

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members³ (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on July 1, 2022.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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

a. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) reduce certain rebates and modify certain required criteria under the Liquidity Provision Tiers; (ii) modify the required criteria under the Step-Up Additive Rebate; (iii) increase the fee and modify the required criteria under Liquidity Removal Tier 1; (iv) reduce the rebates and modify the required criteria under the Displayed Liquidity Incentive ("DLI") Tiers; and (v) eliminate the DLI Additive Rebate, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently

⁴ Market share percentage calculated as of June 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

represents approximately 3.5% of the overall market share.⁵ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of \$0.0020 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”). The Exchange also currently offers Liquidity Provision Tiers 1, 2, 3 and 4, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to reduce certain of the rebates for executions of Added Displayed Volume and modify certain required criteria under the Liquidity Provision Tiers, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of \$0.00335 per share for executions of Added Displayed Volume for

⁵ Id.

Members that qualify for such tier by achieving a Displayed ADAV⁶ that is equal to or greater than 0.40% of the TCV.⁷ The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to \$0.0033 per share,⁸ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) a Remove ADV⁹ that is equal to or greater than 0.25% of the TCV and a Step-Up ADAV¹⁰ from June 2022 that is equal to or greater than 0.05% of the TCV.

Thus, such proposed change would keep the existing criteria intact and add an alternative

⁶ As set forth on the Fee Schedule, “ADAV” means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and “Displayed ADAV” means ADAV with respect to displayed orders.

⁷ As set forth on the Fee Schedule, “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁸ The proposed pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

⁹ As proposed, the term “Remove ADV” means ADV with respect to orders that remove liquidity. As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis. The Exchange proposes to add the definition of Remove ADV under the “Definitions” section of the Fee Schedule.

¹⁰ As set forth on the Fee Schedule, “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

criteria that includes a Remove ADV threshold and a Step-Up ADAV threshold, which are designed to encourage the submission of additional order flow to the Exchange in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under Liquidity Provision Tier 1 merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.00005 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Second, with respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of \$0.0032 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV; or (2) an ADAV that is equal to or greater than 0.15% of the TCV and a Step-Up ADAV from May 2022 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier only by achieving an ADAV that is equal to or greater than 0.25% of the TCV. Thus, such proposed change would keep the first of such two alternative criteria intact and eliminate the second of such criteria. The Exchange notes that no Members are presently achieving the second of such criteria, and as such, the Exchange does not believe that the proposed elimination of such criteria will have a significant impact on any Member's trading behavior on the Exchange. The Exchange therefore no longer wishes to, nor is it required to, maintain such criteria. The Exchange is not proposing to change the rebates provided under such tier.

Third, with respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV; or (2) a Step-Up ADAV from December 2021 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to \$0.0029 per

share,¹¹ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.12% of the TCV; or (2) a Step-Up ADAV from April 2022 that is equal to or greater than 0.04% of the TCV; or (3) a Step-Up Non-Displayed ADAV¹² from April 2022 that is equal to or greater than 2,000,000 shares. Thus, such proposed change would lower the ADAV threshold in the first of such alternative criteria, slightly lower the Step-Up ADAV threshold but reference a more recent baseline month in the second of such alternative criteria, and add a third alternative criteria that is based on a Step-Up Non-Displayed ADAV. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the form of non-displayed liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages displayed liquidity over non-displayed liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria based on a Step-Up Non-Displayed ADAV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.0002 per share), which the Exchange

¹¹ The proposed pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 3" with a Fee Code of "B3", "D3" or "J3", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹² As proposed, the term "Step-Up Non-Displayed ADAV" means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV. As set forth on the Fee Schedule, "Non-Displayed ADAV" means ADAV with respect to non-displayed orders (including Midpoint Peg orders). The Exchange proposes to add the definition of Step-Up Non-Displayed ADAV under the "Definitions" section of the Fee Schedule.

