.*, $((25 \times 10) + (125 \times 10)) / 20$), per trading day during the month. Therefore, such Member would meet both of the applicable securities requirements during the month and would qualify for the DLI for that month under this proposal.

(“Exchange System Disruption Days”); and (2) the day that Russell Investments reconstitutes its family of indexes (the “Russell Reconstitution Day”), which occurs annually on the last Friday in June. The Exchange will exclude Exchange System Disruption Days and the Russell Reconstitution Day when determining both the numerator (i.e., the number of securities in which a Member’s MPIDs met the quoting requirement for each trading day during the month) and the denominator (i.e., the total number of trading days in the month) for purposes of calculating the average number of securities in which such Member meets the quoting requirement per trading day during the month.

As further detail regarding such proposed exclusions, an Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange’s entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member meets the applicable securities requirements during a month to avoid penalizing Members that might otherwise have met such requirements. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes

that the Russell Reconstitution Day typically has extraordinarily high and abnormally distributed trading volumes, and the Exchange believes this change to normal activity may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, and the Exchange believes application of this methodology is similarly appropriate for the proposed DLI pricing incentive.¹⁴

A Member that qualifies for the DLI by meeting the requirements described above during a particular month will receive an enhanced rebate of \$0.0036 per share for all executions of Added Displayed Volume (unless a higher rebate applies¹⁵) during that

¹⁴ See, e.g., the Cboe BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

¹⁵ As described further below, the Exchange is also proposing to specify on the Fee Schedule that the lowest fee/highest rebate will apply if a Member qualifies for multiple fees/rebates with respect to a particular transaction. Retail Orders in securities priced at or above \$1.00 per share that are displayed and add liquidity to the Exchange receive a rebate that is higher than the proposed enhanced rebate for Members that qualify for the DLI. Thus, under the Exchange's proposed pricing structure, a Member that qualifies for the DLI would not receive the proposed DLI enhanced rebate for executions of displayed Retail Orders that add liquidity to the Exchange but instead would receive the rebate applicable to executions of liquidity-adding displayed Retail Orders.

month.¹⁶ This proposed enhanced rebate is \$0.0005 higher than the standard rebate that would otherwise be applicable to such executions, which the Exchange is proposing to reduce from \$0.0034 to \$0.0031, as further described below. The proposed enhanced rebate will apply to all executions of Added Displayed Volume (other than orders receiving a higher rebate, such as Retail Orders) entered by each MPID of a qualifying Member; thus, if a Member qualifies for the DLI as a result of its quoting activity from one of its MPIDs during a month, the qualifying Member will receive the proposed enhanced rebate of \$0.0036 per share for all executions of Added Displayed Volume (unless a higher rebate applies) entered by that MPID as well as those entered by each of its other MPIDs during that month. The Exchange notes that the proposed enhanced rebate will only apply to executions in securities priced at or above \$1.00 per share; executions of a qualifying Member's displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total dollar value of the transaction).

The Exchange is proposing to provide the enhanced rebate for executions of Added Displayed Volume for qualifying Members as a means of recognizing the value of

¹⁶ This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description "Added displayed volume, DLI" with a Fee Code of "Bq", "Dq" or "Jq", 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 the DLI 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 (i.e., "B", "D" or "J") on the execution reports provided to Members during the month and will only designate the Fee Codes of "Bq", "Dq" or "Jq" on the monthly invoices, which are provided after such determination has been made.

market participants that consistently quote at the NBBO in a large number of securities, generally, and in the DLI Target Securities, in particular. Even when such market participants are not formally registered as market makers, they risk capital by offering immediately executable liquidity at the price most favorable to market participants on the opposite side of the market. Such activity promotes price discovery and dampens volatility and enhances the attractiveness of the Exchange as a trading venue. Given the proposed requirements to qualify for the DLI, a Member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of securities, including certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the DLI Target Securities), for a significant portion of the day.

A Member that qualifies for the DLI may be, but is not required to be, a registered market maker in any security; thus, qualifying for the DLI does not by itself impose a two-sided or any other quotation obligation or convey any of the benefits associated with being a registered market maker. Qualification for the DLI will, however, reflect the Member's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities, including the DLI Target Securities. Thus, this proposal is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Through the proposed enhanced rebate for qualifying Members, 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. In addition, the proposal reflects an effort to use a financial incentive to encourage a wider variety of Members, including Members that may be characterized as high-frequency trading firms, to make positive commitments to promote market quality.

The Exchange notes that the proposed DLI is similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality by incentivizing members to achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities, generally, or certain designated securities, in particular.¹⁷ The Exchange further notes that, like the proposed DLI, these programs include as an incentive the provision of an enhanced rebate for executions of

¹⁷ See, e.g., the Nasdaq equities trading fee schedule on its public website, available at <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>) and Nasdaq Rule Equity 7, Section 114(d) describing Nasdaq's Qualified Market Maker Program, which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) for executions of liquidity-providing displayed orders (other than designated retail orders) in securities across all tapes priced at or above \$1.00 per share for members that, in addition to executing transactions that represent a specified percentage of consolidated volume and avoiding inefficient order entry practices that place excessive burdens on Nasdaq's systems, quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month; see also the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) under Cboe BZX's Liquidity Management Program for executions of liquidity-providing displayed orders in Tape B securities priced at or above \$1.00 per share for members that, in addition to adding a specified percentage of total consolidated volume in Tape B securities and meeting certain other quoting requirements with respect to a specified number of securities designated as "LMP Securities" on a list determined by Cboe BZX, quote at the NBBO at least 15% of the time during regular trading hours in a specified number of such designated LMP Securities (or achieve an alternative NBBO quoting standard involving a size-setting element with respect to such designated LMP Securities).

liquidity-adding displayed orders for members that meet the quoting and other requirements of those programs.¹⁸

In addition to the foregoing changes, the Exchange proposes to add to the Fee Schedule definitions of the terms “MPID”, “DLI Target Securities”, “quoting requirement”, “regular trading hours” and “securities requirement” that are consistent with the descriptions of those terms set forth above, as such terms are used in the notes describing the calculation methodologies and criteria for determining whether a Member qualifies for the DLI that the Exchange is proposing to add to the Fee Schedule, as described above.

Adoption of Liquidity Provision Tier

The Exchange is also proposing to introduce a tiered pricing structure applicable to the rebates provided for executions of Added Displayed Volume. Specifically, the Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the “Liquidity Provision Tier”, in which the Exchange will provide an enhanced rebate for executions of Added Displayed Volume for Members that meet a certain specified volume threshold on the Exchange. Currently, the Exchange provides a standard rebate of \$0.0034 per share for executions of Added Displayed Volume, which the Exchange is proposing to reduce to \$0.0031, as further described below. The Exchange now proposes to introduce a tiered pricing structure in which it will provide an enhanced rebate of \$0.00335 per share for executions of Added Displayed Volume for Members that qualify

¹⁸ Id.

for the Liquidity Provision Tier by achieving an ADAV¹⁹ of 15,000,000 shares or more.²⁰ As proposed, ADAV will be calculated on a monthly basis, and Members that qualify for the Liquidity Provision Tier by achieving the specified ADAV threshold in a particular month will receive the proposed enhanced rebate of \$0.00335 per share for all executions of Added Displayed Volume in that month (unless a higher rebate applies).

Similar to the exclusion for purposes of determining qualification for the Displayed Liquidity Incentive, the Exchange proposes to exclude from the calculation of ADAV: (1) any Exchange System Disruption Days; and (2) the Russell Reconstitution Day, which occurs annually on the last Friday in June.²¹ As is true with respect to the Displayed Liquidity Incentive, the Exchange believes that Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member qualifies for the Liquidity Provision Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold. For similar reasons, the Exchange believes it is appropriate

¹⁹ As proposed, the term “ADAV” means the average daily added volume calculated as the number of shares added per day.

