1.   Text of the Proposed Rule Change

(a)   MEMX LLC ("MEMX" or the "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to establish a Retail Midpoint Liquidity Program.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1, and 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
General Counsel   Counsel
MEMX LLC   MEMX LLC
(551) 370-1003   (551) 370-1042

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

a.   Purpose

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

[2]   17 CFR 240.19b-4.

Background

The Exchange proposes to adopt new Exchange Rule 11.22 to establish a Retail Midpoint Liquidity Program (the "RML Program"). As proposed, the RML Program is designed to provide retail investors with meaningful price improvement opportunities by executing at the midpoint of the national best bid and offer ("NBBO") such that Users[3] will be incentivized to direct additional orders designed to execute at the midpoint of the NBBO (the "Midpoint Price") to the Exchange to interact with orders that originate from retail investors that are also designed to execute at the Midpoint Price.

As former Commission Chairman Jay Clayton noted in a 2018 speech, forty-three million U.S. households hold a retirement or brokerage account, with $3.6 trillion in balance sheet assets in 128 million customer accounts serviced by more than 2,800 registered broker-dealers.[4] He also noted the importance of continued broad, long-term retail participation in our capital markets, and that retail investors count on the capital markets to fund major life events such as paying for their children's higher education or funding their own retirements.[5]

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[3]   As defined in Exchange Rule 1.5(jj), a "User" is a member of the Exchange ("Member") or sponsored participant of a Member who is authorized to obtain access to the System pursuant to Exchange Rule 11.3. The term "System" refers to the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing. See Exchange Rule 1.5(gg).

[4]   See The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice, Chairman Jay Clayton, Commission (May 2, 2018), available at https://www.sec.gov/news/speech/speech-clayton-2018-05-02.

[5]   Id.

Against this backdrop, the RML Program is designed to provide retail investors

with access to a pool of midpoint liquidity on the Exchange by introducing a new

mechanism for retail-oriented liquidity provision, thereby providing enhanced

opportunities for meaningful price improvement at the Midpoint Price for retail investors.

The Exchange believes that introducing the RML Program could provide retail investors

with a competitive alternative to existing exchange and over-the-counter ("OTC") retail

programs, by attracting counterparty liquidity to the Exchange from Users and their

clients seeking to interact with retail liquidity. The Exchange understands that many

professional market participants, such as market makers, view interacting with orders of

retail investors as more desirable than interacting with orders of other professional market

participants. For example, as the Commission staff noted in a 2016 memorandum to the

Equity Market Structure Advisory Committee ("EMSAC Memorandum"), "[m]arket

makers are interested in retail customer order flow because retail investors are, on

balance, less informed than other traders about short-term price movements…[and

t]rading against retail customer order flow enables market makers to avoid adverse

selection by informed professional traders and to more reliably profit from market-

making activity."[6] Consistent with the EMSAC Memorandum's conclusions, and based

on informal discussions with market participants and the knowledge and experience of its

staff, the Exchange believes that market makers and other sophisticated market

participants generally value interacting with retail orders because they are smaller and not

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[6]   See January 26, 2016 Memorandum entitled "Certain Issues Affecting Customers
        in the Current Equity Market Structure" from the staff of the Commission's
        Division of Trading and Markets, available at
        https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-
        emsac-012616.pdf.

likely to be part of a larger parent order that can move a stock price, causing a loss to the

market maker. The proposed rule change thus seeks to provide enhanced price

improvement opportunities for retail customers by incentivizing Users and their clients to

provide price-improving liquidity to interact with the orders of retail investors. The RML

Program would therefore be consistent with the goals of the Commission to encourage

markets that are structured to benefit ordinary investors,[7] while facilitating order

interaction to the benefit of all market participants.

As proposed, through the RML Program, the Exchange would enable Retail

Member Organizations[8] to submit a new type of Retail Order designed to execute at the

Midpoint Price (i.e., a Retail Midpoint Order, described below) to the Exchange, and any

User would be permitted to provide price improvement to such order in the form of

another new order type that is designed to execute at the Midpoint Price and that is only

eligible to execute against a Retail Midpoint Order (i.e., an RML Order, described

below). The Exchange expects that the introduction of Retail Midpoint Orders and RML

Orders, through the proposed RML Program, would result in a balanced mix of retail

brokerage firms and their wholesaling partners submitting Retail Midpoint Orders to the

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[7]   See, e.g., U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years
        2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-
        FY22_FINAL_0.pdf ("Commission Strategic Plan").

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

Exchange to access the additional midpoint liquidity provided by RML Orders that the Exchange anticipates resulting from the RML Program.

The Exchange notes that the proposed RML Program is comparable in purpose and effect to the Investors Exchange LLC ("IEX") Retail Price Improvement Program (the "IEX Retail Program"), which is also designed to provide retail investors with meaningful price improvement opportunities.[9] Further, the Commission recently approved several changes to the IEX Retail Program that make certain features of the IEX Retail Program substantially similar to proposed features of the RML Program.[10] The Exchange will describe certain differences between the proposed RML Program and the IEX Retail Program under the appropriate headings below.

The Exchange will submit a separate proposal to amend its Fee Schedule in connection with the proposed RML Program. Under that proposal, the Exchange expects to provide free executions or charge a fee to Users for executions of their RML Orders against Retail Midpoint Orders, and in turn would provide a rebate or free executions to RMOs for executions of their Retail Midpoint Orders against RML Orders.

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[9]   See IEX Rule 11.232; see also Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR-IEX-2021-06) (order approving changes to the IEX Retail Program including dissemination of a retail liquidity identifier and limiting IEX Retail Liquidity Provider orders to midpoint peg orders) (the "IEX Retail Approval Order"). The Exchange notes that the IEX Retail Program, as amended, supports executions of retail orders described in IEX Rule 11.190(b)(15) ("IEX Retail Orders") at the Midpoint Price as well as prices that are different than the Midpoint Price in certain limited circumstances. While the Exchange's proposed new order types under the RML Program would only be eligible to execute at the Midpoint Price, as further described below, the Exchange notes that Retail Orders would still be eligible to execute at prices that are different than the Midpoint Price outside of the RML Program as they are today.

[10]   See IEX Retail Approval Order, supra note 9.

Definitions

The Exchange proposes to adopt the following definitions under paragraph (a) of

proposed Exchange Rule 11.22 (Retail Midpoint Liquidity Program). First, the term

"Retail Midpoint Order" would be defined as a Retail Order submitted by an RMO that is

a Pegged Order[11] with a Midpoint Peg[12] instruction ("Midpoint Peg Order") and that is

only eligible to execute against RML Orders (a proposed new order type described

below), and other orders priced more aggressively than the Midpoint Price, through the

execution process described in proposed Exchange Rule 11.22(c). As proposed, a Retail

Midpoint Order must have a time-in-force ("TIF") instruction of IOC.[13]

Second, the term "Retail Midpoint Liquidity Order" or "RML Order" would be

defined as a Midpoint Peg Order that is only eligible to execute against Retail Midpoint

Orders through the execution process described in proposed Exchange Rule 11.22(c). As

proposed, an RML Order must have a TIF instruction of Day,[14] RHO,[15] or GTT[16] and

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[11]   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 NBBO.

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

[13]   "IOC" is an instruction the User may attach to an order stating the order is to be executed in whole or in part as soon as such order is received, and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the MEMX Book. See Exchange Rule 11.6(o)(1). The term "MEMX Book" refers to the System's electronic file of orders. See Exchange Rule 1.5(q).

[14]   See Exchange Rule 11.6(o)(2).

[15]   See Exchange Rule 11.6(o)(5).

[16]   See Exchange Rule 11.6(o)(4).

may not include a Minimum Execution Quantity[17] instruction. Any User would be

permitted, but not required, to submit RML Orders. Additionally, the Exchange proposes

that a User may, but is not required to, designate an RML Order to be identified as RML

Order interest ("RML Interest") for purposes of the Retail Liquidity Identifier pursuant to

proposed Exchange Rule 11.22(b) (such RML Interest is sometimes referred to herein as

"designated RML Interest"), as further described below, by including a Displayed

instruction.[18] A User would be able to designate RML Interest for this purpose on an

order-by-order basis or on a port-by-port basis. The Exchange notes that, except with

respect to a User's ability to elect whether to designate an RML Order to be identified as

such for purposes of the Retail Liquidity Identifier, an RML Order is substantially similar

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[17]   The Minimum Execution Quantity instruction is described in Exchange Rule
        11.6(f) and is generally defined as an instruction a User may attach to an order
        with a Non-Displayed instruction or a TIF of IOC instruction requiring the
        System to execute the order only to the extent that a minimum quantity can be
        satisfied. A Non-Displayed instruction is an instruction a User may attach to an
        order stating that the order is not to be displayed by the System on the MEMX
        Book. See Exchange Rule 11.6(c)(2).

[18]   A Displayed instruction is an instruction a User may attach to an order stating that
        the order is to be displayed by the System on the MEMX Book. See Exchange
        Rule 11.6(c)(1). Under Exchange Rule 11.8(c)(3), Pegged Orders, including
        Midpoint Peg Orders, are not eligible to include a Displayed instruction; however,
        as proposed, an RML Order would be eligible to include a Displayed instruction,
        which would be for the sole purpose of indicating to the Exchange that the User
        has designated the RML Order to be identified as RML Interest for purposes of
        the Retail Liquidity Identifier pursuant to proposed Exchange Rule 11.22(b), and
        inclusion of the Displayed instruction would not indicate to the Exchange that the
        RML Order is to be displayed by the System on the MEMX Book. The
        Exchange's proposal to permit Users to include a Displayed instruction for an
        RML Order for this purpose is purely to facilitate the implementation of the Retail
        Liquidity Identifier by using an existing but otherwise inapplicable instruction
        type (i.e., the Displayed instruction), and the System will otherwise handle an
        RML Order with a Displayed instruction as if no Displayed instruction was
        included.

in effect to IEX's Retail Liquidity Provider Order ("IEX RLP Order") offered under the

IEX Retail Program, in that an RML Order is an order that is designed to execute at the

Midpoint Price, is only eligible to execute against retail order interest, and may be

submitted by any User.[19]

As further described below, Retail Midpoint Orders and RML Orders would only

be eligible to execute at the Midpoint Price. Additionally, as reflected in the proposed

definitions of Retail Midpoint Order and RML Order, such orders would only be eligible

to execute against each other with the exception that a Retail Midpoint Order would also

be eligible to execute against other orders in certain limited circumstances (i.e., against

displayed odd lot orders and/or non-displayed orders priced more aggressively than the

Midpoint Price resting on the MEMX Book) pursuant to proposed Exchange Rule

11.22(c)(2), as further described below. The purpose of limiting Retail Midpoint Orders

and RML Orders to interacting with each other (subject to the exception of Retail

Midpoint Orders being eligible to execute against other orders priced more aggressively

than the Midpoint Price) is that the proposed RML Program is designed to provide a

mechanism whereby liquidity-providing Users can provide price-improving liquidity at

the Midpoint Price specifically to retail investors, and liquidity-removing RMOs

submitting orders on behalf of retail investors can interact with such price-improving

liquidity at the Midpoint Price, in a deterministic manner. The Exchange notes that this

aspect of the proposed RML Program is partially different than the IEX Retail Program.

Like an IEX RLP Order, which is only eligible to execute against IEX Retail Orders, the

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[19]   See IEX Rule 11.190(b)(14), which describes the IEX RLP Order. See also IEX
        Retail Approval Order, supra note 9.

Exchange's proposed RML Order would only be eligible to execute against Retail

Midpoint Orders. However, an IEX Retail Order is generally eligible to execute against

order types other than an IEX RLP Order,[20] whereas the Exchange's proposed Retail

Midpoint Order would be generally limited to executing against RML Orders (subject to

the exception of Retail Midpoint Orders being eligible to execute against other orders

priced more aggressively than the Midpoint Price). While this aspect of the Exchange's

proposal differs from the IEX Retail Program, the Exchange notes that the concept of an

order type that is limited to interacting with a specific contra-side order type has

previously been approved by the Commission both in the context of liquidity-providing

orders for retail programs[21] and in other contexts.[22] The Exchange believes the proposed

Retail Midpoint Order is analogous to such order types even though a Retail Midpoint

Order would be eligible to execute against non-RML Orders where such orders are priced

more aggressively than the Midpoint Price because orders priced more aggressively than

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[20]   See IEX Rule 11.232(e)(3), which describes the priority and order execution
         processes for IEX Retail Orders and provides that such orders are eligible to
         execute against order types other than an IEX RLP Order in certain
         circumstances, including against other orders during a locked or crossed market,
         against displayed odd lot orders priced at or better than the Midpoint Price, and
         against other non-displayed interest at the Midpoint Price.

[21]   See, e.g., IEX Rule 11.190(b)(14), which states that an IEX RLP Order is only
         eligible to execute against IEX Retail Orders; Nasdaq PSX Rule 4702(b)(5)(A),
         which states that on Nasdaq PSX a Retail Price Improving Order may only
         execute against a Retail Order.

[22]   See, e.g., Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR
         10937 (March 13, 2018) (SR-NASDAQ-2017-074) (Order Granting Accelerated
         Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and
         3, to Adopt the Midpoint Extended Life Order) (the "MELO Approval Order").
         As set forth in the MELO Approval Order, Nasdaq originally allowed executions
         of Midpoint Extended Life Orders ("MELOs") only against other eligible
         MELOs. Pursuant to Rule 4702(b)(14)(A) Nasdaq today allows executions of
         MELOs only against eligible MELOs and MELO+CB orders.

the Midpoint Price comprise only a small amount of the Exchange's volume of orders,

and thus, the Exchange expects that Retail Midpoint Orders would mostly interact with

RML Orders. Moreover, the Exchange generally expects RMOs to submit Retail

Midpoint Orders when the Retail Liquidity Identifier is disseminated, which indicates

that there is available RML Interest of at least one round lot on the MEMX Book, and

generally does not expect RMOs to submit Retail Midpoint Orders when the Retail

Liquidity Identifier is not disseminated or otherwise to specifically seek to interact with

other orders priced more aggressively than the Midpoint Price, particularly as any such

orders would be either non-displayed (and therefore not known to the RMO) or less than

a round lot in size, and RMOs could still submit Retail Orders to interact with such

liquidity using an order type other than the Retail Midpoint Order as they can today.