believes remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Fourth, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.05% of the TCV; or (2) a Step-Up Displayed ADAV from February 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 4 to \$0.0026 per share,¹³ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Step-Up Displayed ADAV from April 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. Thus, such proposed change would slightly increase the ADAV threshold in the first of such alternative criteria, keep the same Step-Up Displayed ADAV threshold but reference a more recent baseline month in the second of such alternative

¹³ The proposed pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

criteria, and keep the third of such alternative criteria intact. Such changes are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.0001 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Step-Up Additive Rebate

The Exchange currently offers the Step-Up Additive Rebate under which the Exchange provides an additive rebate of \$0.0002 per share that is in addition to the otherwise applicable rebate for a qualifying Member's executions of orders that constitute Added Displayed Volume, except: (i) orders that establish the national best bid or offer ("NBBO") if such Member qualifies for the Exchange's NBBO Setter Tier; and (ii) Retail Orders.¹⁴ Currently, a Member qualifies for the Step-Up Additive Rebate by achieving a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV. Now, the Exchange proposes to modify the required

¹⁴ As set forth in Exchange Rule 11.21(a), 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.

criteria under the Step-Up Additive Rebate such that a Member would now qualify for such tier by achieving: (1) a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV; or (2) an ADAV \geq 0.70% of the TCV. Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that is based on an ADAV threshold that is higher than the ADAV threshold under any other of the Exchange's pricing tiers and that no Member is currently achieving on the Exchange. The Exchange believes that this proposed alternative criteria provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under the Step-Up Additive Rebate merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange is not proposing to change the amount of the additive rebate provided under such tier.

Liquidity Removal Tier 1

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Volume”). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of \$0.00285 per share for executions of Removed Volume by achieving: (1) an ADAV that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 0.60% of the TCV. Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.0029 per share,¹⁵ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Remove ADV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV from April 2022 that is equal to or greater than 0.10% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV. Thus, such proposed changes to the required criteria would replace the ADAV threshold with a Remove ADV threshold and a Step-Up ADAV threshold in the first of such alternative criteria and increase the ADV threshold in the second of such alternative criteria. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve,

¹⁵ The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members.

such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of increasing the fee charged for executions of Removed Volume under such tier as proposed (i.e., by \$0.00005 per share), which the Exchange believes is a modest increase and remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the fee charged under such tier for executions of orders in securities priced below \$1.00 per share.

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which qualifying Members are provided an enhanced rebate for executions of Added Displayed Volume. The DLI Tiers are designed to encourage Members, through the provision of such enhanced rebates for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement¹⁶) in a large number of securities, generally,

¹⁶ As set forth on the Fee Schedule, the term "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%, and the term "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

and in the DLI Target Securities,¹⁷ in particular (i.e., through the applicable securities requirements¹⁸), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, including the DLI Target Securities specifically, and committing capital to support the execution of orders.¹⁹ Now, the Exchange proposes to modify DLI Tiers 1 and 2 by modifying the required criteria and reducing the rebates for executions of Added Displayed Volume under such tiers.

Currently, a Member qualifies for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 of which must be DLI Target Securities, per trading day during the month; and a Member qualifies for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month. First, the

¹⁷ As set forth on the Fee Schedule, the term “DLI Target Securities” refers to a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange’s website.

¹⁸ As set forth on the Fee Schedule, the term “securities requirement” means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in a specified number of any securities traded on the Exchange (the “general securities requirement”) as well as a securities requirement that must be achieved by a Member meeting the quoting requirement in a specified number of DLI Target Securities (the “DLI Target Securities requirement”).