²⁰ This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description “Added displayed volume, Liquidity Provision Tier” 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 the Liquidity Provision 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 (*i.e.*, “B”, “D” or “J”) on the execution reports provided to Members during the month and will only designate the Fee Codes of “B1”, “D1” or “J1” on the monthly invoices, which are provided after such determination has been made.

²¹ See supra note 14 and accompanying text.

to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes the change to normal activity may affect a Member's ability to add liquidity to the Exchange on that day.

The Exchange believes that the proposed tiered pricing structure provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the proposed enhanced rebate for executions of Added Displayed Volume. As such, the proposed Liquidity Provision Tier is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow, 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.

Adoption of Enhanced Rebate for Added Midpoint Volume

The Exchange is also proposing to adopt an enhanced rebate for executions of Midpoint Peg Orders that add liquidity to the Exchange (such orders, "Added Midpoint Volume"). Currently, the Exchange provides a standard rebate of \$0.0020 per share for all executions of non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange, including executions of Added Midpoint Volume. The Exchange now proposes to adopt an enhanced rebate for executions of Added Midpoint Volume of \$0.0025 per share,²² while all other executions of non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange will continue to receive the standard rebate for such transactions (i.e., \$0.0020 per share).

²² This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description "Added non-displayed volume, Midpoint Peg" and such orders will continue to receive a Fee Code of "M" assigned by the Exchange.

The Exchange notes that executions of orders with a Midpoint Peg instruction that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total dollar value of the transaction).

The purpose of the proposed enhanced rebate for executions of Added Midpoint Volume is to encourage Members that provide liquidity through non-displayed orders to do so, to a greater extent, through orders that offer price improvement to the benefit of other market participants. While the Exchange's pricing structure is generally designed to encourage the provision of liquidity through displayed orders, as the rebates provided with respect to such orders are consistently higher than those for non-displayed orders, the proposed enhanced rebate for executions of Added Midpoint Volume reflects a concomitant goal of encouraging Members that use non-displayed orders to offer price improvement through the use of orders that are designed to execute at the midpoint of the NBBO. The Exchange believes that providing an enhanced rebate for executions of Added Midpoint Volume is a reasonable means by which to incentivize Members to provide additional liquidity at the midpoint of the NBBO, which in turn would increase the attractiveness of the Exchange as a destination venue, as Members seeking price improvement would be more motivated to direct their orders to the Exchange because they would have a heightened expectation of the availability of liquidity at the midpoint of the NBBO. The Exchange notes that the proposed enhanced rebate is comparable to, and competitive with, the rebate provided by at least one other exchange for executions of non-displayed orders in securities priced at or above \$1.00 per share that are pegged to

the midpoint of the NBBO.²³

Increased Standard Fee for Removed Volume

The Exchange also proposes to increase the standard fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (i.e., Removed Volume). Currently, the Exchange charges a standard fee of \$0.0026 per share for executions of Removed Volume. The Exchange now proposes to increase the standard fee charged for executions of Removed Volume to \$0.00265 per share.²⁴ The purpose of increasing the standard fee for executions of Removed Volume 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 proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume, and the Exchange's operations generally, 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 increase to the standard fee, the Exchange's fee for executions of Removed Volume remains lower than the fee to remove liquidity in

²³ See the Nasdaq PHLX LLC equities trading fee schedule on its public website (available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing), which reflects a standard rebate of \$0.0023 per share for adding non-displayed liquidity via an order that is pegged to the midpoint of the NBBO in a security priced at or above \$1.00 per share.

²⁴ This proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description "Removed volume from MEMX Book" and such orders will continue to receive a Fee Code of "R" assigned by the Exchange.

securities priced at or above \$1.00 charged by several other exchanges.²⁵

Reduced Standard Rebate for Added Displayed Volume

The Exchange also proposes to reduce the standard rebate for executions of Added Displayed Volume. Currently, the Exchange provides a standard rebate of \$0.0034 per share for executions of Added Displayed Volume. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume to \$0.0031 per share.²⁶ The Exchange notes that executions of displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (*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 rebate would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume,

²⁵ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/); Nasdaq Rule Equity 7, Section 118(a).

²⁶ This proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume" and such orders will continue to receive a Fee Code of "B", "D" or "J", as applicable, assigned by the Exchange.

and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that the proposed standard rebate is comparable to, and competitive with, the standard rebates provided by at least one other exchange for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity.²⁷

Lastly, the Exchange proposes to add a note to the Fee Schedule specifying that to the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply. The Exchange notes that charging the fee or providing the rebate that is most favorable with respect to a particular transaction is consistent with the pricing practices of other exchanges.²⁸

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of

²⁷ See the MIAX PEARL, LLC equities trading fee schedule on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Equities_Fee_Schedule_01012021.pdf), which reflects a standard rebate of \$0.0032 per share to add displayed liquidity in Tape A and Tape C securities priced at or above \$1.00 per share and a standard rebate of \$0.0035 per share to add displayed liquidity in Tape B securities priced at or above \$1.00 per share.

²⁸ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides "To the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply."

²⁹ 15 U.S.C. 78f.

the Act,³⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³¹

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

³⁰ 15 U.S.C. 78f(b)(4) and (5).

³¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

more favorable. The Exchange believes that the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, to enhance market quality in both a broad manner and in a targeted manner with respect to the DLI Target Securities, and to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO through the provision of enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and for executions of Added Midpoint Volume. While the Exchange has proposed increasing its standard fee for executions of Removed Volume and reducing its standard rebate for executions of Added Displayed Volume, as further discussed below, each of such changes represents a modest increase (decrease) from the current fee (rebate) applicable to such executions.

As noted above, the proposed 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 in a large number of securities, generally, and in the DLI Target Securities, in particular, thereby benefitting the Exchange and other 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. Additionally, the Exchange believes the proposed enhanced rebate for all executions of a qualifying Member's Added Displayed Volume will simultaneously incentivize such Member to direct additional displayed liquidity-providing orders to the Exchange in a more general manner to receive such enhanced rebate. Thus, the Exchange believes that

the proposed DLI will promote price discovery and market quality in the DLI Target Securities and more generally on the Exchange, and, further, that the resulting tightened spreads and increased displayed liquidity will benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, enhancing quoting competition across exchanges, and promoting market transparency.

The Exchange believes the proposed enhanced rebate of \$0.0036 per share provided to Members that qualify for the DLI for executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the proposed standard rebate of \$0.0031 per share provided to all Members with respect to the provision of displayed liquidity. The Exchange notes that the \$0.0005 additional rebate for such executions for qualifying Members is a competitive proposal given that it is higher than the additional rebates provided by other exchanges for executions of displayed liquidity-providing orders for market participants that meet minimum quoting standards under similar programs designed to enhance market quality.³² In addition, the Exchange believes that it is reasonable and consistent with an equitable allocation of fees to pay a higher rebate for executions of Added Displayed Volume to Members that qualify for the DLI because of the additional commitment to market quality reflected in the associated quoting requirements. Such Members benefit all investors by promoting price discovery and increasing the depth of liquidity available at the NBBO and also benefit the Exchange itself by enhancing its competitiveness as a market that attracts

³² See supra note 17.

actionable orders. Further, the Exchange notes that the proposed DLI would apply uniformly to all Members, and any Member may choose to qualify for the DLI by meeting the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange. The Exchange acknowledges that firms that do not post displayed liquidity on the Exchange or do so on a smaller scale may not have the level of capital necessary to support meeting the proposed DLI's requirements, however, the Exchange believes that the requirements are attainable for many market participants who do actively quote on exchanges and are reasonably related to the enhanced market quality that the DLI is designed to promote. Additionally, the Exchange notes that Members that do not meet the proposed DLI's requirements may still qualify for a rebate that is higher than the standard rebate for executions of Added Displayed Volume through the proposed Liquidity Provision Tier, which does not require a Member to consistently quote at the NBBO across a broad range of securities. Accordingly, the Exchange believes that it is consistent with an equitable allocation of fees and is not unfairly discriminatory to pay a higher rebate in comparison with the rebate paid to other Members for executions of displayed liquidity-providing orders in recognition of these benefits to the Exchange and market participants, particularly as the magnitude of the additional rebate is not unreasonably high and is, instead, reasonably related to such enhanced market quality.