As Retail Midpoint Orders and RML Orders are types of Pegged Orders, and are

designed to execute on the Exchange against each other, such orders would not be

eligible for routing.[23]

<div align="center">Retail Liquidity Identifier</div>

Under the RML Program, the Exchange proposes to disseminate a Retail

Liquidity Identifier through the Exchange's proprietary market data feeds, MEMOIR

Depth[24] and MEMOIR Top,[25] and the appropriate securities information processor

("SIP") when designated RML Interest aggregated to form at least one round lot for a

particular security is available in the System ("Retail Liquidity Identifier"), provided that

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[23]   See Exchange Rule 11.8(c)(5), which provides that Pegged Orders are not eligible for routing.

[24]   See Exchange Rule 13.8(a).

[25]   See Exchange Rule 13.8(b).

such designated RML Interest is resting at the Midpoint Price and is priced at least

$0.001 better than the national best bid ("NBB") or national best offer ("NBO").

The purpose of the Retail Liquidity Identifier is to provide relevant market

information to RMOs that there is available RML Interest on the Exchange, thereby

incentivizing them to send Retail Midpoint Orders to the Exchange seeking execution at

the Midpoint Price. The Retail Liquidity Identifier would reflect the symbol and the side

(buy and/or sell) of the designated RML Interest but would not include the price or size.

The Exchange does not believe that such market information constitutes a "quote" within

the meaning of Regulation NMS because it does not include a specific price or size of the

interest; alternatively, if such information is deemed a quote, the Exchange believes that

an exemption from applicable rules would be appropriate.[26] While an explicit price

would not be disseminated, because RML Orders are only eligible to execute at the

Midpoint Price, dissemination of the Retail Liquidity Identifier would thus reflect the

availability of price improvement at the Midpoint Price.[27]

As noted above, the Exchange would only disseminate the Retail Liquidity

Identifier when designated RML Interest would provide at least $0.001 of price

improvement, which is consistent with the rules of the other exchanges that disseminate

Retail Liquidity Identifiers[28] as well as the SIP Plans' requirements.[29] Because RML

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[26]   The Exchange plans to submit a letter requesting no-action or exemptive relief
         from obligations set forth in Rule 602 of Regulation NMS.

[27]   The Exchange notes that this aspect of the proposed Retail Liquidity Identifier is
         the same as the Retail Liquidity Identifier disseminated by IEX under the IEX
         Retail Program that was recently approved by the Commission. See IEX Rule
         11.232(f); see also IEX Retail Approval Order, supra note 9, at 38167.

[28]   See, e.g., IEX Rule 11.232(f), Cboe BYX Rule 11.24(e), and NYSE Arca Equities

Orders are proposed to be only Midpoint Peg Orders, they will always represent at least

$0.001 price improvement over the NBB or NBO, with two exceptions: (1) in a locked or

crossed market; and (2) a sub-dollar quote when the security's spread is less than

$0.002.[30] Under Exchange Rule 11.8(c)(6), a Pegged Order resting on the MEMX Book

is not eligible for execution when the market is locked or crossed; thus, an RML Order

would not be eligible for execution when the market is locked or crossed and would rest

on the MEMX Book and become eligible for execution again when the market ceases to

be locked or crossed.[31] Because an RML Order would not be eligible for execution when

the market is locked or crossed, such order would not provide any price improvement to

an incoming Retail Midpoint Order (i.e., would not be priced at least $0.001 better than

the NBB or NBO) and therefore would not comprise eligible RML Interest for purposes

of the Retail Liquidity Identifier. Similarly, when a particular security is priced less than

$1.00 per share, its MPV is $0.0001, so the Midpoint Price will not always represent at

least $0.001 in price improvement.[32] Therefore, the Exchange would only disseminate

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Rule 7.44(j).

[29]   See January 26, 2021 CQS Participant Input Binary Specification Version 2.6a,
available at
https://www.ctaplan.com/publicdocs/ctaplan/CQS_Pillar_Input_Specification.pdf
and May 2020 UTP Data Feed Services Specification Version 1.5, available at
https://www.utpplan.com/DOC/UtpBinaryOutputSpec.pdf.

[30]   The Minimum Price Variation ("MPV") for bids, offers, or orders in securities
priced less than $1.00 per share is $0.0001. See Exchange Rule 11.6(g).

[31]   See Exchange Rule 11.8(c)(6).

[32]   For example, if a security's NBB is $0.505 and NBO is $0.506, the Midpoint
Price would be $0.5055, which is $0.0005 more than the NBB and less than the
NBO, so it would not represent at least $0.001 price improvement over the NBB
or NBO, and therefore would not comprise eligible RML Interest for purposes of
the Retail Liquidity Identifier.

the Retail Liquidity Identifier for sub-dollar securities if the spread in the security is greater than or equal to $0.002, meaning the Midpoint Price represents at least $0.001 price improvement over the NBB or NBO. With respect to the requirement that an RML Order must be resting at the Midpoint Price in order to be included in the designated RML Interest to be disseminated pursuant to the Retail Liquidity Identifier, the Exchange notes that an RML Order could have a limit price that is less aggressive than the Midpoint Price in which case it would not be eligible to trade with an incoming Retail Midpoint Order and therefore should not be included for purposes of Retail Liquidity Identifier dissemination since it would not reflect interest available to trade with Retail Midpoint Orders. The Exchange notes that not including: (1) RML Interest for a security when the market for the security is locked or crossed; (2) RML Interest for a sub-dollar security if the spread in the security is greater than or equal to $0.002; and (3) RML Interest that is not resting at the Midpoint Price (i.e., RML Interest that is constrained by a limit price that is less aggressive than the Midpoint Price), for purposes of Retail Liquidity Identifier dissemination is consistent with the Retail Liquidity Identifier disseminated by IEX under the IEX Retail Program.[33]

The Exchange also proposes to remove the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against Retail Midpoint Orders have depleted the available designated RML Interest such that the remaining designated RML Interest does not aggregate to form at least one round lot, or in situations where there is no actionable

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[33]   See IEX Rule 11.232(f); see also IEX Retail Approval Order, supra note 9, at 38167.

RML Interest (such as when the market is locked or crossed), in order to indicate to

market participants that there is no longer designated RML Interest of at least one round

lot available. The Exchange believes that removing the Retail Liquidity Identifier on the

market data feeds and SIP when there is not sufficient eligible RML Interest available is

consistent with the implementation of the other exchanges that disseminate Retail

Liquidity Identifiers.

As described above, the Exchange's proposed Retail Liquidity Identifier is

substantially similar to IEX's Retail Liquidity Identifier. However, the Exchange notes

one key distinction – the Exchange would enable a User to elect whether to designate an

RML Order to be identified as such for purposes of the Retail Liquidity Identifier.

Similar to the proposed RML Program, under the IEX Retail Program, eligible IEX RLP

Order interest that is aggregated to form at least one round lot is required to cause the

dissemination of the Retail Liquidity Identifier. Under the IEX Retail Program, a User is

not able to elect whether an IEX RLP Order is to be identified as such for purposes of the

Retail Liquidity Identifier, and thus, all IEX RLP Order interest is included in

determining whether there is a sufficient amount of IEX RLP Order interest (i.e., one

round lot) to cause the dissemination of the Retail Liquidity Identifier. In contrast, under

the proposed RML Program, a User may, but is not required to, designate an RML Order

to be identified as such for purposes of the Retail Liquidity Identifier. Therefore, a User

would be able to elect whether an RML Order that it submits will be included in

determining whether there is a sufficient amount of RML Interest (i.e., one round lot) to

cause the dissemination of the Retail Liquidity Identifier (i.e., whether it constitutes

designated RML Interest).[34]

     As further described below, RML Orders that are designated to be identified as

such for purposes of the Retail Liquidity Identifier would receive execution priority

ahead of RML Orders that are not designated to be identified as such. The Exchange

believes that providing Users with the optionality to designate their RML Orders to be

identified as such for purposes of the Retail Liquidity Identifier is appropriate because

some Users submitting RML Orders may be concerned with signaling to the market that

there is interest to buy or sell at the non-displayed Midpoint Price. In particular, while a

User submitting a smaller sized RML Order as part of a normal liquidity provision

strategy might prefer to have its interest identified through the Retail Liquidity Identifier,

it is possible that a larger sized RML Order could be entered and that the User submitting

such order may prefer not to signal to the market that there is significant interest in that

security at the Midpoint Price. While the Retail Liquidity Identifier would not identify

the size associated with an RML Order, a larger RML Order would likely result in the

Retail Liquidity Identifier persisting for a longer period of time despite multiple

executions of Retail Midpoint Orders against such order. The Exchange acknowledges

that since, as proposed, a User may elect not to designate an RML Order to be identified

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34   As an example, assume the following facts: User 1 enters an RML Order that is
designated to be identified as such for purposes of the Retail Liquidity Identifier
to buy 50 shares of ABC; User 2 enters an RML Order that is not designated to be
identified as such for purposes of the Retail Liquidity Identifier to buy 100 shares
of ABC; and such orders are the only RML Orders resting on the MEMX Book.
In this event, the Exchange would not disseminate the Retail Liquidity Identifier
because there is not designated RML Interest to buy ABC aggregated to form at
least one round lot available in the System, as only User 1's RML Order to buy 50
shares of ABC was designated as such.

as such for purposes of the Retail Liquidity Identifier, RML Interest could be available

without causing the dissemination of the Retail Liquidity Identifier. The Exchange

nevertheless believes it is appropriate to limit dissemination of the Retail Liquidity

Identifier to those cases when at least one round lot of *designated* RML Interest is

available in order to maintain the proposed optionality available to Users that wish to

submit RML Orders but do not want indications of their midpoint interest disseminated

by the Exchange. While different than the IEX Retail Program, the Exchange notes that

the ability for a User to elect whether to designate their RML Interest to be identified as

such for purposes of the Retail Liquidity Identifier is similar in purpose and effect to the

ability of a User to elect whether to designate their orders as displayed or non-displayed

on an exchange's order book—functionality that is offered by most U.S. equities

exchanges, including the Exchange—as it is simply intended to provide Users with the

ability to decide which information they publicize in the marketplace.

<div align="center">Priority and Order Execution</div>

Retail Midpoint Orders and RML Orders would only execute at the Midpoint

Price, as stated in proposed Exchange Rule 11.22(c)(1) and further described below. As

discussed above, Retail Midpoint Orders and RML Orders are primarily intended to

interact with each other; however, proposed Exchange Rule 11.22(c)(2) provides that if

there is: (A) a Limit Order[35] of Odd Lot[36] size that is displayed by the System

("Displayed Odd Lot Order") and that is priced more aggressively than the Midpoint

Price and/or (B) an order that is not displayed by the System ("Non-Displayed Order")

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[35]   See Exchange Rule 11.8(b).

[36]   See Exchange Rule 11.6(q)(2).

and that is priced more aggressively than the Midpoint Price, resting on the MEMX

Book, then an incoming Retail Midpoint Order would first execute against any such

orders pursuant to the Exchange's standard price/time priority in accordance with

Exchange Rule 11.9 and Exchange Rule 11.10 before executing against RML Orders

resting on the MEMX Book.[37] Proposed Exchange Rule 11.22(c)(2) further provides that

any such executions would be at the Midpoint Price irrespective of the prices at which

such Displayed Odd Lot Orders and/or Non-Displayed Orders were ranked by the System

on the MEMX Book.

The purpose of permitting a Retail Midpoint Order to first execute against

Displayed Odd Lot Orders and/or Non-Displayed Orders that are priced more

aggressively than the Midpoint Price is to ensure that the priority of more aggressively

priced orders over less aggressively priced orders is maintained on the Exchange,

consistent with Exchange Rule 11.9. The Exchange notes that its proposed handling of a

Retail Midpoint Order in this regard is similar to Nasdaq's handling of a MELO, which is

an order type that is similarly designed to interact with a specific contra-side order type at

the Midpoint Price, in that MELOs will respect better priced liquidity, as MELOs that

"would otherwise be eligible to execute, will not execute if there is a more aggressively

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[37]   The Exchange notes that Displayed Odd Lot Orders and Non-Displayed Orders
are the only types of orders that could rest on the MEMX Book at a price that is
more aggressive than the Midpoint Price, as any displayed buy (sell) order that is
at least one round lot in size would be eligible to form the NBB (NBO) as a
Protected Quotation. The term "Protected Quotation" refers to a quotation that is
a Protected Bid or Protected Offer. In turn, the term "Protected Bid" or
"Protected Offer" refers to a bid or offer in a stock that is (i) displayed by an
automated trading center; (ii) disseminated pursuant to an effective national
market system plan; and (iii) an automated quotation that is the best bid or best
offer of a national securities exchange or association. See Exchange Rule 1.5(z).

priced Order resting on the Nasdaq Book."[38] Thus, because the Exchange's proposal

introduces new order types that are designed to interact with each other at the Midpoint

Price but provides for a mechanism to respect the priority of more aggressively priced

liquidity on the Exchange, similar to Nasdaq's handling of a MELO, the Exchange

believes that this aspect of the proposal does not raise any novel issues for the

Commission to consider.