The Exchange also believes that including in the proposed DLI qualification criteria a quoting requirement for certain specified securities (i.e., the DLI Target Securities), in addition to the more general 250 securities requirement, is equitable and not unfairly discriminatory because the Exchange has identified the DLI Target Securities

as securities in which it would like to inject additional quoting competition, which the Exchange believes will generally act to narrow spreads, increase size at the NBBO, and increase liquidity depth in such securities, thereby increasing the attractiveness of the Exchange as a destination venue with respect to such securities. Accordingly, the Exchange believes that this aspect of the proposal is reasonable, equitably allocated, and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Furthermore, as noted above, the proposed DLI is similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality.³³ Specifically, these programs, like the proposed DLI, provide a higher rebate for executions of liquidity-adding displayed orders for members that achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities, generally, or certain designated securities, in particular.³⁴ The Exchange also notes that the proposed DLI is not dissimilar from volume-based rebates and fees (“Volume Tiers”), like the Liquidity Provision Tier proposed in this filing, which have been widely adopted by exchanges³⁵ and are equitable and not unfairly discriminatory because they are generally open to all members on an equal basis and provide higher rebates and/or lower fees that are reasonably related to the value to an exchange’s market

³³ Id.

³⁴ Id.

³⁵ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

quality. Much like Volume Tiers are generally designed to incentivize higher levels of liquidity provision, the proposed DLI is designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the NBBO, and greater quoting depth in a large number of securities, generally, and in the DLI Target Securities, in particular, through the provision of an enhanced rebate for all executions of a qualifying Member's Added Displayed Volume, where such rebate will in turn incentivize higher levels of displayed liquidity provision in a general manner. Accordingly, the Exchange believes that the proposed DLI would act to enhance liquidity and competition across exchanges in the DLI Target Securities and enhance liquidity provision in all securities on the Exchange more generally by providing a rebate reasonably related to such enhanced market quality to the benefit of all investors, thereby promoting the principles discussed in Sections 6(b)(4) and 6(b)(5) of the Act.³⁶

The Exchange also believes that adding to the Fee Schedule the notes describing the calculation methodologies and criteria for determining whether a Member satisfies the requirements to qualify for the DLI, as well as the definitions of terms that are used in these notes, is reasonable, equitable, and non-discriminatory because these notes and definitions are designed to ensure that the Fee Schedule is as clear and easily understandable as possible with respect to the requirements of the proposed DLI. Additionally, the Exchange believes that excluding Exchange System Disruption Days and the Russell Reconstitution Day when determining whether a Member qualifies for the proposed DLI during a month is reasonable, equitable, and non-discriminatory because,

³⁶ 15 U.S.C. 78f(b)(4) and (5).

as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed DLI due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives.³⁷

As noted above, Volume Tiers, like the Liquidity Provision Tier proposed in this filing, have been widely adopted by exchanges³⁸ and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates 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 introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposed Liquidity Provision Tier is equitable and not unfairly discriminatory for these same reasons, as it is open to all Members and is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow in this regard, 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. Additionally, the Exchange believes the proposed enhanced rebate for executions of Added Displayed Volume for qualifying Members

³⁷ See supra note 14.

³⁸ See supra note 35.

(i.e., \$0.00335 per share) is reasonable, in that it represents only a modest increase above the proposed standard rebate for such executions (i.e., \$0.0031 per share) as well as a modest decrease from the current standard rebate for such executions (i.e., \$0.0034 per share). Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to pay such higher rebate for executions of Added Displayed Volume to Members that qualify for the Liquidity Provision Tier in comparison with the standard rebate in recognition of benefits to the Exchange and market participants described above, particularly as the magnitude of the additional rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. The Exchange further believes that such rebate is reasonable as it offers an alternative way for Members that do not meet the proposed DLI's requirements to qualify for a rebate that is higher than the proposed standard rebate for executions of Added Displayed Volume that does not require such Members to consistently quote at the NBBO across a broad range of securities.

Additionally, the Exchange believes that excluding Exchange System Disruption Days and the Russell Reconstitution Day when determining whether a Member qualifies for the proposed Liquidity Provision Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Liquidity Provision Tier due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and

other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADAV for Volume Tiers specifically.³⁹

With respect to the proposed enhanced rebate for executions of Added Midpoint Volume, the Exchange believes that providing a rebate for such executions that is higher than the standard rebate for executions of other non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange is reasonable as the Exchange believes this would encourage Members that provide liquidity through non-displayed orders to do so, to a greater extent, through orders designed to execute at the midpoint of the NBBO. Because such orders provide price improvement to the benefit of other market participants, the Exchange believes it is reasonable and consistent with an equitable allocation of fees to provide an enhanced rebate to encourage their use, while still maintaining an overall pricing structure that places even greater emphasis on the value of displayed liquidity in advancing transparency and price discovery. The Exchange further believes the proposed enhanced rebate is reasonable because, as noted above, it is comparable to, and competitive with, the rebate provided by at least one other exchange for executions of non-displayed orders in securities priced at or above \$1.00 per share that are pegged to the midpoint of the NBBO.⁴⁰ The Exchange also believes this proposed enhanced rebate is not unfairly discriminatory as it would apply equally to all Members and the elements of differentiation between displayed and non-displayed liquidity and orders designed to execute at the midpoint of the NBBO and other non-

³⁹ See supra note 14.

⁴⁰ See supra note 23.

displayed orders promote the goals of price discovery and encouraging market participants to provide price improvement.

The Exchange believes that the proposed changes to increase the standard fee for executions of Removed Volume and 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 to offset some of the costs associated with the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange also believes the proposed increased standard fee for executions of Removed Volume is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains lower than the fee to remove liquidity in securities priced at or above \$1.00 charged by several other exchanges.⁴¹ Similarly, the Exchange believes the proposed reduced standard rebate for executions of Added Displayed Volume is reasonable and appropriate because it represents a modest decrease from the current standard rebate and, as noted above, remains comparable to, and competitive with, the standard rebates provided by at least one other exchange for executions of orders in securities priced at or above \$1.00 per

⁴¹ See supra note 25.

share that add displayed liquidity.⁴² The Exchange further believes that the proposed increased standard fee 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.

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 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.

Finally, the Exchange believes that the proposed change to add a note on the Fee Schedule specifying that to the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply is reasonable, equitable, and non-discriminatory because it applies uniformly to all Members and is designed to clarify for Members which fee or rebate is applicable to their transactions. Thus, Exchange believes that this proposed change will make the Fee Schedule clearer and eliminate potential confusion in this regard, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Further, as noted above, this practice

⁴² See supra note 27.

is consistent with the pricing practices of other exchanges.⁴³

4. 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 designed to enhance market quality on the Exchange in a large number of securities, generally, and in the DLI Target Securities, in particular, to encourage Members to maintain or increase their order flow, 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, and to encourage Members to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO. In turn, the Exchange believes the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and for executions of Added Midpoint Volume would encourage the submission of additional order flow to the Exchange, particularly in the form of Added Displayed Volume and Added Midpoint Volume, thereby promoting market depth, enhanced execution opportunities, price improvement, and price discovery to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders,

⁴³ See supra note 28.

which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”⁴⁴

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 maintain or increase their order flow, 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, and to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO, which the Exchange believes, in turn, would continue to encourage participants to direct order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the DLI, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume, would be available to all Members that meet the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange, and as noted above, the Exchange believes that the DLI’s requirements are attainable for many market participants who actively quote on exchanges and are reasonably related to the enhanced market quality that the DLI is designed to promote. Similarly, the opportunity to qualify for the Liquidity Provision Tier, and thus also receive an enhanced rebate for

⁴⁴ See supra note 31.

executions of Added Displayed Volume (albeit a rebate lower than that provided for Members who qualify for the DLI), would be available to all Members that meet the associated volume requirement in any month. The Exchange believes the volume requirement of the Liquidity Provision Tier is attainable for several market participants who add displayed liquidity executed on the Exchange and is reasonably related to the enhanced market quality that the Liquidity Provision Tier is designed to promote. Similarly, the proposed enhanced rebate for executions of Added Midpoint Volume, the proposed increased standard fee 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

The Exchange operates in a highly competitive market. 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, Added Midpoint 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 certain order flow to be sent to the Exchange and to promote market quality through pricing incentives that are similar in structure and purpose to pricing programs in place at other exchanges.⁴⁵ 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.

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."⁴⁶ 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:

⁴⁵ See supra notes 17, 23, and 35.

⁴⁶ See supra note 31.

“[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’”⁴⁷ 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁴⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission

⁴⁷ 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)).

⁴⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.⁴⁹

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As noted above, the proposed DLI is similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality.⁵⁰ Specifically, the proposed DLI is similar to Nasdaq's Qualified Market Maker Program in that it provides an enhanced rebate for executions of liquidity-adding displayed orders for members that meet minimum quoting standards in a large number of securities, generally, and is similar to Cboe BZX's Liquidity Management Program in that it provides such a rebate for members that meet minimum quoting standards in certain designated securities, in particular.⁵¹ Similarly, the proposed Liquidity Provision Tier and other aspects of the proposal such as the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day are also similar in structure and purpose to pricing programs in place on other exchanges.⁵²

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

⁴⁹ 15 U.S.C. 78s(b)(2)(B).

⁵⁰ See supra note 17.

⁵¹ Id.

⁵² See supra notes 14 and 35.

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2021-07]

[Insert date]

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 [insert date], 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 June 1, 2021. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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) adopt a new pricing incentive (the “Displayed Liquidity Incentive” or “DLI”) designed to improve market quality on the Exchange in certain specific securities and more generally in the form of an enhanced rebate for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, “Added Displayed Volume”) for Members that meet certain minimum quoting requirements across a specified number of securities, as further described below; (ii) introduce a tiered pricing structure applicable to the rebates provided for executions of Added Displayed Volume; (iii) adopt an enhanced rebate for executions of Pegged Orders⁴ with a Midpoint Peg⁵ instruction in securities priced at or above \$1.00 per share (such orders, “Midpoint Peg Orders”) that add liquidity to the Exchange; (iv) increase the standard fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Volume”); and (v) reduce the standard rebate

⁴ Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the national best bid and/or offer (“NBBO”).

⁵ A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to midpoint of the NBBO. See Exchange Rule 11.6(h)(2).

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.⁶ 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.⁷

Adoption of Displayed Liquidity Incentive

The Exchange proposes to adopt a new pricing incentive, referred to by the Exchange as the “Displayed Liquidity Incentive” or “DLI”, in the form of an enhanced rebate for executions of Added Displayed Volume for Members that qualify for the DLI by meeting certain minimum quoting requirements across a specified number of securities, as further described below. The proposed DLI is designed to encourage Members to improve market quality on the Exchange in certain specific securities and more generally. As proposed, a Member will qualify for the DLI, and thus receive the

⁶ Market share percentage calculated as of May 27, 2021. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁷ Id.

proposed enhanced rebate for executions of Added Displayed Volume described below, if the Member's NBBO Time⁸ is at least 25% in an average of at least 250 securities, at least 75 of which must be DLI Target Securities,⁹ per trading day during the month.

Under this proposal, the Exchange will determine on a daily basis the number of securities in which each of a Member's MPIDs meets the 25% NBBO Time requirement (the "quoting requirement") for that day. The Exchange will then aggregate the number of securities in which each of a Member's MPIDs meets the quoting requirement to determine the total number of securities in which such Member meets the quoting requirement for that day.¹⁰ However, a single security in which more than one of such

⁸ As proposed, the term "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 ("NBB") or the national best offer ("NBO"). If an MPID has a displayed order of at least one round lot at both the NBB and the NBO, the quoting activity on each side will be aggregated and counted toward the NBBO Time. As an example, where a Member's MPID has a displayed order of at least one round lot at the NBB for 20% of the time during regular trading hours and a displayed order of at least one round lot at the NBO for 10% of the time during regular trading hours for a security, the Member's NBBO Time with respect to that MPID for that security would be 30%. Thus, it is possible for a single MPID to have an NBBO Time for a security of up to 200% for a particular day under this proposal. As proposed, the term "regular trading hours" refers to the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when the securities markets close early.

⁹ As proposed, the term "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. The Exchange anticipates that the initial DLI Target Securities list will include between 275 and 300 securities. The DLI Target Securities list will always include at least 75 securities and may be periodically updated by the Exchange, provided that the Exchange will not remove a security from the DLI Target Securities list without at least 30 days' prior notice to Members as published on the Exchange's website (unless the security is no longer eligible for trading on the Exchange).

¹⁰ For example, if a Member has four MPIDs and each MPID has an NBBO Time of 30% in a different security, this will count as four securities in which such

Member's MPIDs meets the quoting requirement for that day will only be counted once for this purpose.¹¹ Additionally, as proposed, the quoting requirement with respect to a security must be met by a single MPID achieving the requisite NBBO Time for that day, and the NBBO Time of multiple MPIDs will not be aggregated to determine if the Member has met the quoting requirement in that security.¹²

As noted above, to qualify for the DLI, a Member must meet the quoting requirement in an average of at least 250 securities traded on the Exchange (the "250 securities requirement"), at least 75 of which must be DLI Target Securities (the "75 DLI Target Securities requirement"), per trading day during the month. Each of the 250 securities requirement and the 75 DLI Target Securities requirement is referred to under this proposal as a "securities requirement." The proposed DLI is designed to enhance market quality both in a broad manner with respect to all securities traded on the Exchange, through the 250 securities requirement, and in a targeted manner with respect to certain designated securities in which the Exchange specifically seeks to inject

Member has met the quoting requirement for that day.

¹¹ Thus, if a Member has two MPIDs that meet the quoting requirement in the same security for a particular day, this will only count as one security for purposes of determining the total number of securities in which such Member has met the quoting requirement for that day.

¹² As an example, assume that a Member has two MPIDs, and that MPID 1 has an NBBO Time of 15% and MPID 2 has an NBBO Time of 20% in the same security for a particular day. In this event, such Member would not meet the quoting requirement in that security for that day as it does not have an MPID with an NBBO Time of at least 25% in that security for that day. The Exchange notes that The Nasdaq Stock Market LLC ("Nasdaq") uses this same methodology when calculating the time that a member quotes at the NBBO under its Qualified Market Maker program. See *infra* note 17; see also Securities Exchange Act Release No. 77662 (April 20, 2016), 81 FR 24681, 24682 (April 26, 2016) (SR-NASDAQ-2016-051).

additional quoting competition (i.e., the DLI Target Securities), through the 75 DLI Target Securities requirement. The number of DLI Target Securities in which a Member meets the quoting requirement will be counted toward both the 75 DLI Target Securities requirement and the 250 securities requirement. In order to determine whether a Member meets the applicable securities requirements during a month, the average number of securities in which such Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which each of such Member's MPIDs met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.¹³ The Exchange proposes to add notes to the Fee Schedule describing the criteria for determining whether a Member qualifies for the DLI and the related calculation methodologies described above.