The Exchange believes that it is appropriate to execute any such Displayed Odd

Lot Orders and/or Non-Displayed Orders against a Retail Midpoint Order at the Midpoint

Price instead of the prices at which such orders were ranked because RMOs that submit

Retail Midpoint Orders to the Exchange are, by selecting an order type that is specifically

limited to executing at the Midpoint Price, expecting to receive an execution at the

Midpoint Price and not at any other price(s). Thus, the Exchange is proposing to address

the needs of RMOs that focus their Retail Order trading on receiving executions at the

Midpoint Price through the adoption of the Retail Midpoint Order, and the Exchange

notes that use of this order type is completely voluntary and that RMOs may continue to

submit their Retail Orders to the Exchange to execute against orders at prices different

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[38]   SR-NASDAQ-2017-074, Amendment No. 2, at page 20, available at
         https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074-2659324-
         161401.pdf. See also Nasdaq Rule 4702(b)(14)(A). While the Exchange's
         proposed handling of Retail Midpoint Orders when there is a resting order priced
         more aggressively than the Midpoint Price similarly respects the more
         aggressively priced resting order, it differs from Nasdaq's handling of MELOs in
         this event, in that MELOs will not execute and will be held for execution until
         such resting order is no longer on the Nasdaq book or the Midpoint Price matches
         the price of such resting order, and the Exchange proposes to execute a Retail
         Midpoint Order against such resting order at the Midpoint Price. Thus, both
         implementations are designed to maintain the priority of more aggressively priced
         orders.

than the Midpoint Price, outside of the RML Program, as they can today. Moreover,

based on informal discussions with market participants, the Exchange believes that there

are benefits associated with executing Retail Orders submitted to the Exchange at one

price level rather than multiple prices, such as simplified record-keeping for retail

investors and execution reporting by RMOs. The Exchange also believes the Users

submitting the contra-side Displayed Odd Lot Orders and/or Non-Displayed Orders

would prefer an execution against an incoming Retail Midpoint Order at the Midpoint

Price, as this would provide price improvement to such orders, which were originally

priced more aggressively than the Midpoint Price.

After first executing against any resting Displayed Odd Lot Orders and/or Non-

Displayed Orders priced more aggressively than the Midpoint Price, as described above,

a Retail Midpoint Order would then execute against RML Orders resting on the MEMX

Book in accordance with proposed Exchange Rule 11.22(c)(3). Specifically, Retail

Midpoint Orders would execute against RML Orders resting on the MEMX Book at the

Midpoint Price in relative time priority in accordance with Exchange Rule 11.10 as

follows: (1) first against RML Orders that are designated to be identified as RML Interest

pursuant to proposed Exchange Rule 11.22(b); and (2) then against RML Orders that are

not designated to be identified as RML Interest pursuant to proposed Exchange Rule

11.22(b). Thus, RML Orders that are designated to be identified as such for purposes of

the Retail Liquidity Identifier, as described above, would be executed ahead of

previously-received RML Orders that are not designated to be identified as such.[39] The

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[39] The Exchange notes that this aspect of the proposed RML Program is different
      than the IEX Retail Program since the IEX Retail Program does not offer the

execution of multiple RML Orders that are designated to be identified as such would be
determined vis-à-vis each other based on time priority. Similarly, the execution of
multiple RML Orders that are not designated to be identified as such would be
determined vis-à-vis each other based on time priority.

The Exchange believes it is appropriate to provide priority to RML Orders that
are designated to be identified as such for purposes of the Retail Liquidity Identifier over
orders that are not so designated because the Retail Liquidity Identifier is likely to be an
important factor in attracting RMOs to send Retail Midpoint Orders, and thus increases
the likelihood of execution for resting RML Orders. Thus, similar to the priority afforded
to orders that are displayed on the MEMX Book, which receive priority because they
contribute to price discovery and attract liquidity to the Exchange, the Exchange believes
that designated RML Orders resulting in the dissemination of the Retail Liquidity
Identifier should receive priority over those that do not.

The following examples, which the Exchange proposes to codify in proposed
Exchange Rule 11.22(c)(3)(B) as slightly modified to conform with the Rule's context,
illustrate how the Exchange would handle orders under the proposed RML Program:

Assume the following facts:

- The NBBO for security ABC is $10.00 – $10.10.

- User 1 enters an RML Order that is not designated to be identified as RML
  Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX
  Book as an RML Order to buy ABC at $10.05.

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ability to elect whether to designate an IEX RLP Order to be identified as such for
purposes of IEX's Retail Liquidity Identifier, as described above.

- User 2 then enters an RML Order that is designated to be identified as RML

  Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX

  Book as an RML Order to buy ABC at $10.05. The Exchange publishes

  through the MEMOIR Depth and MEMOIR Top data products and through

  the appropriate SIP a Retail Liquidity Identifier indicating the presence of

  designated RML Interest of at least one round lot to buy ABC.

- User 3 then enters a Pegged Order with a Midpoint Peg instruction to buy

  ABC for 500 shares. The Pegged Order is posted to the MEMX Book as a

  Pegged Order to buy ABC at $10.05.

- User 4 then enters a Limit Order with a Non-Displayed instruction to buy

  ABC at $10.07 for 100 shares, which is posted to the MEMX Book.

- There are no other orders resting on the MEMX Book.

Example 1: Retail Member Organization enters a Retail Midpoint Order to sell

1,200 shares of ABC. The Retail Midpoint Order will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05

  (because it is priced more aggressively than the Midpoint Price, and thus, it is

  eligible to execute against a Retail Midpoint Order, it has priority over the

  RML Orders resting on the MEMX Book, and it executes at the Midpoint

  Price pursuant to proposed Exchange Rule 11.22(c)(2));

- second, against the full size of User 2's buy order for 500 shares at $10.05

  (because it has priority over User 1's RML Order that is not designated to be

  identified as RML Interest pursuant to proposed Exchange Rule

  11.22(c)(3)(A)(i) and (ii)); and

- third, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order does not execute against User 3's buy order because User 3's buy order is not an RML Order. The Retail Midpoint Order is filled for 1,100 shares and the balance of 100 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP as there is no longer designated RML Interest of at least one round lot to buy ABC.

Example 2: Assume the same facts above, except that User 3 enters a Limit Order with a Displayed instruction to buy 50 shares of ABC at $10.06, which is posted to the MEMX Book. The incoming Retail Midpoint Order to sell 1,200 shares of ABC will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05 (because it is priced more aggressively than User 3's buy order and is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2));

- second, against the full size of User 3's buy order for 50 shares at $10.05 (because it is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2));

- third, against the full size of User 2's buy order for 500 shares at $10.05 (because it has priority over User 1's RML Order that is not designated to be identified as RML Interest pursuant to proposed Exchange Rule 11.22(c)(3)(A)(i) and (ii)); and

- fourth, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order is filled for 1,150 shares and the balance of 50 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP as there is no longer designated RML Interest of at least one round lot to buy ABC.

Implementation

The Exchange proposes that all securities traded on the Exchange would be eligible for inclusion in the RML Program. If the Commission approves this proposed rule change, the Exchange will implement it within 90 days of approval and will provide notice to Members and market participants of the implementation timeline.

b.   Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[40] in general, and furthers the objectives of Section 6(b)(5) of the Act[41] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to

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[40]   15 U.S.C. 78f(b).

[41]   15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with these principles because it is designed to increase competition among execution venues and offer the potential for meaningful price improvement to orders of retail investors, including through encouraging market participants to provide additional liquidity to execute against the orders of retail investors at the Midpoint Price.

As discussed in the Purpose section, the Exchange's proposed RML Program is a simple, transparent approach designed to provide retail investors with meaningful price improvement opportunities by executing at the Midpoint Price (through RMOs' use of the proposed new Retail Midpoint Order) by incentivizing Users who wish to interact with such retail liquidity to send additional non-displayed resting interest also designed to execute at the Midpoint Price (through such Users' use of the proposed new RML Order).

As described above, the proposed RML Program is comparable in purpose and effect to the IEX Retail Program, and the Commission recently approved several changes to the IEX Retail Program that make certain of its features substantially similar to proposed features of the RML Program.[42] Accordingly, the Exchange's proposal generally encourages competition between exchange venues. In this connection, the Exchange believes that the proposed distinctions between the Exchange's proposal and the approved IEX Retail Program will both enhance competition amongst market participants and encourage competition amongst exchange venues.

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[42]   See IEX Retail Approval Order, supra note 9.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers, and the Exchange understands that broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the RML Program would differentiate among its Users, in that Retail Midpoint Orders may only be submitted by an RMO, as is the case with other Retail Orders on the Exchange today, the Exchange believes that such differentiation is not unfairly discriminatory but rather is designed to promote a competitive process for retail executions while providing retail investors with the potential to receive meaningful price improvement at the Midpoint Price. In addition to the Exchange's existing rules relating to Retail Orders,[43] there is ample precedent for differentiation of retail order flow in the existing approved programs of other national securities exchanges,[44] including the IEX Retail Program, as described in the Purpose section. As the Commission has recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.[45]

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[43]   See Exchange Rule 11.21.

[44]   See infra note 47.

[45]   See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754

The Commission consistently highlights the need to ensure that the U.S. capital markets are structured with the interests of retail investors in mind, and highlighted its focus on the "long-term interests of Main Street investors" as its number one strategic goal for fiscal years 2018 to 2022 in the Commission Strategic Plan.[46] The Exchange believes its proposed RML Program would serve the retail investing public by providing them with the opportunity for meaningful price improvement on eligible trades.

The Exchange notes that several other national securities exchanges, including IEX as described herein, have for several years operated retail liquidity programs that include market segmentation whereby retail orders are permitted to interact with specified price-improving liquidity or receive execution priority.[47] The Exchange understands that these programs were designed to promote competition for retail order flow among execution venues, most of which continues to be executed in the OTC markets rather than on exchanges. Similarly, the Exchange's proposed RML Program is designed to provide an additional competitive alternative for retail orders to receive price improvement. The Exchange believes that it is appropriate to provide incentives to bring more retail order flow to a public exchange. As described in the Purpose section, these incentives include the opportunity for Retail Orders to receive meaningful price improvement at the Midpoint Price (through RMOs' use of the proposed Retail Midpoint

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(February 22, 2019) (SR-NYSE-2018-28) (order approving NYSE's Retail Liquidity Program on a permanent basis).

[46] See Commission Strategic Plan, supra note 7.

[47] See IEX Rule 11.232. See also NYSE Rule 107C, NYSE Arca Equities Rule 7.44, Cboe EDGX Rule 11.9(a)(2)(A) and (B), Cboe BYX Rule 11.24, and Nasdaq BX Rule 4780.

Order) by providing all Users with the opportunity to provide price-improving liquidity to such orders (through Users' use of the proposed RML Order).

<div align="center">Definitions</div>

The Exchange believes that it is consistent with the Act for a Retail Midpoint Order to be a Retail Order that is a Midpoint Peg Order with a TIF instruction of IOC, as this is designed to ensure that such orders are entered on behalf of retail investors[48] and will receive price improvement at the Midpoint Price when executing against resting RML Orders. Similarly, the Exchange believes that it is consistent with the Act for an RML Order to be a Midpoint Peg Order with a TIF instruction of Day, RHO, or GTT, as this is designed to ensure that such orders are able to post to the MEMX Book and will provide price improvement at the Midpoint Price to retail investors when executing against incoming Retail Midpoint Orders. The Exchange also believes that it is appropriate and consistent with the Act for Retail Midpoint Orders and RML Orders to not be eligible for routing because, as noted above, such orders are designed to execute on the Exchange against each other and, as Pegged Orders, are not eligible for routing under the Exchange's current rules relating to Pegged Orders.

The Exchange further believes that it is consistent with the Act to structure its RML Program such that Retail Midpoint Orders and RML Orders are only eligible to execute against each other (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced more aggressively than the Midpoint Price in order to maintain price priority on the Exchange, as described above) to provide a

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48   An RMO must exercise due diligence and monitor orders that it enters as Retail Orders to ensure that such orders originate from natural persons (i.e., retail investors). See Exchange Rule 11.21(b)(6).

mechanism whereby liquidity-providing Users can provide price-improving liquidity at the Midpoint Price specifically to retail investors, and liquidity-removing RMOs submitting orders on behalf of retail investors can interact with such price-improving liquidity at the Midpoint Price in a deterministic manner. This structure would thus facilitate the interaction of such liquidity-providing Users with the orders of retail investors, which the Exchange believes is desirable for certain Users, as described above, while avoiding the possibility of such Users unintentionally interacting with another type of market participant. Accordingly, the Exchange believes that it is consistent with the Act for RML Orders to only execute against Retail Midpoint Orders (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced more aggressively than the Midpoint Price) so as to incentivize the entry of RML Orders and thereby provide meaningful price improvement to retail investors. Further, as noted above, the concept of an order type that is only eligible to interact with a specific contra-side order type has previously been approved by the Commission both in the context of liquidity-providing orders for retail programs and in other contexts.[49] The Exchange reiterates that RMOs may continue to submit their Retail Orders to the Exchange to execute against the various other order types offered by the Exchange, at prices different than the Midpoint Price, as they can today.

For the foregoing reasons, the Exchange believes that the proposed definitions of Retail Midpoint Order and RML Order, and the proposed structure of the RML Program whereby such orders are only eligible to execute against each other (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced

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[49]   See supra notes 21-22 and accompanying text.

more aggressively than the Midpoint Price) and at the Midpoint Price, are designed to
promote just and equitable principles of trade, foster cooperation and coordination with
persons engaged in facilitating transactions in securities, remove impediments to and
perfect the mechanism of a free and open market and a national market system, and
further the investor protection and public interest objectives of Section 6(b) of the Act, by
establishing a simple, transparent structure that is designed to facilitate the provision of
meaningful price improvement (i.e., at the Midpoint Price) for orders of retail investors in
a deterministic manner.

<div align="center">Retail Liquidity Identifier</div>

The Exchange believes that it is consistent with the Act to disseminate a Retail
Liquidity Identifier in connection with its RML Program, as described in the Purpose
section. The purpose of the Retail Liquidity Identifier is to provide relevant market
information to RMOs that there is available RML Interest on the Exchange. The
dissemination is thus designed to augment the total mix of information available to
RMOs that may benefit the Retail Orders they represent by encouraging RMOs to send
such retail liquidity as Retail Midpoint Orders designed to receive price improvement by
executing at the Midpoint Price against available RML Interest.