In addition, the Exchange will exclude for purposes of determining qualification for the Displayed Liquidity Incentive: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption Days"); and (2) the day that Russell Investments reconstitutes its family of indexes (the "Russell Reconstitution Day"), which occurs

¹³ As an example, in a month with 20 trading days, if a Member's MPIDs collectively satisfied the quoting requirement in 125 securities (of which 25 were DLI Target Securities) for ten of the trading days in the month, and collectively satisfied the quoting requirement in 375 securities (of which 125 were DLI Target Securities) for the other ten trading days in the month, such Member would meet the quoting requirement in an average of 250 securities (i.e., $((125 \times 10) + (375 \times 10)) / 20$), inclusive of an average of 75 DLI Target Securities (i.e., $((25 \times 10) + (125 \times 10)) / 20$), per trading day during the month. Therefore, such Member would meet both of the applicable securities requirements during the month and would qualify for the DLI for that month under this proposal.

annually on the last Friday in June. The Exchange will exclude Exchange System Disruption Days and the Russell Reconstitution Day when determining both the numerator (i.e., the number of securities in which a Member's MPIDs met the quoting requirement for each trading day during the month) and the denominator (i.e., the total number of trading days in the month) for purposes of calculating the average number of securities in which such Member meets the quoting requirement per trading day during the month.

As further detail regarding such proposed exclusions, an Exchange system disruption may occur, for example, where a certain group of securities traded on the Exchange is unavailable for trading due to an Exchange system issue. Similarly, the Exchange may be able to perform certain functions with respect to accepting and processing orders, but may have a failure to another significant process, such as routing to other market centers, that would lead Members that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. The Exchange believes that these types of Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member meets the applicable securities requirements during a month to avoid penalizing Members that might otherwise have met such requirements. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes that the Russell Reconstitution Day typically has extraordinarily high and abnormally distributed trading volumes, and the Exchange believes this change to normal activity

may affect a Member's ability to meet the quoting requirement across various securities on that day. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, and the Exchange believes application of this methodology is similarly appropriate for the proposed DLI pricing incentive.¹⁴

A Member that qualifies for the DLI by meeting the requirements described above during a particular month will receive an enhanced rebate of \$0.0036 per share for all executions of Added Displayed Volume (unless a higher rebate applies¹⁵) during that month.¹⁶ This proposed enhanced rebate is \$0.0005 higher than the standard rebate that

¹⁴ See, e.g., the Cboe BZX Exchange, Inc. ("Cboe BZX") equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

¹⁵ As described further below, the Exchange is also proposing to specify on the Fee Schedule that the lowest fee/highest rebate will apply if a Member qualifies for multiple fees/rebates with respect to a particular transaction. Retail Orders in securities priced at or above \$1.00 per share that are displayed and add liquidity to the Exchange receive a rebate that is higher than the proposed enhanced rebate for Members that qualify for the DLI. Thus, under the Exchange's proposed pricing structure, a Member that qualifies for the DLI would not receive the proposed DLI enhanced rebate for executions of displayed Retail Orders that add liquidity to the Exchange but instead would receive the rebate applicable to executions of liquidity-adding displayed Retail Orders.

¹⁶ This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description "Added displayed volume, DLI" with a Fee Code of "Bq", "Dq" or "Jq", 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 the DLI for a particular month will not be made until after the month-end, the Exchange will provide the Fee

would otherwise be applicable to such executions, which the Exchange is proposing to reduce from \$0.0034 to \$0.0031, as further described below. The proposed enhanced rebate will apply to all executions of Added Displayed Volume (other than orders receiving a higher rebate, such as Retail Orders) entered by each MPID of a qualifying Member; thus, if a Member qualifies for the DLI as a result of its quoting activity from one of its MPIDs during a month, the qualifying Member will receive the proposed enhanced rebate of \$0.0036 per share for all executions of Added Displayed Volume (unless a higher rebate applies) entered by that MPID as well as those entered by each of its other MPIDs during that month. The Exchange notes that the proposed enhanced rebate will only apply to executions in securities priced at or above \$1.00 per share; executions of a qualifying Member's displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total dollar value of the transaction).

The Exchange is proposing to provide the enhanced rebate for executions of Added Displayed Volume for qualifying Members as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities, generally, and in the DLI Target Securities, in particular. Even when such market participants are not formally registered as market makers, they risk capital by offering immediately executable liquidity at the price most favorable to market participants on the

Codes otherwise applicable to such transactions (i.e., "B", "D" or "J") on the execution reports provided to Members during the month and will only designate the Fee Codes of "Bq", "Dq" or "Jq" on the monthly invoices, which are provided after such determination has been made.

opposite side of the market. Such activity promotes price discovery and dampens volatility and enhances the attractiveness of the Exchange as a trading venue. Given the proposed requirements to qualify for the DLI, a Member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of securities, including certain designated securities in which the Exchange specifically seeks to inject additional quoting competition (i.e., the DLI Target Securities), for a significant portion of the day.

A Member that qualifies for the DLI may be, but is not required to be, a registered market maker in any security; thus, qualifying for the DLI does not by itself impose a two-sided or any other quotation obligation or convey any of the benefits associated with being a registered market maker. Qualification for the DLI will, however, reflect the Member's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities, including the DLI Target Securities. Thus, this proposal is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Through the proposed enhanced rebate for qualifying Members, 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. In addition, the proposal reflects an effort to use a financial incentive to encourage a wider variety of Members, including Members that may be characterized as high-frequency trading firms, to make positive commitments to promote market quality.

The Exchange notes that the proposed DLI is similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality by incentivizing members to achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of securities, generally, or certain designated securities, in particular.¹⁷ The Exchange further notes that, like the proposed DLI, these programs include as an incentive the provision of an enhanced rebate for executions of liquidity-adding displayed orders for members that meet the quoting and other requirements of those programs.¹⁸

In addition to the foregoing changes, the Exchange proposes to add to the Fee Schedule definitions of the terms “MPID”, “DLI Target Securities”, “quoting

¹⁷ See, e.g., the Nasdaq equities trading fee schedule on its public website, available at <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>) and Nasdaq Rule Equity 7, Section 114(d) describing Nasdaq’s Qualified Market Maker Program, which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) for executions of liquidity-providing displayed orders (other than designated retail orders) in securities across all tapes priced at or above \$1.00 per share for members that, in addition to executing transactions that represent a specified percentage of consolidated volume and avoiding inefficient order entry practices that place excessive burdens on Nasdaq’s systems, quote at the NBBO at least 25% of the time during regular market hours in an average of at least 1,000 securities per day during the month; see also the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides for an additional rebate (ranging from \$0.0001 to \$0.0002 per share) under Cboe BZX’s Liquidity Management Program for executions of liquidity-providing displayed orders in Tape B securities priced at or above \$1.00 per share for members that, in addition to adding a specified percentage of total consolidated volume in Tape B securities and meeting certain other quoting requirements with respect to a specified number of securities designated as “LMP Securities” on a list determined by Cboe BZX, quote at the NBBO at least 15% of the time during regular trading hours in a specified number of such designated LMP Securities (or achieve an alternative NBBO quoting standard involving a size-setting element with respect to such designated LMP Securities).

¹⁸ Id.

requirement”, “regular trading hours” and “securities requirement” that are consistent with the descriptions of those terms set forth above, as such terms are used in the notes describing the calculation methodologies and criteria for determining whether a Member qualifies for the DLI that the Exchange is proposing to add to the Fee Schedule, as described above.

Adoption of Liquidity Provision Tier

The Exchange is also proposing to introduce a tiered pricing structure applicable to the rebates provided for executions of Added Displayed Volume. Specifically, the Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the “Liquidity Provision Tier”, in which the Exchange will provide an enhanced rebate for executions of Added Displayed Volume for Members that meet a certain specified volume threshold on the Exchange. Currently, the Exchange provides a standard rebate of \$0.0034 per share for executions of Added Displayed Volume, which the Exchange is proposing to reduce to \$0.0031, as further described below. The Exchange now proposes to introduce a tiered pricing structure in which it will provide an enhanced rebate of \$0.00335 per share for executions of Added Displayed Volume for Members that qualify for the Liquidity Provision Tier by achieving an ADAV¹⁹ of 15,000,000 shares or more.²⁰

¹⁹ As proposed, the term “ADAV” means the average daily added volume calculated as the number of shares added per day.