As noted above, the proposed Retail Liquidity Identifier is substantially similar to
the Retail Liquidity Identifier disseminated by IEX, which was recently approved by the
Commission, except that the Exchange would enable a User to elect whether to designate
an RML Order to be identified as such for purposes of the Retail Liquidity Identifier.
The Exchange believes that providing Users with the optionality to designate an RML
Order to be identified as such for purposes of the Retail Liquidity Identifier is appropriate

and consistent with the Act because, as described above, some Users submitting RML Orders, such as those with a larger sized RML Order, may be concerned about potential information leakage when the Retail Liquidity Identifier persists for extended periods of time despite multiple executions of Retail Midpoint Orders against such order. The Exchange thus believes that offering this optionality would enable such Users to manage their RML Orders more effectively and would therefore foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, as noted above, the ability for a User to elect whether to designate their RML Interest to be identified as such for purposes of the Retail Liquidity Identifier is similar in purpose and effect to the ability of a User to elect whether to designate their orders as displayed or non-displayed on an exchange's order book— functionality that is offered by most U.S. equities exchanges, including the Exchange—as it is simply intended to provide Users with the ability to decide which information they publicize in the marketplace, and thus, the Exchange does not believe this aspect of the proposal raises any novel issues for the Commission to consider.

The Exchange also believes that removing the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against Retail Midpoint Orders have depleted the available designated RML Interest such that the remaining designated RML Interest does not aggregate to form at least one round lot is consistent with the Act, as it would increase transparency in the market by indicating to RMOs that there is no longer designated RML Interest of at least one round lot available, which the Exchange believes

would reduce the amount of Retail Midpoint Orders sent to the Exchange that are

cancelled back to the User when there is no actionable RML Interest to execute against.

In this regard, the Exchange believes that its proposed implementation of the Retail

Liquidity Identifier would foster cooperation and coordination with persons engaged in

facilitating transactions in securities and remove impediments to and perfect the

mechanism of a free and open market and a national market system. As noted above, the

Exchange also believes this implementation is consistent with the implementation of the

other exchanges that disseminate Retail Liquidity Identifiers.

<p align="center">Priority and Order Execution</p>

The Exchange further believes that its priority and order execution approach for

the RML Program is consistent with the Act. As discussed above, the RML Program is

designed to incentivize RMOs to submit Retail Midpoint Orders to the Exchange to

receive meaningful price improvement while simultaneously incentivizing Users and

their clients to enter additional non-displayed interest in the form of RML Orders that

will only trade with, and offer meaningful price improvement to, Retail Midpoint Orders.

Thus, the proposed RML Program is designed to facilitate the provision of meaningful

price improvement (i.e., at the Midpoint Price) for orders of retail investors.

The Exchange believes that it is appropriate and consistent with the Act to

structure its RML Program such that Retail Midpoint Orders and RML Orders are only

eligible to execute against each other at the Midpoint Price, so that Retail Midpoint

Orders, which are entered on behalf of retail investors, receive price improvement that is

meaningful by definition, as they are guaranteed, if executed, to execute at the Midpoint

Price. The Exchange believes that introducing a program that provides and encourages

additional liquidity and price improvement to Retail Orders, in the form of Retail

Midpoint Orders designed to execute at the Midpoint Price, is appropriate because retail

investors are typically less sophisticated than professional market participants and

therefore would not have the type of technology to enable them to compete with such

market participants. Therefore, the Exchange believes that it is consistent with the public

interest and the protection of investors to provide retail investors with these enhanced

execution opportunities. Additionally, as discussed above, the Exchange believes that the

opportunity to obtain meaningful price improvement at the Midpoint Price should operate

as a powerful incentive for RMOs to send Retail Orders to the Exchange in the form of

Retail Midpoint Orders, thereby contributing to the Exchange's midpoint liquidity to the

benefit of all Users. While the Exchange typically has resting non-displayed liquidity

priced to execute at the Midpoint Price, a key aspect of the proposed RML Program is to

further incentivize Users and their clients to enter additional non-displayed interest that

will trade with Retail Orders and offer meaningful price improvement at the Midpoint

Price (i.e., in the form of RML Orders) in a deterministic manner.

In addition, the proposal to execute Retail Midpoint Orders against RML Orders

only at the Midpoint Price is also designed to facilitate RMOs' compliance with their best

execution obligations when acting as agent on behalf of a Retail Order.[50] Specifically, as

noted in FINRA Regulatory Notice 15-46 (Guidance on Best Execution Obligations in

Equity, Options and Fixed Income Markets), when conducting its review of execution

quality in any security, a firm should consider, among other things, whether it could

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[50]   All Users that handle customer orders as agent are required to be FINRA
         members, and therefore are subject to FINRA guidance. See 17 CFR 240.15b9-
         1(a).

obtain mid-point price improvement on one venue versus less price improvement on another venue.[51] Further, limiting the execution of Retail Midpoint Orders against RML Orders to the Midpoint Price is designed to be a simple approach that does not introduce unnecessary complexity to the order entry and execution process on the Exchange, as both orders are proposed to be a type of Midpoint Peg Order. The Exchange notes that under the initial implementation of the IEX Retail Program, approved by the Commission in 2019, IEX Retail Orders and IEX RLP Orders were only eligible to trade at the Midpoint Price.[52] Accordingly, the Exchange does not believe this aspect of the proposal raises any novel issues that have not been considered by the Commission.

The Exchange further believes that it is appropriate and consistent with the Act to execute Retail Midpoint Orders against Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the Midpoint Price, rather than at the prices at which such orders are ranked on the MEMX Book, as doing so would ensure that the priority of more aggressively priced orders is maintained on the Exchange,

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[51]   See FINRA Regulatory Notice 15-46, endnote 25, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

[52]   See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (order granting approval of a proposed rule change to establish the IEX Retail Program). The Exchange notes that IEX subsequently amended the IEX Retail Program to permit executions at prices other than the Midpoint Price in certain limited circumstances—i.e., against displayed odd lots priced at or more aggressively than the Midpoint Price— although the Exchange is instead proposing to execute Retail Midpoint Orders against Displayed Odd Lot Orders priced more aggressively than the Midpoint Price at the Midpoint Price in this circumstance, as described above. See Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Retail Orders to Trade with Certain Aggressively Priced Displayed Odd Lot Orders).

as described above, in a manner that provides the expected execution price to RMOs that submit Retail Midpoint Orders and provides price improvement to Users that submit more aggressively priced orders. As noted above, by selecting an order type that is specifically limited to executing at the Midpoint Price, an RMO would expect to receive an execution of their Retail Midpoint Order at the Midpoint Price and not at any other price(s), and thus, the Exchange is proposing to address the needs of RMOs that focus their Retail Order trading on receiving executions at the Midpoint Price in a deterministic manner through the adoption of the Retail Midpoint Order. Additionally, as noted above, use of this order type is completely voluntary, and RMOs may continue to submit their Retail Orders to the Exchange to execute against orders at prices different than the Midpoint Price, outside of the RML Program, as they can today. Moreover, the Exchange believes that there are benefits associated with executing Retail Orders submitted to the Exchange at one price level rather than multiple prices, such as simplified record-keeping for retail investors and execution reporting by RMOs. The Exchange believes such benefits, in addition to the simplicity and transparency of the RML Program achieved by permitting executions of the proposed new order types only at the Midpoint Price, outweigh the potential additional price improvement that Retail Midpoint Orders could receive if they were permitted to execute against Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the prices at which such orders were ranked, in a manner consistent with the objectives of Section 6(b)(5) of the Act[53] described above.

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[53]   15 U.S.C. 78f(b)(5).

The Exchange believes that first executing a Retail Midpoint Order against any resting Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price ahead of RML Orders is consistent with the Act because, notwithstanding the RML Program's goal of matching Retail Midpoint Orders against RML Orders at the Midpoint Price in a deterministic manner, doing so ensures that the priority of more aggressively priced orders is maintained on the Exchange, as described above. Maintaining price priority in this regard, consistent with its current rules, reflects the Exchange's overall goal of incentivizing Users to submit aggressively priced orders to the Exchange, which contribute to the overall market quality and attract liquidity on the Exchange, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system. Furthermore, as the proposed RML Program provides for a mechanism to respect the priority of more aggressively priced liquidity on the Exchange prior to executing Retail Midpoint Orders against RML Orders at the Midpoint Price, similar to Nasdaq's handling of MELOs, as described above, the Exchange believes that this aspect of the proposal does not raise any novel issues for the Commission to consider.

The Exchange believes that providing execution priority to RML Orders that are designated to be identified as such for purposes of the Retail Liquidity Identifier ahead of RML Orders that are not so designated is consistent with the Act, as the Exchange believes that designated RML Orders would attract additional liquidity to the Exchange. Specifically, as noted above, the Exchange believes that dissemination of the Retail Liquidity Identifier is likely to be an important factor in attracting incoming Retail

Midpoint Orders, and thus increases the likelihood of execution for resting RML Orders.

Therefore, the Exchange believes that it removes impediments to and perfects the

mechanism of a free and open market and national market system to provide execution

priority to designated RML Orders, which cause the dissemination of the Retail Liquidity

Identifier, over those that do not. Additionally, the Exchange believes that providing

execution priority to designated RML Orders is not unfairly discriminatory since any

User can designate their RML Orders to be identified as such for purposes of the Retail

Liquidity Identifier, and the Exchange believes that Users would only choose not to

designate RML Orders to be identified as such when another purpose, such as the

potential for information leakage, outweighs the importance of execution priority for such

orders.

In sum, the Exchange submits that the proposed RML Program is a simple,

transparent approach designed to provide an opportunity for retail customers' orders to

receive meaningful price improvement in a manner generally consistent with the

approved retail programs of other exchanges. Thus, the Exchange believes that the

proposed RML Program is consistent with the Act in that it is designed to promote just

and equitable principles of trade, to foster cooperation and coordination with persons

engaged in facilitating transactions in securities, to remove impediments to and perfect

the mechanism of a free and open market and a national market system and, in general, to

protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any

burden on competition that is not necessary or appropriate in furtherance of the purposes

of the Act. To the contrary, the Exchange believes that the proposed RML Program would enhance competition and execution quality for retail investors and would enhance competition for Users and their clients seeking to interact with retail liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, a Retail Midpoint Order may only be submitted by firms approved to send Retail Orders on the Exchange (i.e., RMOs), which is comparable to an IEX Retail Order offered under the IEX Retail Program and retail programs on other exchanges where specific rules have been approved allowing only certain participants to send Retail Orders.[54] All Users would be eligible to enter an RML Order, and all Users would be eligible to execute against an incoming Retail Midpoint Order in price priority in accordance with the Exchange's existing rules. Moreover, the proposed rule change would provide potential benefits to all Users to the extent it is successful in attracting additional midpoint liquidity.

5.   Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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[54]   See supra note 47.

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)

Not applicable.

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

As described above, the proposed RML Program is comparable in purpose and

effect to the IEX Retail Program, and the Commission recently approved several changes

to the IEX Retail Program that make certain features of the IEX Retail Program

substantially similar to proposed features of the RML Program.[55] While certain aspects

of the proposed RML Program differ from the IEX Retail Program, as described above,

the core purpose of each program are the same.

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

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 - Notice of Proposed Rule Change for publication in the Federal

Register.

Exhibit 5 - Text of the proposed rule change.

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[55]   See IEX Retail Approval Order, supra note 9.

<u>EXHIBIT 1</u>

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2021-10]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of a Proposed Rule Change to Establish a Retail Midpoint Liquidity Program

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.   <u>Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change</u>

The Exchange is filing with the Commission a proposed rule change to establish a Retail Midpoint Liquidity Program. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

[2]   17 CFR 240.19b-4.

sections A, B, and C below, of the most significant aspects of such statements.

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

     1.   <u>Purpose</u>

<u>Background</u>

The Exchange proposes to adopt new Exchange Rule 11.22 to establish a Retail Midpoint Liquidity Program (the "RML Program"). As proposed, the RML Program is designed to provide retail investors with meaningful price improvement opportunities by executing at the midpoint of the national best bid and offer ("NBBO") such that Users[3] will be incentivized to direct additional orders designed to execute at the midpoint of the NBBO (the "Midpoint Price") to the Exchange to interact with orders that originate from retail investors that are also designed to execute at the Midpoint Price.

As former Commission Chairman Jay Clayton noted in a 2018 speech, forty-three million U.S. households hold a retirement or brokerage account, with $3.6 trillion in balance sheet assets in 128 million customer accounts serviced by more than 2,800 registered broker-dealers.[4] He also noted the importance of continued broad, long-term retail participation in our capital markets, and that retail investors count on the capital

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[3]   As defined in Exchange Rule 1.5(jj), a "User" is a member of the Exchange ("Member") or sponsored participant of a Member who is authorized to obtain access to the System pursuant to Exchange Rule 11.3. The term "System" refers to the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing. <u>See</u> Exchange Rule 1.5(gg).

[4]   <u>See</u> The Evolving Market for Retail Investment Services and Forward-Looking Regulation — Adding Clarity and Investor Protection while Ensuring Access and Choice, Chairman Jay Clayton, Commission (May 2, 2018), available at https://www.sec.gov/news/speech/speech-clayton-2018-05-02.

markets to fund major life events such as paying for their children's higher education or
funding their own retirements.[5]

Against this backdrop, the RML Program is designed to provide retail investors
with access to a pool of midpoint liquidity on the Exchange by introducing a new
mechanism for retail-oriented liquidity provision, thereby providing enhanced
opportunities for meaningful price improvement at the Midpoint Price for retail investors.
The Exchange believes that introducing the RML Program could provide retail investors
with a competitive alternative to existing exchange and over-the-counter ("OTC") retail
programs, by attracting counterparty liquidity to the Exchange from Users and their
clients seeking to interact with retail liquidity. The Exchange understands that many
professional market participants, such as market makers, view interacting with orders of
retail investors as more desirable than interacting with orders of other professional market
participants. For example, as the Commission staff noted in a 2016 memorandum to the
Equity Market Structure Advisory Committee ("EMSAC Memorandum"), "[m]arket
makers are interested in retail customer order flow because retail investors are, on
balance, less informed than other traders about short-term price movements…[and
t]rading against retail customer order flow enables market makers to avoid adverse
selection by informed professional traders and to more reliably profit from market-
making activity."[6] Consistent with the EMSAC Memorandum's conclusions, and based

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[5]   Id.