²⁰ This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description “Added displayed volume, Liquidity Provision Tier” 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 the Liquidity Provision 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 (i.e., “B”, “D” or “J”) on the execution reports provided to Members during the month and

As proposed, ADAV will be calculated on a monthly basis, and Members that qualify for the Liquidity Provision Tier by achieving the specified ADAV threshold in a particular month will receive the proposed enhanced rebate of \$0.00335 per share for all executions of Added Displayed Volume in that month (unless a higher rebate applies).

Similar to the exclusion for purposes of determining qualification for the Displayed Liquidity Incentive, the Exchange proposes to exclude from the calculation of ADAV: (1) any Exchange System Disruption Days; and (2) the Russell Reconstitution Day, which occurs annually on the last Friday in June.²¹ As is true with respect to the Displayed Liquidity Incentive, the Exchange believes that Exchange system disruptions could preclude Members from participating on the Exchange to the extent that they might have otherwise participated on such days, and thus, the Exchange believes it is appropriate to exclude such days when determining whether a Member qualifies for the Liquidity Provision Tier to avoid penalizing Members that might otherwise have met the applicable volume threshold. For similar reasons, the Exchange believes it is appropriate to exclude the Russell Reconstitution Day in the same manner, as the Exchange believes the change to normal activity may affect a Member's ability to add liquidity to the Exchange on that day.

The Exchange believes that the proposed tiered pricing structure provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the proposed enhanced rebate for executions of Added Displayed Volume. As such, the proposed Liquidity Provision Tier is designed to encourage Members that

will only designate the Fee Codes of "B1", "D1" or "J1" on the monthly invoices, which are provided after such determination has been made.

²¹ See supra note 14 and accompanying text.

provide liquidity on the Exchange to maintain or increase their order flow, 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.

Adoption of Enhanced Rebate for Added Midpoint Volume

The Exchange is also proposing to adopt an enhanced rebate for executions of Midpoint Peg Orders that add liquidity to the Exchange (such orders, “Added Midpoint Volume”). Currently, the Exchange provides a standard rebate of \$0.0020 per share for all executions of non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange, including executions of Added Midpoint Volume. The Exchange now proposes to adopt an enhanced rebate for executions of Added Midpoint Volume of \$0.0025 per share,²² while all other executions of non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange will continue to receive the standard rebate for such transactions (i.e., \$0.0020 per share). The Exchange notes that executions of orders with a Midpoint Peg instruction that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (i.e., 0.05% of the total dollar value of the transaction).

The purpose of the proposed enhanced rebate for executions of Added Midpoint Volume is to encourage Members that provide liquidity through non-displayed orders to do so, to a greater extent, through orders that offer price improvement to the benefit of other market participants. While the Exchange’s pricing structure is generally designed

²² This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description “Added non-displayed volume, Midpoint Peg” and such orders will continue to receive a Fee Code of “M” assigned by the Exchange.

to encourage the provision of liquidity through displayed orders, as the rebates provided with respect to such orders are consistently higher than those for non-displayed orders, the proposed enhanced rebate for executions of Added Midpoint Volume reflects a concomitant goal of encouraging Members that use non-displayed orders to offer price improvement through the use of orders that are designed to execute at the midpoint of the NBBO. The Exchange believes that providing an enhanced rebate for executions of Added Midpoint Volume is a reasonable means by which to incentivize Members to provide additional liquidity at the midpoint of the NBBO, which in turn would increase the attractiveness of the Exchange as a destination venue, as Members seeking price improvement would be more motivated to direct their orders to the Exchange because they would have a heightened expectation of the availability of liquidity at the midpoint of the NBBO. The Exchange notes that the proposed enhanced rebate is comparable to, and competitive with, the rebate provided by at least one other exchange for executions of non-displayed orders in securities priced at or above \$1.00 per share that are pegged to the midpoint of the NBBO.²³

Increased Standard Fee for Removed Volume

The Exchange also proposes to increase the standard fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (*i.e.*, Removed Volume). Currently, the Exchange charges a standard fee of \$0.0026 per share for executions of Removed Volume. The Exchange now proposes to increase the

²³ See the Nasdaq PHLX LLC equities trading fee schedule on its public website (available at https://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing), which reflects a standard rebate of \$0.0023 per share for adding non-displayed liquidity via an order that is pegged to the midpoint of the NBBO in a security priced at or above \$1.00 per share.

standard fee charged for executions of Removed Volume to \$0.00265 per share.²⁴ The purpose of increasing the standard fee for executions of Removed Volume 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 proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume, and the Exchange's operations generally, 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 increase to the standard fee, the Exchange's fee for executions of Removed Volume remains lower than the fee to remove liquidity in securities priced at or above \$1.00 charged by several other exchanges.²⁵

Reduced Standard Rebate for Added Displayed Volume

The Exchange also proposes to reduce the standard rebate for executions of Added Displayed Volume. Currently, the Exchange provides a standard rebate of \$0.0034 per share for executions of Added Displayed Volume. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume to

²⁴ This proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description "Removed volume from MEMX Book" and such orders will continue to receive a Fee Code of "R" assigned by the Exchange.

²⁵ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX Exchange, Inc. ("Cboe EDGX") equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/); Nasdaq Rule Equity 7, Section 118(a).

\$0.0031 per share.²⁶ The Exchange notes that executions of displayed orders that add liquidity to the Exchange in securities priced below \$1.00 per share will continue to receive the standard rebate applicable to executions of such orders on the Exchange (*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 rebate would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that the proposed standard rebate is comparable to, and competitive with, the standard rebates provided by at least one other exchange for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity.²⁷

Lastly, the Exchange proposes to add a note to the Fee Schedule specifying that to the extent a Member qualifies for multiple fees/rebates with respect to a particular

²⁶ This proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume" and such orders will continue to receive a Fee Code of "B", "D" or "J", as applicable, assigned by the Exchange.

²⁷ See the MIAX PEARL, LLC equities trading fee schedule on its public website (available at https://www.miaxoptions.com/sites/default/files/fee_schedule_files/MIAX_PEARL_Equities_Fee_Schedule_01012021.pdf), which reflects a standard rebate of \$0.0032 per share to add displayed liquidity in Tape A and Tape C securities priced at or above \$1.00 per share and a standard rebate of \$0.0035 per share to add displayed liquidity in Tape B securities priced at or above \$1.00 per share.

transaction, the lowest fee/highest rebate shall apply. The Exchange notes that charging the fee or providing the rebate that is most favorable with respect to a particular transaction is consistent with the pricing practices of other exchanges.²⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁹ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,³⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

²⁸ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/), which provides “To the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply.”

²⁹ 15 U.S.C. 78f.

³⁰ 15 U.S.C. 78f(b)(4) and (5).

in promoting market competition in its broader forms that are most important to investors and listed companies.”³¹

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 that the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, to enhance market quality in both a broad manner and in a targeted manner with respect to the DLI Target Securities, and to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO through the provision of enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and for executions of Added Midpoint Volume. While the Exchange has proposed increasing its standard fee for executions of Removed Volume and reducing its standard rebate for executions of Added Displayed Volume, as further discussed below, each of such changes represents a modest increase (decrease) from the current fee (rebate) applicable to such executions.

As noted above, the proposed DLI is intended to encourage Members to promote

³¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, generally, and in the DLI Target Securities, in particular, thereby benefitting the Exchange and other 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. Additionally, the Exchange believes the proposed enhanced rebate for all executions of a qualifying Member's Added Displayed Volume will simultaneously incentivize such Member to direct additional displayed liquidity-providing orders to the Exchange in a more general manner to receive such enhanced rebate. Thus, the Exchange believes that the proposed DLI will promote price discovery and market quality in the DLI Target Securities and more generally on the Exchange, and, further, that the resulting tightened spreads and increased displayed liquidity will benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, enhancing quoting competition across exchanges, and promoting market transparency.