[6]   See January 26, 2016 Memorandum entitled "Certain Issues Affecting Customers
        in the Current Equity Market Structure" from the staff of the Commission's
        Division of Trading and Markets, available at
        https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-
        emsac-012616.pdf.

on informal discussions with market participants and the knowledge and experience of its

staff, the Exchange believes that market makers and other sophisticated market

participants generally value interacting with retail orders because they are smaller and not

likely to be part of a larger parent order that can move a stock price, causing a loss to the

market maker. The proposed rule change thus seeks to provide enhanced price

improvement opportunities for retail customers by incentivizing Users and their clients to

provide price-improving liquidity to interact with the orders of retail investors. The RML

Program would therefore be consistent with the goals of the Commission to encourage

markets that are structured to benefit ordinary investors,[7] while facilitating order

interaction to the benefit of all market participants.

As proposed, through the RML Program, the Exchange would enable Retail

Member Organizations[8] to submit a new type of Retail Order designed to execute at the

Midpoint Price (i.e., a Retail Midpoint Order, described below) to the Exchange, and any

User would be permitted to provide price improvement to such order in the form of

another new order type that is designed to execute at the Midpoint Price and that is only

eligible to execute against a Retail Midpoint Order (i.e., an RML Order, described

below). The Exchange expects that the introduction of Retail Midpoint Orders and RML

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[7]   See, e.g., U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years
       2018-2022, available at https://www.sec.gov/files/SEC_Strategic_Plan_FY18-
       FY22_FINAL_0.pdf ("Commission Strategic Plan").

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

Orders, through the proposed RML Program, would result in a balanced mix of retail brokerage firms and their wholesaling partners submitting Retail Midpoint Orders to the Exchange to access the additional midpoint liquidity provided by RML Orders that the Exchange anticipates resulting from the RML Program.

The Exchange notes that the proposed RML Program is comparable in purpose and effect to the Investors Exchange LLC ("IEX") Retail Price Improvement Program (the "IEX Retail Program"), which is also designed to provide retail investors with meaningful price improvement opportunities.[9] Further, the Commission recently approved several changes to the IEX Retail Program that make certain features of the IEX Retail Program substantially similar to proposed features of the RML Program.[10] The Exchange will describe certain differences between the proposed RML Program and the IEX Retail Program under the appropriate headings below.

The Exchange will submit a separate proposal to amend its Fee Schedule in connection with the proposed RML Program. Under that proposal, the Exchange expects to provide free executions or charge a fee to Users for executions of their RML Orders

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[9]   See IEX Rule 11.232; see also Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR-IEX-2021-06) (order approving changes to the IEX Retail Program including dissemination of a retail liquidity identifier and limiting IEX Retail Liquidity Provider orders to midpoint peg orders) (the "IEX Retail Approval Order"). The Exchange notes that the IEX Retail Program, as amended, supports executions of retail orders described in IEX Rule 11.190(b)(15) ("IEX Retail Orders") at the Midpoint Price as well as prices that are different than the Midpoint Price in certain limited circumstances. While the Exchange's proposed new order types under the RML Program would only be eligible to execute at the Midpoint Price, as further described below, the Exchange notes that Retail Orders would still be eligible to execute at prices that are different than the Midpoint Price outside of the RML Program as they are today.

[10]   See IEX Retail Approval Order, supra note 9.

against Retail Midpoint Orders, and in turn would provide a rebate or free executions to

RMOs for executions of their Retail Midpoint Orders against RML Orders.

<div align="center">Definitions</div>

The Exchange proposes to adopt the following definitions under paragraph (a) of

proposed Exchange Rule 11.22 (Retail Midpoint Liquidity Program). First, the term

"Retail Midpoint Order" would be defined as a Retail Order submitted by an RMO that is

a Pegged Order[11] with a Midpoint Peg[12] instruction ("Midpoint Peg Order") and that is

only eligible to execute against RML Orders (a proposed new order type described

below), and other orders priced more aggressively than the Midpoint Price, through the

execution process described in proposed Exchange Rule 11.22(c). As proposed, a Retail

Midpoint Order must have a time-in-force ("TIF") instruction of IOC.[13]

Second, the term "Retail Midpoint Liquidity Order" or "RML Order" would be

defined as a Midpoint Peg Order that is only eligible to execute against Retail Midpoint

Orders through the execution process described in proposed Exchange Rule 11.22(c). As

proposed, an RML Order must have a TIF instruction of Day,[14] RHO,[15] or GTT[16] and

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[11]   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 NBBO.

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

[13]   "IOC" is an instruction the User may attach to an order stating the order is to be
         executed in whole or in part as soon as such order is received, and the portion not
         executed immediately on the Exchange or another trading center is treated as
         cancelled and is not posted to the MEMX Book. See Exchange Rule 11.6(o)(1).
         The term "MEMX Book" refers to the System's electronic file of orders. See
         Exchange Rule 1.5(q).

[14]   See Exchange Rule 11.6(o)(2).

may not include a Minimum Execution Quantity[17] instruction. Any User would be

permitted, but not required, to submit RML Orders. Additionally, the Exchange proposes

that a User may, but is not required to, designate an RML Order to be identified as RML

Order interest ("RML Interest") for purposes of the Retail Liquidity Identifier pursuant to

proposed Exchange Rule 11.22(b) (such RML Interest is sometimes referred to herein as

"designated RML Interest"), as further described below, by including a Displayed

instruction.[18] A User would be able to designate RML Interest for this purpose on an

order-by-order basis or on a port-by-port basis. The Exchange notes that, except with

respect to a User's ability to elect whether to designate an RML Order to be identified as

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[15]   See Exchange Rule 11.6(o)(5).

[16]   See Exchange Rule 11.6(o)(4).

[17]   The Minimum Execution Quantity instruction is described in Exchange Rule
         11.6(f) and is generally defined as an instruction a User may attach to an order
         with a Non-Displayed instruction or a TIF of IOC instruction requiring the
         System to execute the order only to the extent that a minimum quantity can be
         satisfied. A Non-Displayed instruction is an instruction a User may attach to an
         order stating that the order is not to be displayed by the System on the MEMX
         Book. See Exchange Rule 11.6(c)(2).

[18]   A Displayed instruction is an instruction a User may attach to an order stating that
         the order is to be displayed by the System on the MEMX Book. See Exchange
         Rule 11.6(c)(1). Under Exchange Rule 11.8(c)(3), Pegged Orders, including
         Midpoint Peg Orders, are not eligible to include a Displayed instruction; however,
         as proposed, an RML Order would be eligible to include a Displayed instruction,
         which would be for the sole purpose of indicating to the Exchange that the User
         has designated the RML Order to be identified as RML Interest for purposes of
         the Retail Liquidity Identifier pursuant to proposed Exchange Rule 11.22(b), and
         inclusion of the Displayed instruction would not indicate to the Exchange that the
         RML Order is to be displayed by the System on the MEMX Book. The
         Exchange's proposal to permit Users to include a Displayed instruction for an
         RML Order for this purpose is purely to facilitate the implementation of the Retail
         Liquidity Identifier by using an existing but otherwise inapplicable instruction
         type (i.e., the Displayed instruction), and the System will otherwise handle an
         RML Order with a Displayed instruction as if no Displayed instruction was
         included.

such for purposes of the Retail Liquidity Identifier, an RML Order is substantially similar

in effect to IEX's Retail Liquidity Provider Order ("IEX RLP Order") offered under the

IEX Retail Program, in that an RML Order is an order that is designed to execute at the

Midpoint Price, is only eligible to execute against retail order interest, and may be

submitted by any User.[19]

As further described below, Retail Midpoint Orders and RML Orders would only

be eligible to execute at the Midpoint Price. Additionally, as reflected in the proposed

definitions of Retail Midpoint Order and RML Order, such orders would only be eligible

to execute against each other with the exception that a Retail Midpoint Order would also

be eligible to execute against other orders in certain limited circumstances (i.e., against

displayed odd lot orders and/or non-displayed orders priced more aggressively than the

Midpoint Price resting on the MEMX Book) pursuant to proposed Exchange Rule

11.22(c)(2), as further described below. The purpose of limiting Retail Midpoint Orders

and RML Orders to interacting with each other (subject to the exception of Retail

Midpoint Orders being eligible to execute against other orders priced more aggressively

than the Midpoint Price) is that the proposed RML Program is designed to provide a

mechanism whereby liquidity-providing Users can provide price-improving liquidity at

the Midpoint Price specifically to retail investors, and liquidity-removing RMOs

submitting orders on behalf of retail investors can interact with such price-improving

liquidity at the Midpoint Price, in a deterministic manner. The Exchange notes that this

aspect of the proposed RML Program is partially different than the IEX Retail Program.

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19   See IEX Rule 11.190(b)(14), which describes the IEX RLP Order. See also IEX
      Retail Approval Order, supra note 9.

Like an IEX RLP Order, which is only eligible to execute against IEX Retail Orders, the

Exchange's proposed RML Order would only be eligible to execute against Retail

Midpoint Orders. However, an IEX Retail Order is generally eligible to execute against

order types other than an IEX RLP Order,[20] whereas the Exchange's proposed Retail

Midpoint Order would be generally limited to executing against RML Orders (subject to

the exception of Retail Midpoint Orders being eligible to execute against other orders

priced more aggressively than the Midpoint Price). While this aspect of the Exchange's

proposal differs from the IEX Retail Program, the Exchange notes that the concept of an

order type that is limited to interacting with a specific contra-side order type has

previously been approved by the Commission both in the context of liquidity-providing

orders for retail programs[21] and in other contexts.[22] The Exchange believes the proposed

Retail Midpoint Order is analogous to such order types even though a Retail Midpoint

Order would be eligible to execute against non-RML Orders where such orders are priced

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[20]   See IEX Rule 11.232(e)(3), which describes the priority and order execution processes for IEX Retail Orders and provides that such orders are eligible to execute against order types other than an IEX RLP Order in certain circumstances, including against other orders during a locked or crossed market, against displayed odd lot orders priced at or better than the Midpoint Price, and against other non-displayed interest at the Midpoint Price.

[21]   See, e.g., IEX Rule 11.190(b)(14), which states that an IEX RLP Order is only eligible to execute against IEX Retail Orders; Nasdaq PSX Rule 4702(b)(5)(A), which states that on Nasdaq PSX a Retail Price Improving Order may only execute against a Retail Order.

[22]   See, e.g., Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR-NASDAQ-2017-074) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Adopt the Midpoint Extended Life Order) (the "MELO Approval Order"). As set forth in the MELO Approval Order, Nasdaq originally allowed executions of Midpoint Extended Life Orders ("MELOs") only against other eligible MELOs. Pursuant to Rule 4702(b)(14)(A) Nasdaq today allows executions of MELOs only against eligible MELOs and MELO+CB orders.

more aggressively than the Midpoint Price because orders priced more aggressively than

the Midpoint Price comprise only a small amount of the Exchange's volume of orders,

and thus, the Exchange expects that Retail Midpoint Orders would mostly interact with

RML Orders. Moreover, the Exchange generally expects RMOs to submit Retail

Midpoint Orders when the Retail Liquidity Identifier is disseminated, which indicates

that there is available RML Interest of at least one round lot on the MEMX Book, and

generally does not expect RMOs to submit Retail Midpoint Orders when the Retail

Liquidity Identifier is not disseminated or otherwise to specifically seek to interact with

other orders priced more aggressively than the Midpoint Price, particularly as any such

orders would be either non-displayed (and therefore not known to the RMO) or less than

a round lot in size, and RMOs could still submit Retail Orders to interact with such

liquidity using an order type other than the Retail Midpoint Order as they can today.

As Retail Midpoint Orders and RML Orders are types of Pegged Orders, and are

designed to execute on the Exchange against each other, such orders would not be

eligible for routing.[23]

<u>Retail Liquidity Identifier</u>

Under the RML Program, the Exchange proposes to disseminate a Retail

Liquidity Identifier through the Exchange's proprietary market data feeds, MEMOIR

Depth[24] and MEMOIR Top,[25] and the appropriate securities information processor

("SIP") when designated RML Interest aggregated to form at least one round lot for a

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[23]   See Exchange Rule 11.8(c)(5), which provides that Pegged Orders are not eligible
        for routing.

[24]   See Exchange Rule 13.8(a).

[25]   See Exchange Rule 13.8(b).

particular security is available in the System ("Retail Liquidity Identifier"), provided that

such designated RML Interest is resting at the Midpoint Price and is priced at least

$0.001 better than the national best bid ("NBB") or national best offer ("NBO").

The purpose of the Retail Liquidity Identifier is to provide relevant market

information to RMOs that there is available RML Interest on the Exchange, thereby

incentivizing them to send Retail Midpoint Orders to the Exchange seeking execution at

the Midpoint Price. The Retail Liquidity Identifier would reflect the symbol and the side

(buy and/or sell) of the designated RML Interest but would not include the price or size.

The Exchange does not believe that such market information constitutes a "quote" within

the meaning of Regulation NMS because it does not include a specific price or size of the

interest; alternatively, if such information is deemed a quote, the Exchange believes that

an exemption from applicable rules would be appropriate.[26] While an explicit price

would not be disseminated, because RML Orders are only eligible to execute at the

Midpoint Price, dissemination of the Retail Liquidity Identifier would thus reflect the

availability of price improvement at the Midpoint Price.[27]

As noted above, the Exchange would only disseminate the Retail Liquidity

Identifier when designated RML Interest would provide at least $0.001 of price

improvement, which is consistent with the rules of the other exchanges that disseminate

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[26]   The Exchange plans to submit a letter requesting no-action or exemptive relief
        from obligations set forth in Rule 602 of Regulation NMS.

[27]   The Exchange notes that this aspect of the proposed Retail Liquidity Identifier is
        the same as the Retail Liquidity Identifier disseminated by IEX under the IEX
        Retail Program that was recently approved by the Commission. See IEX Rule
        11.232(f); see also IEX Retail Approval Order, supra note 9, at 38167.

Retail Liquidity Identifiers[28] as well as the SIP Plans' requirements.[29] Because RML

Orders are proposed to be only Midpoint Peg Orders, they will always represent at least

$0.001 price improvement over the NBB or NBO, with two exceptions: (1) in a locked or

crossed market; and (2) a sub-dollar quote when the security's spread is less than

$0.002.[30] Under Exchange Rule 11.8(c)(6), a Pegged Order resting on the MEMX Book

is not eligible for execution when the market is locked or crossed; thus, an RML Order

would not be eligible for execution when the market is locked or crossed and would rest

on the MEMX Book and become eligible for execution again when the market ceases to

be locked or crossed.[31] Because an RML Order would not be eligible for execution when

the market is locked or crossed, such order would not provide any price improvement to

an incoming Retail Midpoint Order (i.e., would not be priced at least $0.001 better than

the NBB or NBO) and therefore would not comprise eligible RML Interest for purposes

of the Retail Liquidity Identifier. Similarly, when a particular security is priced less than

$1.00 per share, its MPV is $0.0001, so the Midpoint Price will not always represent at

least $0.001 in price improvement.[32] Therefore, the Exchange would only disseminate

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[28]   See, e.g., IEX Rule 11.232(f), Cboe BYX Rule 11.24(e), and NYSE Arca Equities
        Rule 7.44(j).

[29]   See January 26, 2021 CQS Participant Input Binary Specification Version 2.6a,
        available at
        https://www.ctaplan.com/publicdocs/ctaplan/CQS_Pillar_Input_Specification.pdf
        and May 2020 UTP Data Feed Services Specification Version 1.5, available at
        https://www.utpplan.com/DOC/UtpBinaryOutputSpec.pdf.

[30]   The Minimum Price Variation ("MPV") for bids, offers, or orders in securities
        priced less than $1.00 per share is $0.0001. See Exchange Rule 11.6(g).

[31]   See Exchange Rule 11.8(c)(6).

[32]   For example, if a security's NBB is $0.505 and NBO is $0.506, the Midpoint
        Price would be $0.5055, which is $0.0005 more than the NBB and less than the
        NBO, so it would not represent at least $0.001 price improvement over the NBB

the Retail Liquidity Identifier for sub-dollar securities if the spread in the security is greater than or equal to $0.002, meaning the Midpoint Price represents at least $0.001 price improvement over the NBB or NBO. With respect to the requirement that an RML Order must be resting at the Midpoint Price in order to be included in the designated RML Interest to be disseminated pursuant to the Retail Liquidity Identifier, the Exchange notes that an RML Order could have a limit price that is less aggressive than the Midpoint Price in which case it would not be eligible to trade with an incoming Retail Midpoint Order and therefore should not be included for purposes of Retail Liquidity Identifier dissemination since it would not reflect interest available to trade with Retail Midpoint Orders. The Exchange notes that not including: (1) RML Interest for a security when the market for the security is locked or crossed; (2) RML Interest for a sub-dollar security if the spread in the security is greater than or equal to $0.002; and (3) RML Interest that is not resting at the Midpoint Price (i.e., RML Interest that is constrained by a limit price that is less aggressive than the Midpoint Price), for purposes of Retail Liquidity Identifier dissemination is consistent with the Retail Liquidity Identifier disseminated by IEX under the IEX Retail Program.[33]

The Exchange also proposes to remove the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against Retail Midpoint Orders have depleted the available designated RML Interest such that the remaining designated RML Interest does

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or NBO, and therefore would not comprise eligible RML Interest for purposes of the Retail Liquidity Identifier.

[33]   See IEX Rule 11.232(f); see also IEX Retail Approval Order, supra note 9, at 38167.

not aggregate to form at least one round lot, or in situations where there is no actionable

RML Interest (such as when the market is locked or crossed), in order to indicate to

market participants that there is no longer designated RML Interest of at least one round

lot available. The Exchange believes that removing the Retail Liquidity Identifier on the

market data feeds and SIP when there is not sufficient eligible RML Interest available is

consistent with the implementation of the other exchanges that disseminate Retail

Liquidity Identifiers.

As described above, the Exchange's proposed Retail Liquidity Identifier is

substantially similar to IEX's Retail Liquidity Identifier. However, the Exchange notes

one key distinction – the Exchange would enable a User to elect whether to designate an

RML Order to be identified as such for purposes of the Retail Liquidity Identifier.

Similar to the proposed RML Program, under the IEX Retail Program, eligible IEX RLP

Order interest that is aggregated to form at least one round lot is required to cause the

dissemination of the Retail Liquidity Identifier. Under the IEX Retail Program, a User is

not able to elect whether an IEX RLP Order is to be identified as such for purposes of the

Retail Liquidity Identifier, and thus, all IEX RLP Order interest is included in

determining whether there is a sufficient amount of IEX RLP Order interest (i.e., one

round lot) to cause the dissemination of the Retail Liquidity Identifier. In contrast, under

the proposed RML Program, a User may, but is not required to, designate an RML Order

to be identified as such for purposes of the Retail Liquidity Identifier. Therefore, a User

would be able to elect whether an RML Order that it submits will be included in

determining whether there is a sufficient amount of RML Interest (i.e., one round lot) to

cause the dissemination of the Retail Liquidity Identifier (i.e., whether it constitutes

designated RML Interest).[34]

As further described below, RML Orders that are designated to be identified as

such for purposes of the Retail Liquidity Identifier would receive execution priority

ahead of RML Orders that are not designated to be identified as such. The Exchange

believes that providing Users with the optionality to designate their RML Orders to be

identified as such for purposes of the Retail Liquidity Identifier is appropriate because

some Users submitting RML Orders may be concerned with signaling to the market that

there is interest to buy or sell at the non-displayed Midpoint Price. In particular, while a

User submitting a smaller sized RML Order as part of a normal liquidity provision

strategy might prefer to have its interest identified through the Retail Liquidity Identifier,

it is possible that a larger sized RML Order could be entered and that the User submitting

such order may prefer not to signal to the market that there is significant interest in that

security at the Midpoint Price. While the Retail Liquidity Identifier would not identify

the size associated with an RML Order, a larger RML Order would likely result in the

Retail Liquidity Identifier persisting for a longer period of time despite multiple

executions of Retail Midpoint Orders against such order. The Exchange acknowledges

that since, as proposed, a User may elect not to designate an RML Order to be identified

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[34]   As an example, assume the following facts: User 1 enters an RML Order that is
         designated to be identified as such for purposes of the Retail Liquidity Identifier
         to buy 50 shares of ABC; User 2 enters an RML Order that is not designated to be
         identified as such for purposes of the Retail Liquidity Identifier to buy 100 shares
         of ABC; and such orders are the only RML Orders resting on the MEMX Book.
         In this event, the Exchange would not disseminate the Retail Liquidity Identifier
         because there is not designated RML Interest to buy ABC aggregated to form at
         least one round lot available in the System, as only User 1's RML Order to buy 50
         shares of ABC was designated as such.

as such for purposes of the Retail Liquidity Identifier, RML Interest could be available

without causing the dissemination of the Retail Liquidity Identifier. The Exchange

nevertheless believes it is appropriate to limit dissemination of the Retail Liquidity

Identifier to those cases when at least one round lot of *designated* RML Interest is

available in order to maintain the proposed optionality available to Users that wish to

submit RML Orders but do not want indications of their midpoint interest disseminated

by the Exchange. While different than the IEX Retail Program, the Exchange notes that

the ability for a User to elect whether to designate their RML Interest to be identified as

such for purposes of the Retail Liquidity Identifier is similar in purpose and effect to the

ability of a User to elect whether to designate their orders as displayed or non-displayed

on an exchange's order book—functionality that is offered by most U.S. equities

exchanges, including the Exchange—as it is simply intended to provide Users with the

ability to decide which information they publicize in the marketplace.

<div align="center">Priority and Order Execution</div>

Retail Midpoint Orders and RML Orders would only execute at the Midpoint

Price, as stated in proposed Exchange Rule 11.22(c)(1) and further described below. As

discussed above, Retail Midpoint Orders and RML Orders are primarily intended to

interact with each other; however, proposed Exchange Rule 11.22(c)(2) provides that if

there is: (A) a Limit Order[35] of Odd Lot[36] size that is displayed by the System

("Displayed Odd Lot Order") and that is priced more aggressively than the Midpoint

Price and/or (B) an order that is not displayed by the System ("Non-Displayed Order")

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[35]   See Exchange Rule 11.8(b).

[36]   See Exchange Rule 11.6(q)(2).

and that is priced more aggressively than the Midpoint Price, resting on the MEMX

Book, then an incoming Retail Midpoint Order would first execute against any such

orders pursuant to the Exchange's standard price/time priority in accordance with

Exchange Rule 11.9 and Exchange Rule 11.10 before executing against RML Orders

resting on the MEMX Book.[37] Proposed Exchange Rule 11.22(c)(2) further provides that

any such executions would be at the Midpoint Price irrespective of the prices at which

such Displayed Odd Lot Orders and/or Non-Displayed Orders were ranked by the System

on the MEMX Book.

The purpose of permitting a Retail Midpoint Order to first execute against

Displayed Odd Lot Orders and/or Non-Displayed Orders that are priced more

aggressively than the Midpoint Price is to ensure that the priority of more aggressively

priced orders over less aggressively priced orders is maintained on the Exchange,

consistent with Exchange Rule 11.9. The Exchange notes that its proposed handling of a

Retail Midpoint Order in this regard is similar to Nasdaq's handling of a MELO, which is

an order type that is similarly designed to interact with a specific contra-side order type at

the Midpoint Price, in that MELOs will respect better priced liquidity, as MELOs that

"would otherwise be eligible to execute, will not execute if there is a more aggressively

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[37]   The Exchange notes that Displayed Odd Lot Orders and Non-Displayed Orders
        are the only types of orders that could rest on the MEMX Book at a price that is
        more aggressive than the Midpoint Price, as any displayed buy (sell) order that is
        at least one round lot in size would be eligible to form the NBB (NBO) as a
        Protected Quotation. The term "Protected Quotation" refers to a quotation that is
        a Protected Bid or Protected Offer. In turn, the term "Protected Bid" or
        "Protected Offer" refers to a bid or offer in a stock that is (i) displayed by an
        automated trading center; (ii) disseminated pursuant to an effective national
        market system plan; and (iii) an automated quotation that is the best bid or best
        offer of a national securities exchange or association. See Exchange Rule 1.5(z).

priced Order resting on the Nasdaq Book."[38] Thus, because the Exchange's proposal

introduces new order types that are designed to interact with each other at the Midpoint

Price but provides for a mechanism to respect the priority of more aggressively priced

liquidity on the Exchange, similar to Nasdaq's handling of a MELO, the Exchange

believes that this aspect of the proposal does not raise any novel issues for the

Commission to consider.

The Exchange believes that it is appropriate to execute any such Displayed Odd

Lot Orders and/or Non-Displayed Orders against a Retail Midpoint Order at the Midpoint

Price instead of the prices at which such orders were ranked because RMOs that submit

Retail Midpoint Orders to the Exchange are, by selecting an order type that is specifically

limited to executing at the Midpoint Price, expecting to receive an execution at the

Midpoint Price and not at any other price(s). Thus, the Exchange is proposing to address

the needs of RMOs that focus their Retail Order trading on receiving executions at the

Midpoint Price through the adoption of the Retail Midpoint Order, and the Exchange

notes that use of this order type is completely voluntary and that RMOs may continue to

submit their Retail Orders to the Exchange to execute against orders at prices different

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[38] SR-NASDAQ-2017-074, Amendment No. 2, at page 20, available at
https://www.sec.gov/comments/sr-nasdaq-2017-074/nasdaq2017074-2659324-161401.pdf. See also Nasdaq Rule 4702(b)(14)(A). While the Exchange's
proposed handling of Retail Midpoint Orders when there is a resting order priced
more aggressively than the Midpoint Price similarly respects the more
aggressively priced resting order, it differs from Nasdaq's handling of MELOs in
this event, in that MELOs will not execute and will be held for execution until
such resting order is no longer on the Nasdaq book or the Midpoint Price matches
the price of such resting order, and the Exchange proposes to execute a Retail
Midpoint Order against such resting order at the Midpoint Price. Thus, both
implementations are designed to maintain the priority of more aggressively priced
orders.

than the Midpoint Price, outside of the RML Program, as they can today. Moreover,

based on informal discussions with market participants, the Exchange believes that there

are benefits associated with executing Retail Orders submitted to the Exchange at one

price level rather than multiple prices, such as simplified record-keeping for retail

investors and execution reporting by RMOs. The Exchange also believes the Users

submitting the contra-side Displayed Odd Lot Orders and/or Non-Displayed Orders

would prefer an execution against an incoming Retail Midpoint Order at the Midpoint

Price, as this would provide price improvement to such orders, which were originally

priced more aggressively than the Midpoint Price.

After first executing against any resting Displayed Odd Lot Orders and/or Non-

Displayed Orders priced more aggressively than the Midpoint Price, as described above,

a Retail Midpoint Order would then execute against RML Orders resting on the MEMX

Book in accordance with proposed Exchange Rule 11.22(c)(3). Specifically, Retail

Midpoint Orders would execute against RML Orders resting on the MEMX Book at the

Midpoint Price in relative time priority in accordance with Exchange Rule 11.10 as

follows: (1) first against RML Orders that are designated to be identified as RML Interest

pursuant to proposed Exchange Rule 11.22(b); and (2) then against RML Orders that are

not designated to be identified as RML Interest pursuant to proposed Exchange Rule

11.22(b). Thus, RML Orders that are designated to be identified as such for purposes of

the Retail Liquidity Identifier, as described above, would be executed ahead of

previously-received RML Orders that are not designated to be identified as such.[39] The

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[39]   The Exchange notes that this aspect of the proposed RML Program is different
        than the IEX Retail Program since the IEX Retail Program does not offer the
        ability to elect whether to designate an IEX RLP Order to be identified as such for

execution of multiple RML Orders that are designated to be identified as such would be

determined vis-à-vis each other based on time priority. Similarly, the execution of

multiple RML Orders that are not designated to be identified as such would be

determined vis-à-vis each other based on time priority.

The Exchange believes it is appropriate to provide priority to RML Orders that

are designated to be identified as such for purposes of the Retail Liquidity Identifier over

orders that are not so designated because the Retail Liquidity Identifier is likely to be an

important factor in attracting RMOs to send Retail Midpoint Orders, and thus increases

the likelihood of execution for resting RML Orders. Thus, similar to the priority afforded

to orders that are displayed on the MEMX Book, which receive priority because they

contribute to price discovery and attract liquidity to the Exchange, the Exchange believes

that designated RML Orders resulting in the dissemination of the Retail Liquidity

Identifier should receive priority over those that do not.