The Exchange believes the proposed enhanced rebate of \$0.0036 per share provided to Members that qualify for the DLI for executions of Added Displayed Volume is reasonable, in that it does not reflect a disproportionate increase above the proposed standard rebate of \$0.0031 per share provided to all Members with respect to the provision of displayed liquidity. The Exchange notes that the \$0.0005 additional rebate for such executions for qualifying Members is a competitive proposal given that it is higher than the additional rebates provided by other exchanges for executions of

displayed liquidity-providing orders for market participants that meet minimum quoting standards under similar programs designed to enhance market quality.³² In addition, the Exchange believes that it is reasonable and consistent with an equitable allocation of fees to pay a higher rebate for executions of Added Displayed Volume to Members that qualify for the DLI because of the additional commitment to market quality reflected in the associated quoting requirements. Such Members benefit all investors by promoting price discovery and increasing the depth of liquidity available at the NBBO and also benefit the Exchange itself by enhancing its competitiveness as a market that attracts actionable orders. Further, the Exchange notes that the proposed DLI would apply uniformly to all Members, and any Member may choose to qualify for the DLI by meeting the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange. The Exchange acknowledges that firms that do not post displayed liquidity on the Exchange or do so on a smaller scale may not have the level of capital necessary to support meeting the proposed DLI's requirements, however, the Exchange believes that the requirements are attainable for many market participants who do actively quote on exchanges and are reasonably related to the enhanced market quality that the DLI is designed to promote. Additionally, the Exchange notes that Members that do not meet the proposed DLI's requirements may still qualify for a rebate that is higher than the standard rebate for executions of Added Displayed Volume through the proposed Liquidity Provision Tier, which does not require a Member to consistently quote at the NBBO across a broad range of securities. Accordingly, the Exchange believes that it is consistent with an equitable allocation of

³² See supra note 17.

fees and is not unfairly discriminatory to pay a higher rebate in comparison with the rebate paid to other Members for executions of displayed liquidity-providing orders in recognition of these benefits to the Exchange and market participants, particularly as the magnitude of the additional rebate is not unreasonably high and is, instead, reasonably related to such enhanced market quality.

The Exchange also believes that including in the proposed DLI qualification criteria a quoting requirement for certain specified securities (i.e., the DLI Target Securities), in addition to the more general 250 securities requirement, is equitable and not unfairly discriminatory because the Exchange has identified the DLI Target Securities as securities in which it would like to inject additional quoting competition, which the Exchange believes will generally act to narrow spreads, increase size at the NBBO, and increase liquidity depth in such securities, thereby increasing the attractiveness of the Exchange as a destination venue with respect to such securities. Accordingly, the Exchange believes that this aspect of the proposal is reasonable, equitably allocated, and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

Furthermore, as noted above, the proposed DLI is similar in structure and purpose to pricing programs in place at other exchanges that are designed to enhance market quality.³³ Specifically, these programs, like the proposed DLI, provide a higher rebate for executions of liquidity-adding displayed orders for members that achieve minimum quoting standards, including minimum quoting at the NBBO in a large number of

33

Id.

securities, generally, or certain designated securities, in particular.³⁴ The Exchange also notes that the proposed DLI is not dissimilar from volume-based rebates and fees (“Volume Tiers”), like the Liquidity Provision Tier proposed in this filing, which have been widely adopted by exchanges³⁵ and are equitable and not unfairly discriminatory because they are generally open to all members on an equal basis and provide higher rebates and/or lower fees that are reasonably related to the value to an exchange’s market quality. Much like Volume Tiers are generally designed to incentivize higher levels of liquidity provision, the proposed DLI is designed to incentivize enhanced market quality on the Exchange through tighter spreads, greater size at the NBBO, and greater quoting depth in a large number of securities, generally, and in the DLI Target Securities, in particular, through the provision of an enhanced rebate for all executions of a qualifying Member’s Added Displayed Volume, where such rebate will in turn incentivize higher levels of displayed liquidity provision in a general manner. Accordingly, the Exchange believes that the proposed DLI would act to enhance liquidity and competition across exchanges in the DLI Target Securities and enhance liquidity provision in all securities on the Exchange more generally by providing a rebate reasonably related to such enhanced market quality to the benefit of all investors, thereby promoting the principles discussed in Sections 6(b)(4) and 6(b)(5) of the Act.³⁶

³⁴ Id.

³⁵ See, e.g., the Cboe BZX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/); the Cboe EDGX equities trading fee schedule on its public website (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/).

³⁶ 15 U.S.C. 78f(b)(4) and (5).

The Exchange also believes that adding to the Fee Schedule the notes describing the calculation methodologies and criteria for determining whether a Member satisfies the requirements to qualify for the DLI, as well as the definitions of terms that are used in these notes, is reasonable, equitable, and non-discriminatory because these notes and definitions are designed to ensure that the Fee Schedule is as clear and easily understandable as possible with respect to the requirements of the proposed DLI. Additionally, the Exchange believes that excluding Exchange System Disruption Days and the Russell Reconstitution Day when determining whether a Member qualifies for the proposed DLI during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed DLI due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives.³⁷

As noted above, Volume Tiers, like the Liquidity Provision Tier proposed in this filing, have been widely adopted by exchanges³⁸ and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates 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

³⁷ See supra note 14.

³⁸ See supra note 35.

introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes the proposed Liquidity Provision Tier is equitable and not unfairly discriminatory for these same reasons, as it is open to all Members and is designed to encourage Members that provide liquidity on the Exchange to maintain or increase their order flow in this regard, 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. Additionally, the Exchange believes the proposed enhanced rebate for executions of Added Displayed Volume for qualifying Members (i.e., \$0.00335 per share) is reasonable, in that it represents only a modest increase above the proposed standard rebate for such executions (i.e., \$0.0031 per share) as well as a modest decrease from the current standard rebate for such executions (i.e., \$0.0034 per share). Thus, the Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to pay such higher rebate for executions of Added Displayed Volume to Members that qualify for the Liquidity Provision Tier in comparison with the standard rebate in recognition of benefits to the Exchange and market participants described above, particularly as the magnitude of the additional rebate is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. The Exchange further believes that such rebate is reasonable as it offers an alternative way for Members that do not meet the proposed DLI's requirements to qualify for a rebate that is higher than the proposed standard rebate for executions of Added Displayed Volume that does not require such Members to consistently quote at the NBBO across a broad range of securities.

Additionally, the Exchange believes that excluding Exchange System Disruption

Days and the Russell Reconstitution Day when determining whether a Member qualifies for the proposed Liquidity Provision Tier during a month is reasonable, equitable, and non-discriminatory because, as explained above, the Exchange believes doing so would help to avoid penalizing Members that might otherwise have met the requirements to qualify for the proposed Liquidity Provision Tier due to Exchange system disruptions and/or abnormal market conditions. The Exchange notes that the exclusion of Exchange System Disruption Days and the Russell Reconstitution Day is consistent with the methodologies used by other exchanges when calculating certain member trading and other volume metrics for purposes of determining whether members qualify for certain pricing incentives, including calculations of ADAV for Volume Tiers specifically.³⁹

With respect to the proposed enhanced rebate for executions of Added Midpoint Volume, the Exchange believes that providing a rebate for such executions that is higher than the standard rebate for executions of other non-displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange is reasonable as the Exchange believes this would encourage Members that provide liquidity through non-displayed orders to do so, to a greater extent, through orders designed to execute at the midpoint of the NBBO. Because such orders provide price improvement to the benefit of other market participants, the Exchange believes it is reasonable and consistent with an equitable allocation of fees to provide an enhanced rebate to encourage their use, while still maintaining an overall pricing structure that places even greater emphasis on the value of displayed liquidity in advancing transparency and price discovery. The Exchange further believes the proposed enhanced rebate is reasonable because, as noted

³⁹ See supra note 14.

above, it is comparable to, and competitive with, the rebate provided by at least one other exchange for executions of non-displayed orders in securities priced at or above \$1.00 per share that are pegged to the midpoint of the NBBO.⁴⁰ The Exchange also believes this proposed enhanced rebate is not unfairly discriminatory as it would apply equally to all Members and the elements of differentiation between displayed and non-displayed liquidity and orders designed to execute at the midpoint of the NBBO and other non-displayed orders promote the goals of price discovery and encouraging market participants to provide price improvement.