The following examples, which the Exchange proposes to codify in proposed

Exchange Rule 11.22(c)(3)(B) as slightly modified to conform with the Rule's context,

illustrate how the Exchange would handle orders under the proposed RML Program:

Assume the following facts:

- The NBBO for security ABC is $10.00 – $10.10.

- User 1 enters an RML Order that is not designated to be identified as RML

    Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX

    Book as an RML Order to buy ABC at $10.05.

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purposes of IEX's Retail Liquidity Identifier, as described above.

- User 2 then enters an RML Order that is designated to be identified as RML Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX Book as an RML Order to buy ABC at $10.05. The Exchange publishes through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP a Retail Liquidity Identifier indicating the presence of designated RML Interest of at least one round lot to buy ABC.

- User 3 then enters a Pegged Order with a Midpoint Peg instruction to buy ABC for 500 shares. The Pegged Order is posted to the MEMX Book as a Pegged Order to buy ABC at $10.05.

- User 4 then enters a Limit Order with a Non-Displayed instruction to buy ABC at $10.07 for 100 shares, which is posted to the MEMX Book.

- There are no other orders resting on the MEMX Book.

Example 1: Retail Member Organization enters a Retail Midpoint Order to sell 1,200 shares of ABC. The Retail Midpoint Order will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05 (because it is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2));

- second, against the full size of User 2's buy order for 500 shares at $10.05 (because it has priority over User 1's RML Order that is not designated to be identified as RML Interest pursuant to proposed Exchange Rule 11.22(c)(3)(A)(i) and (ii)); and

- third, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order does not execute against User 3's buy order because User 3's buy order is not an RML Order. The Retail Midpoint Order is filled for 1,100 shares and the balance of 100 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP as there is no longer designated RML Interest of at least one round lot to buy ABC.

Example 2: Assume the same facts above, except that User 3 enters a Limit Order with a Displayed instruction to buy 50 shares of ABC at $10.06, which is posted to the MEMX Book. The incoming Retail Midpoint Order to sell 1,200 shares of ABC will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05 (because it is priced more aggressively than User 3's buy order and is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2));

- second, against the full size of User 3's buy order for 50 shares at $10.05 (because it is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2));

- third, against the full size of User 2's buy order for 500 shares at $10.05

    (because it has priority over User 1's RML Order that is not designated to be

    identified as RML Interest pursuant to proposed Exchange Rule

    11.22(c)(3)(A)(i) and (ii)); and

- fourth, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order is filled for 1,150 shares and the balance of 50 shares is

cancelled back to the Retail Member Organization. The Exchange removes the Retail

Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR

Top data products and through the appropriate SIP as there is no longer designated RML

Interest of at least one round lot to buy ABC.

Implementation

The Exchange proposes that all securities traded on the Exchange would be

eligible for inclusion in the RML Program. If the Commission approves this proposed

rule change, the Exchange will implement it within 90 days of approval and will provide

notice to Members and market participants of the implementation timeline.

2.   Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section

6(b) of the Act[40] in general, and furthers the objectives of Section 6(b)(5) of the Act[41] in

particular, in that it is designed to prevent fraudulent and manipulative acts and practices,

to promote just and equitable principles of trade, to foster cooperation and coordination

with persons engaged in facilitating transactions in securities, to remove impediments to

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[40]   15 U.S.C. 78f(b).

[41]   15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with these principles because it is designed to increase competition among execution venues and offer the potential for meaningful price improvement to orders of retail investors, including through encouraging market participants to provide additional liquidity to execute against the orders of retail investors at the Midpoint Price.

As discussed in the Purpose section, the Exchange's proposed RML Program is a simple, transparent approach designed to provide retail investors with meaningful price improvement opportunities by executing at the Midpoint Price (through RMOs' use of the proposed new Retail Midpoint Order) by incentivizing Users who wish to interact with such retail liquidity to send additional non-displayed resting interest also designed to execute at the Midpoint Price (through such Users' use of the proposed new RML Order).

As described above, the proposed RML Program is comparable in purpose and effect to the IEX Retail Program, and the Commission recently approved several changes to the IEX Retail Program that make certain of its features substantially similar to proposed features of the RML Program.[42] Accordingly, the Exchange's proposal generally encourages competition between exchange venues. In this connection, the Exchange believes that the proposed distinctions between the Exchange's proposal and the approved IEX Retail Program will both enhance competition amongst market participants and encourage competition amongst exchange venues.

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[42]   See IEX Retail Approval Order, supra note 9.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers, and the Exchange understands that broker-dealers commonly differentiate between customers based on the nature and profitability of their business.

While the RML Program would differentiate among its Users, in that Retail Midpoint Orders may only be submitted by an RMO, as is the case with other Retail Orders on the Exchange today, the Exchange believes that such differentiation is not unfairly discriminatory but rather is designed to promote a competitive process for retail executions while providing retail investors with the potential to receive meaningful price improvement at the Midpoint Price. In addition to the Exchange's existing rules relating to Retail Orders,[43] there is ample precedent for differentiation of retail order flow in the existing approved programs of other national securities exchanges,[44] including the IEX Retail Program, as described in the Purpose section. As the Commission has recognized, retail order segmentation was designed to create additional competition for retail order flow, leading to additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.[45]

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[43]   See Exchange Rule 11.21.

[44]   See infra note 47.

[45]   See Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR-NYSE-2018-28) (order approving NYSE's Retail

The Commission consistently highlights the need to ensure that the U.S. capital markets are structured with the interests of retail investors in mind, and highlighted its focus on the "long-term interests of Main Street investors" as its number one strategic goal for fiscal years 2018 to 2022 in the Commission Strategic Plan.[46] The Exchange believes its proposed RML Program would serve the retail investing public by providing them with the opportunity for meaningful price improvement on eligible trades.

The Exchange notes that several other national securities exchanges, including IEX as described herein, have for several years operated retail liquidity programs that include market segmentation whereby retail orders are permitted to interact with specified price-improving liquidity or receive execution priority.[47] The Exchange understands that these programs were designed to promote competition for retail order flow among execution venues, most of which continues to be executed in the OTC markets rather than on exchanges. Similarly, the Exchange's proposed RML Program is designed to provide an additional competitive alternative for retail orders to receive price improvement. The Exchange believes that it is appropriate to provide incentives to bring more retail order flow to a public exchange. As described in the Purpose section, these incentives include the opportunity for Retail Orders to receive meaningful price improvement at the Midpoint Price (through RMOs' use of the proposed Retail Midpoint

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Liquidity Program on a permanent basis).

[46]   See Commission Strategic Plan, supra note 7.

[47]   See IEX Rule 11.232. See also NYSE Rule 107C, NYSE Arca Equities Rule
7.44, Cboe EDGX Rule 11.9(a)(2)(A) and (B), Cboe BYX Rule 11.24, and
Nasdaq BX Rule 4780.

Order) by providing all Users with the opportunity to provide price-improving liquidity to

such orders (through Users' use of the proposed RML Order).

Definitions

The Exchange believes that it is consistent with the Act for a Retail Midpoint

Order to be a Retail Order that is a Midpoint Peg Order with a TIF instruction of IOC, as

this is designed to ensure that such orders are entered on behalf of retail investors[48] and

will receive price improvement at the Midpoint Price when executing against resting

RML Orders. Similarly, the Exchange believes that it is consistent with the Act for an

RML Order to be a Midpoint Peg Order with a TIF instruction of Day, RHO, or GTT, as

this is designed to ensure that such orders are able to post to the MEMX Book and will

provide price improvement at the Midpoint Price to retail investors when executing

against incoming Retail Midpoint Orders. The Exchange also believes that it is

appropriate and consistent with the Act for Retail Midpoint Orders and RML Orders to

not be eligible for routing because, as noted above, such orders are designed to execute

on the Exchange against each other and, as Pegged Orders, are not eligible for routing

under the Exchange's current rules relating to Pegged Orders.

The Exchange further believes that it is consistent with the Act to structure its

RML Program such that Retail Midpoint Orders and RML Orders are only eligible to

execute against each other (subject to the exception of Retail Midpoint Orders being

eligible to execute against other orders priced more aggressively than the Midpoint Price

in order to maintain price priority on the Exchange, as described above) to provide a

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48   An RMO must exercise due diligence and monitor orders that it enters as Retail
        Orders to ensure that such orders originate from natural persons (i.e., retail
        investors). See Exchange Rule 11.21(b)(6).

mechanism whereby liquidity-providing Users can provide price-improving liquidity at the Midpoint Price specifically to retail investors, and liquidity-removing RMOs submitting orders on behalf of retail investors can interact with such price-improving liquidity at the Midpoint Price in a deterministic manner. This structure would thus facilitate the interaction of such liquidity-providing Users with the orders of retail investors, which the Exchange believes is desirable for certain Users, as described above, while avoiding the possibility of such Users unintentionally interacting with another type of market participant. Accordingly, the Exchange believes that it is consistent with the Act for RML Orders to only execute against Retail Midpoint Orders (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced more aggressively than the Midpoint Price) so as to incentivize the entry of RML Orders and thereby provide meaningful price improvement to retail investors. Further, as noted above, the concept of an order type that is only eligible to interact with a specific contra-side order type has previously been approved by the Commission both in the context of liquidity-providing orders for retail programs and in other contexts.[49] The Exchange reiterates that RMOs may continue to submit their Retail Orders to the Exchange to execute against the various other order types offered by the Exchange, at prices different than the Midpoint Price, as they can today.

For the foregoing reasons, the Exchange believes that the proposed definitions of Retail Midpoint Order and RML Order, and the proposed structure of the RML Program whereby such orders are only eligible to execute against each other (subject to the exception of Retail Midpoint Orders being eligible to execute against other orders priced

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[49]   See supra notes 21-22 and accompanying text.

more aggressively than the Midpoint Price) and at the Midpoint Price, are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and further the investor protection and public interest objectives of Section 6(b) of the Act, by establishing a simple, transparent structure that is designed to facilitate the provision of meaningful price improvement (i.e., at the Midpoint Price) for orders of retail investors in a deterministic manner.

<div align="center">Retail Liquidity Identifier</div>

The Exchange believes that it is consistent with the Act to disseminate a Retail Liquidity Identifier in connection with its RML Program, as described in the Purpose section. The purpose of the Retail Liquidity Identifier is to provide relevant market information to RMOs that there is available RML Interest on the Exchange. The dissemination is thus designed to augment the total mix of information available to RMOs that may benefit the Retail Orders they represent by encouraging RMOs to send such retail liquidity as Retail Midpoint Orders designed to receive price improvement by executing at the Midpoint Price against available RML Interest.

As noted above, the proposed Retail Liquidity Identifier is substantially similar to the Retail Liquidity Identifier disseminated by IEX, which was recently approved by the Commission, except that the Exchange would enable a User to elect whether to designate an RML Order to be identified as such for purposes of the Retail Liquidity Identifier. The Exchange believes that providing Users with the optionality to designate an RML Order to be identified as such for purposes of the Retail Liquidity Identifier is appropriate

and consistent with the Act because, as described above, some Users submitting RML

Orders, such as those with a larger sized RML Order, may be concerned about potential

information leakage when the Retail Liquidity Identifier persists for extended periods of

time despite multiple executions of Retail Midpoint Orders against such order. The

Exchange thus believes that offering this optionality would enable such Users to manage

their RML Orders more effectively and would therefore foster cooperation and

coordination with persons engaged in facilitating transactions in securities and remove

impediments to and perfect the mechanism of a free and open market and a national

market system. Further, as noted above, the ability for a User to elect whether to

designate their RML Interest to be identified as such for purposes of the Retail Liquidity

Identifier is similar in purpose and effect to the ability of a User to elect whether to

designate their orders as displayed or non-displayed on an exchange's order book—

functionality that is offered by most U.S. equities exchanges, including the Exchange—as

it is simply intended to provide Users with the ability to decide which information they

publicize in the marketplace, and thus, the Exchange does not believe this aspect of the

proposal raises any novel issues for the Commission to consider.

The Exchange also believes that removing the Retail Liquidity Identifier

previously disseminated through the MEMOIR Depth and MEMOIR Top data products

and through the appropriate SIP after executions against Retail Midpoint Orders have

depleted the available designated RML Interest such that the remaining designated RML

Interest does not aggregate to form at least one round lot is consistent with the Act, as it

would increase transparency in the market by indicating to RMOs that there is no longer

designated RML Interest of at least one round lot available, which the Exchange believes

would reduce the amount of Retail Midpoint Orders sent to the Exchange that are

cancelled back to the User when there is no actionable RML Interest to execute against.

In this regard, the Exchange believes that its proposed implementation of the Retail

Liquidity Identifier would foster cooperation and coordination with persons engaged in

facilitating transactions in securities and remove impediments to and perfect the

mechanism of a free and open market and a national market system. As noted above, the

Exchange also believes this implementation is consistent with the implementation of the

other exchanges that disseminate Retail Liquidity Identifiers.

<u>Priority and Order Execution</u>

The Exchange further believes that its priority and order execution approach for

the RML Program is consistent with the Act. As discussed above, the RML Program is

designed to incentivize RMOs to submit Retail Midpoint Orders to the Exchange to

receive meaningful price improvement while simultaneously incentivizing Users and

their clients to enter additional non-displayed interest in the form of RML Orders that

will only trade with, and offer meaningful price improvement to, Retail Midpoint Orders.

Thus, the proposed RML Program is designed to facilitate the provision of meaningful

price improvement (i.e., at the Midpoint Price) for orders of retail investors.

The Exchange believes that it is appropriate and consistent with the Act to

structure its RML Program such that Retail Midpoint Orders and RML Orders are only

eligible to execute against each other at the Midpoint Price, so that Retail Midpoint

Orders, which are entered on behalf of retail investors, receive price improvement that is

meaningful by definition, as they are guaranteed, if executed, to execute at the Midpoint

Price. The Exchange believes that introducing a program that provides and encourages

additional liquidity and price improvement to Retail Orders, in the form of Retail

Midpoint Orders designed to execute at the Midpoint Price, is appropriate because retail

investors are typically less sophisticated than professional market participants and

therefore would not have the type of technology to enable them to compete with such

market participants. Therefore, the Exchange believes that it is consistent with the public

interest and the protection of investors to provide retail investors with these enhanced

execution opportunities. Additionally, as discussed above, the Exchange believes that the

opportunity to obtain meaningful price improvement at the Midpoint Price should operate

as a powerful incentive for RMOs to send Retail Orders to the Exchange in the form of

Retail Midpoint Orders, thereby contributing to the Exchange's midpoint liquidity to the

benefit of all Users. While the Exchange typically has resting non-displayed liquidity

priced to execute at the Midpoint Price, a key aspect of the proposed RML Program is to

further incentivize Users and their clients to enter additional non-displayed interest that

will trade with Retail Orders and offer meaningful price improvement at the Midpoint

Price (i.e., in the form of RML Orders) in a deterministic manner.

In addition, the proposal to execute Retail Midpoint Orders against RML Orders

only at the Midpoint Price is also designed to facilitate RMOs' compliance with their best

execution obligations when acting as agent on behalf of a Retail Order.[50] Specifically, as

noted in FINRA Regulatory Notice 15-46 (Guidance on Best Execution Obligations in

Equity, Options and Fixed Income Markets), when conducting its review of execution

quality in any security, a firm should consider, among other things, whether it could

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[50]   All Users that handle customer orders as agent are required to be FINRA
         members, and therefore are subject to FINRA guidance. See 17 CFR 240.15b9-
         1(a).

obtain mid-point price improvement on one venue versus less price improvement on another venue.[51] Further, limiting the execution of Retail Midpoint Orders against RML Orders to the Midpoint Price is designed to be a simple approach that does not introduce unnecessary complexity to the order entry and execution process on the Exchange, as both orders are proposed to be a type of Midpoint Peg Order. The Exchange notes that under the initial implementation of the IEX Retail Program, approved by the Commission in 2019, IEX Retail Orders and IEX RLP Orders were only eligible to trade at the Midpoint Price.[52] Accordingly, the Exchange does not believe this aspect of the proposal raises any novel issues that have not been considered by the Commission.

The Exchange further believes that it is appropriate and consistent with the Act to execute Retail Midpoint Orders against Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the Midpoint Price, rather than at the prices at which such orders are ranked on the MEMX Book, as doing so would ensure that the priority of more aggressively priced orders is maintained on the Exchange,

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[51]   See FINRA Regulatory Notice 15-46, endnote 25, available at https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

[52]   See Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR-IEX-2019-05) (order granting approval of a proposed rule change to establish the IEX Retail Program). The Exchange notes that IEX subsequently amended the IEX Retail Program to permit executions at prices other than the Midpoint Price in certain limited circumstances—i.e., against displayed odd lots priced at or more aggressively than the Midpoint Price— although the Exchange is instead proposing to execute Retail Midpoint Orders against Displayed Odd Lot Orders priced more aggressively than the Midpoint Price at the Midpoint Price in this circumstance, as described above. See Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR-IEX-2021-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow Retail Orders to Trade with Certain Aggressively Priced Displayed Odd Lot Orders).

as described above, in a manner that provides the expected execution price to RMOs that submit Retail Midpoint Orders and provides price improvement to Users that submit more aggressively priced orders. As noted above, by selecting an order type that is specifically limited to executing at the Midpoint Price, an RMO would expect to receive an execution of their Retail Midpoint Order at the Midpoint Price and not at any other price(s), and thus, the Exchange is proposing to address the needs of RMOs that focus their Retail Order trading on receiving executions at the Midpoint Price in a deterministic manner through the adoption of the Retail Midpoint Order. Additionally, as noted above, use of this order type is completely voluntary, and RMOs may continue to submit their Retail Orders to the Exchange to execute against orders at prices different than the Midpoint Price, outside of the RML Program, as they can today. Moreover, the Exchange believes that there are benefits associated with executing Retail Orders submitted to the Exchange at one price level rather than multiple prices, such as simplified record-keeping for retail investors and execution reporting by RMOs. The Exchange believes such benefits, in addition to the simplicity and transparency of the RML Program achieved by permitting executions of the proposed new order types only at the Midpoint Price, outweigh the potential additional price improvement that Retail Midpoint Orders could receive if they were permitted to execute against Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the prices at which such orders were ranked, in a manner consistent with the objectives of Section 6(b)(5) of the Act[53] described above.

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[53] 15 U.S.C. 78f(b)(5).

The Exchange believes that first executing a Retail Midpoint Order against any resting Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price ahead of RML Orders is consistent with the Act because, notwithstanding the RML Program's goal of matching Retail Midpoint Orders against RML Orders at the Midpoint Price in a deterministic manner, doing so ensures that the priority of more aggressively priced orders is maintained on the Exchange, as described above. Maintaining price priority in this regard, consistent with its current rules, reflects the Exchange's overall goal of incentivizing Users to submit aggressively priced orders to the Exchange, which contribute to the overall market quality and attract liquidity on the Exchange, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system. Furthermore, as the proposed RML Program provides for a mechanism to respect the priority of more aggressively priced liquidity on the Exchange prior to executing Retail Midpoint Orders against RML Orders at the Midpoint Price, similar to Nasdaq's handling of MELOs, as described above, the Exchange believes that this aspect of the proposal does not raise any novel issues for the Commission to consider.

The Exchange believes that providing execution priority to RML Orders that are designated to be identified as such for purposes of the Retail Liquidity Identifier ahead of RML Orders that are not so designated is consistent with the Act, as the Exchange believes that designated RML Orders would attract additional liquidity to the Exchange. Specifically, as noted above, the Exchange believes that dissemination of the Retail Liquidity Identifier is likely to be an important factor in attracting incoming Retail

Midpoint Orders, and thus increases the likelihood of execution for resting RML Orders.

Therefore, the Exchange believes that it removes impediments to and perfects the

mechanism of a free and open market and national market system to provide execution

priority to designated RML Orders, which cause the dissemination of the Retail Liquidity

Identifier, over those that do not. Additionally, the Exchange believes that providing

execution priority to designated RML Orders is not unfairly discriminatory since any

User can designate their RML Orders to be identified as such for purposes of the Retail

Liquidity Identifier, and the Exchange believes that Users would only choose not to

designate RML Orders to be identified as such when another purpose, such as the

potential for information leakage, outweighs the importance of execution priority for such

orders.

In sum, the Exchange submits that the proposed RML Program is a simple,

transparent approach designed to provide an opportunity for retail customers' orders to

receive meaningful price improvement in a manner generally consistent with the

approved retail programs of other exchanges. Thus, the Exchange believes that the

proposed RML Program is consistent with the Act in that it is designed to promote just

and equitable principles of trade, to foster cooperation and coordination with persons

engaged in facilitating transactions in securities, to remove impediments to and perfect

the mechanism of a free and open market and a national market system and, in general, to

protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any

burden on competition that is not necessary or appropriate in furtherance of the purposes

of the Act. To the contrary, the Exchange believes that the proposed RML Program

would enhance competition and execution quality for retail investors and would enhance competition for Users and their clients seeking to interact with retail liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, a Retail Midpoint Order may only be submitted by firms approved to send Retail Orders on the Exchange (i.e., RMOs), which is comparable to an IEX Retail Order offered under the IEX Retail Program and retail programs on other exchanges where specific rules have been approved allowing only certain participants to send Retail Orders.[54] All Users would be eligible to enter an RML Order, and all Users would be eligible to execute against an incoming Retail Midpoint Order in price priority in accordance with the Exchange's existing rules. Moreover, the proposed rule change would provide potential benefits to all Users to the extent it is successful in attracting additional midpoint liquidity.

    C.   <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

The Exchange neither solicited nor received comments on the proposed rule change.

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[54]   <u>See</u> <u>supra</u> note 47.

III.   Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2021-10 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-2021-10. 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-2021-10 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.[55]

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[55]   17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is <u>underlined</u>; Proposed deletions are in [brackets].

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CHAPTER 11. TRADING RULES

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<u>Rule 11.22. Retail Midpoint Liquidity Program</u>

<u>(a)   Definitions.</u>

<u>(1)   Retail Midpoint Order. A "Retail Midpoint Order" is a Retail Order submitted by a Retail Member Organization that is a Pegged Order with a Midpoint Peg instruction and that is only eligible to execute against RML Orders, and other orders priced more aggressively than the midpoint of the NBBO, through the execution process described in Rule 11.22(c). A Retail Midpoint Order must have a TIF instruction of IOC.</u>

<u>(2)   Retail Midpoint Liquidity Order. A "Retail Midpoint Liquidity Order" or "RML Order" is a Pegged Order with a Midpoint Peg instruction that is only eligible to execute against Retail Midpoint Orders through the execution process described in Rule 11.22(c). An RML Order must have one of the following TIF instructions: Day, RHO, or GTT. An RML Order may not include a Minimum Execution Quantity instruction. Any User is permitted, but not required, to submit RML Orders. A User may, but is not required to, designate an RML Order to be identified as RML Order interest ("RML Interest") pursuant to Rule 11.22(b) by including a Displayed instruction, either on an order-by-order basis or on a port-by-port basis.</u>

<u>(b)   Retail Liquidity Identifier. An identifier shall be disseminated through the Exchange's MEMOIR Depth and MEMOIR Top data products (specified in Rule 13.8) and through the appropriate securities information processor, when designated RML Interest aggregated to form at least one round lot for a particular security is available in the System ("Retail Liquidity Identifier"), provided that such designated RML Interest is resting at the midpoint of the NBBO and is priced at least $0.001 better than the NBB or NBO. The Retail Liquidity Identifier shall reflect the symbol for the particular security and the side (buy, sell, or buy and sell) of the designated RML Interest, but shall not include the price or size of the designated RML Interest.</u>

<u>(c)   Priority and Order Execution.</u>

<u>(1)   Retail Midpoint Orders and RML Orders shall only execute at the midpoint of the NBBO.</u>

(2)   Retail Midpoint Orders shall seek to execute against RML Orders resting on the MEMX Book at the midpoint of the NBBO in accordance with paragraph (c)(3) below; provided, however, that if there is: (A) a Limit Order of Odd Lot size that is displayed by the System and that is priced more aggressively than the midpoint of the NBBO and/or (B) an order that is not displayed by the System and that is priced more aggressively than the midpoint of the NBBO, resting on the MEMX Book, then an incoming Retail Midpoint Order would first execute against any such orders in price/time priority in accordance with Rule 11.9 and Rule 11.10, except that such orders would execute at the midpoint of the NBBO irrespective of the prices at which such orders were ranked.

(3)   Retail Midpoint Orders shall execute against RML Orders resting on the MEMX Book at the midpoint of the NBBO in time priority in accordance with Rule 11.10, subject to the following:

(A)   A Retail Midpoint Order to buy (sell) shall execute upon entry against sell (buy) RML Orders in the following order:

(i)   RML Orders that are designated to be identified as RML Interest pursuant to Rule 11.22(b); and

(ii)   RML Orders that are not designated to be identified as RML Interest pursuant to Rule 11.22(b).

(B)   Examples of priority and order allocation are as follows:

The NBBO for security ABC is $10.00 – $10.10.

User 1 enters an RML Order that is not designated to be identified as RML Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX Book as an RML Order to buy ABC at $10.05.

User 2 then enters an RML Order that is designated to be identified as RML Interest to buy ABC for 500 shares. The RML Order is posted to the MEMX Book as an RML Order to buy ABC at $10.05. The Exchange publishes through the MEMOIR Depth and MEMOIR Top data products and through the appropriate securities information processor a Retail Liquidity Identifier indicating the presence of designated RML Interest of at least one round lot to buy ABC.

User 3 then enters a Pegged Order with a Midpoint Peg instruction to buy ABC for 500 shares. The Pegged Order is posted to the MEMX Book as a Pegged Order to buy ABC at $10.05.

User 4 then enters a Limit Order with a Non-Displayed instruction to buy ABC at $10.07 for 100 shares, which is posted to the MEMX Book.

There are no other orders resting on the MEMX Book.

Example 1: Retail Member Organization enters a Retail Midpoint Order to sell 1,200 shares of ABC. The Retail Midpoint Order will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05 (because it is priced more aggressively than the midpoint of the NBBO, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the midpoint of the NBBO pursuant to Rule 11.22(c)(2));

- second, against the full size of User 2's buy order for 500 shares at $10.05 (because it has priority over User 1's RML Order that is not designated to be identified as RML Interest pursuant to Rule 11.22(c)(3)(A)(i) and (ii)); and

- third, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order does not execute against User 3's buy order because User 3's buy order is not an RML Order. The Retail Midpoint Order is filled for 1,100 shares and the balance of 100 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate securities information processor as there is no longer designated RML Interest of at least one round lot to buy ABC.

Example 2: Assume the same facts above, except that User 3 enters a Limit Order with a Displayed instruction to buy 50 shares of ABC at $10.06, which is posted to the MEMX Book. The incoming Retail Midpoint Order to sell 1,200 shares of ABC will execute in the following order:

- first, against the full size of User 4's buy order for 100 shares at $10.05 (because it is priced more aggressively than User 3's buy order and is priced more aggressively than the midpoint of the NBBO, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the midpoint of the NBBO pursuant to Rule 11.22(c)(2));

- second, against the full size of User 3's buy order for 50 shares at $10.05 (because it is priced more aggressively than the midpoint of the NBBO, and thus, it is eligible to execute against a Retail Midpoint Order, it has priority over the RML Orders resting on the MEMX Book, and it executes at the midpoint of the NBBO pursuant to Rule 11.22(c)(2));

- third, against the full size of User 2's buy order for 500 shares at $10.05 (because it has priority over User 1's RML Order that is not designated to be identified as RML Interest pursuant to Rule 11.22(c)(3)(A)(i) and (ii)); and

- fourth, against the full size of User 1's buy order for 500 shares at $10.05.

The Retail Midpoint Order is filled for 1,150 shares and the balance of 50 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate securities information processor as there is no longer designated RML Interest of at least one round lot to buy ABC.

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