The Exchange believes that the proposed changes to increase the standard fee for executions of Removed Volume and 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 to offset some of the costs associated with the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and executions of Added Midpoint Volume, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange also believes the proposed increased standard fee for executions of Removed Volume is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains lower than the fee to remove liquidity in securities priced at or above \$1.00 charged by several other

⁴⁰ See supra note 23.

exchanges.⁴¹ Similarly, the Exchange believes the proposed reduced standard rebate for executions of Added Displayed Volume is reasonable and appropriate because it represents a modest decrease from the current standard rebate and, as noted above, remains comparable to, and competitive with, the standard rebates provided by at least one other exchange for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity.⁴² The Exchange further believes that the proposed increased standard fee 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.

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 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.

Finally, the Exchange believes that the proposed change to add a note on the Fee Schedule specifying that to the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply is reasonable, equitable, and non-discriminatory because it applies uniformly to all Members and is

⁴¹ See supra note 25.

⁴² See supra note 27.

designed to clarify for Members which fee or rebate is applicable to their transactions. Thus, Exchange believes that this proposed change will make the Fee Schedule clearer and eliminate potential confusion in this regard, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. Further, as noted above, this practice is consistent with the pricing practices of other exchanges.⁴³

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 designed to enhance market quality on the Exchange in a large number of securities, generally, and in the DLI Target Securities, in particular, to encourage Members to maintain or increase their order flow, 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, and to encourage Members to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO. In turn, the Exchange believes the proposed enhanced rebates for executions of Added Displayed Volume for Members that qualify for the DLI or the Liquidity Provision Tier and for executions of Added Midpoint Volume would encourage the submission of additional order flow to the Exchange, particularly in the form of Added Displayed Volume and Added Midpoint Volume, thereby promoting market depth, enhanced execution opportunities, price improvement, and price discovery to the benefit of all Members and market participants. As a result,

⁴³ See supra note 28.

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."⁴⁴

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 maintain or increase their order flow, 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, and to provide price improvement through the use of orders that are designed to execute at the midpoint of the NBBO, which the Exchange believes, in turn, would continue to encourage participants to direct order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the DLI, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume, would be available to all Members that meet the associated requirements in any month, regardless of the volume of transactions that it executes on the Exchange, and as noted above, the Exchange believes that the DLI's requirements are attainable for many

⁴⁴ See supra note 31.

market participants who actively quote on exchanges and are reasonably related to the enhanced market quality that the DLI is designed to promote. Similarly, the opportunity to qualify for the Liquidity Provision Tier, and thus also receive an enhanced rebate for executions of Added Displayed Volume (albeit a rebate lower than that provided for Members who qualify for the DLI), would be available to all Members that meet the associated volume requirement in any month. The Exchange believes the volume requirement of the Liquidity Provision Tier is attainable for several market participants who add displayed liquidity executed on the Exchange and is reasonably related to the enhanced market quality that the Liquidity Provision Tier is designed to promote. Similarly, the proposed enhanced rebate for executions of Added Midpoint Volume, the proposed increased standard fee 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

The Exchange operates in a highly competitive market. 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, Added Midpoint 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 certain order flow to be sent to the Exchange and to promote market quality through pricing incentives that are similar in structure and purpose to pricing programs in place at other exchanges.⁴⁵ 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.

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

⁴⁵ See supra notes 17, 23, and 35.

and listed companies.”⁴⁶ 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’....”⁴⁷ 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 Act⁴⁸ and Rule 19b-4(f)(2)⁴⁹ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the

⁴⁶ See supra note 31.

⁴⁷ 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)).

⁴⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁹ 17 CFR 240.19b-4(f)(2).

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-2021-07 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-2021-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2021-07 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.⁵⁰

⁵⁰ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; Proposed deletions are in [brackets].

MEMX Fee Schedule
(EFFECTIVE [FEBRUARY]JUNE 1, 2021)

Transaction Fees

MEMX Members are charged per share fees or provided per share rebates based on shares executed within each of the fee code categories below.

Fee Code	Description	Fee/(Rebate) - Securities at or above \$1.00 ("A")	Fee/(Rebate) - Securities below \$1.00 ("B")
B, D or J	Added displayed volume	\$(0.0031[4])	(0.05% of total dollar value)
<u>B1, D1 or J1</u>	<u>Added displayed volume, Liquidity Provision Tier</u>	<u>\$(0.00335)</u>	<u>(0.05% of total dollar value)</u>
<u>Bq, Dq or Jq</u>	<u>Added displayed volume, DLI</u>	<u>\$(0.0036)</u>	<u>(0.05% of total dollar value)</u>
Br, Dr or Jr	Added displayed volume, Retail Order	\$(0.0037)	(0.05% of total dollar value)
H[or M]	Added non-displayed volume	\$(0.0020)	(0.05% of total dollar value)
<u>M</u>	<u>Added non-displayed volume, Midpoint Peg</u>	<u>\$(0.0025)</u>	<u>(0.05% of total dollar value)</u>
R	Removed volume from MEMX Book	\$0.00265	0.05% of total dollar value
Z	Routed to another market, removed liquidity	\$0.0030	0.30% of total dollar value

Notes:

- To the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply.
- "ADAV" means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.
- The Exchange excludes from its calculation of ADAV and for purposes of determining qualification for the Displayed Liquidity Incentive: (1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during

regular trading hours; and (2) the day that Russell Investments reconstitutes its family of indexes (i.e., the last Friday in June).

- The Reserve Quantity of an order is treated as adding displayed volume, and thus, the rebate for adding displayed volume applies to any Reserve Quantity of an order.

Liquidity Provision Tier

A Member with an ADAV of 15,000,000 shares or more will receive a rebate of \$0.00335 per share for executions of added displayed volume in securities priced at or above \$1.00 per share, with a Fee Code of B1, D1 or J1.

Displayed Liquidity Incentive

A Member that qualifies for the Displayed Liquidity Incentive (“DLI”) will receive the “Added displayed volume, DLI” rebate set forth in the table above, with a Fee Code of Bq, Dq or Jq, for executions of added displayed volume in securities priced at or above \$1.00 per share.

Definitions and Notes

A Member will qualify for the DLI if the Member’s NBBO Time is 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.

For purposes of this section, the terms set forth below shall have the following meanings:

1. The term “MPID” shall mean market participant identifier.
2. The term “DLI Target Securities” shall mean a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange’s website.
3. The term “NBBO Time” shall mean the aggregate of the percentage of time during regular trading hours during which one of a Member’s MPIDs has a displayed order of at least one round lot at the national best bid or the national best offer.
4. The term “quoting requirement” shall mean the requirement that a Member’s NBBO Time be at least 25%.
5. The term “regular trading hours” shall mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when the securities markets close early.
6. The term “securities requirement” shall mean the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day.

On a daily basis, MEMX will determine the number of securities in which each of a Member's MPIDs meets the quoting requirement for that day. MEMX will aggregate the number of securities in which each of a Member's MPIDs meets the quoting requirement to determine the number of securities in which such Member meets the quoting requirement for that day, provided that a single security in which more than one of such Member's MPIDs meets the quoting requirement for that day will only be counted once for this purpose. The quoting requirement with respect to a security must be met by a single MPID and MEMX will not aggregate the NBBO Time across all of a Member's MPIDs to determine if the quoting requirement has been met.

In order to determine whether a Member meets the applicable securities requirements during a month, the average number of securities in which such Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which each of such Member's MPIDs met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.

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