¹⁹ See the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>) for additional details regarding the Exchange’s DLI Tiers and the DLI Target Securities. See also Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

Exchange proposes to modify the required criteria under DLI Tiers 1 and 2 by deleting the requirement for a Member to meet the quoting requirement in a specified number of DLI Target Securities (i.e., the DLI Target Securities requirement) in each of such tiers. Thus, the Exchange is proposing to delete the DLI Target Securities requirements and the concept of DLI Target Securities altogether, and the required criteria under each of DLI Tiers 1 and 2 would now only be based on a Member meeting the quoting requirement in the applicable number of securities, which may be comprised of any securities traded on the Exchange (i.e., the general securities requirement).²⁰ The existing DLI Target Securities requirements under DLI Tiers 1 and 2 were initially designed to incentivize additional quoting competition with respect to a designated list of securities (i.e., the DLI Target Securities) in which the Exchange specifically sought to enhance market quality. Since the initial adoption of the DLI program, each of the DLI Tiers have included a DLI Target Securities requirement, and the Exchange has seen significant improvement in market quality with respect to the DLI Target Securities. The Exchange now believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements.

In addition to the proposed deletion of the DLI Target Securities requirements under DLI Tiers 1 and 2, the Exchange also proposes to increase the general securities requirement under DLI Tier 2 such that a Member would now qualify for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 400 (i.e., increased from 250)

²⁰ In connection with this proposed change, the Exchange is proposing to delete the definition of “DLI Target Securities” from the Fee Schedule as it will no longer be used.

securities per trading day during the month. While the Exchange is proposing to delete the DLI Target Securities requirement, this proposed increase in the general securities requirement under DLI Tier 2 is designed to achieve the DLI's market quality benefits described above in a broader base of securities under such tier.

In addition to the proposed changes to the required criteria under DLI Tiers 1 and 2 described above, the Exchange is also proposing to reduce the rebates for executions of Added Displayed Volume under such tiers. Currently, the Exchange provides enhanced rebates of \$0.0033 per share under DLI Tier 1 and \$0.0030 per share under DLI Tier 2 for executions of Added Displayed Volume for Members that qualify for such tiers. Now, the Exchange proposes to reduce the rebate provided under DLI Tier 1 to \$0.0032 per share and the rebate provided under DLI Tier 2 to \$0.0029 per share.²¹ The purpose of reducing the enhanced rebates for executions of Added Displayed Volume provided under DLI Tiers 1 and 2 as proposed (i.e., by \$0.0001 per share in each case), which the Exchange believes is a modest decrease and remains commensurate with the proposed new required criteria in each case, is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity and promoting the price discovery and market quality objectives of the DLI Tiers

²¹ The proposed pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" with a Fee Code of "Bq1", "Bq1" or "Jq1", as applicable, and the proposed pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 2" with a Fee Code of "Bq2", "Dq2" or "Jq2", as applicable.

described above. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below \$1.00 per share.

DLI Additive Rebate

Lastly, the Exchange proposes to eliminate the DLI Additive Rebate. Currently, the Exchange offers a DLI Additive Rebate incentive that is applicable to DLI Tier 1, which provides an additive rebate of \$0.0001 per share for executions of Added Displayed Volume where, for a Member that qualifies for DLI Tier 1, such Member has an ADAV that is equal to or greater than 0.30% of the TCV. The Exchange now proposes to eliminate such DLI Additive Rebate. The purpose of eliminating the DLI Additive Rebate is for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. For these reasons, the Exchange no longer wishes to, nor is it required to, maintain such tier.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4) and (5).

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including through more diverse types of orders, to the Exchange, which the Exchange believes would enhance liquidity and market quality on the

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

Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, through the proposed reduced rebates and increased fees under certain pricing tiers, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers, the Step-Up Additive Rebate, Liquidity Removal Tier 1 and the DLI Tiers, as modified by the proposed changes to the rebates and fees, as well as the required criteria, as applicable, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including through various forms of diverse order types, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, thereby deepening liquidity, promoting price discovery and contributing to a more robust and well-balanced market ecosystem to the benefit of all

Members. The Exchange also believes that the proposed changes to such tiers reflect a reasonable and equitable allocation of fees and rebates because, as noted above, the Exchange believes in each case that the proposed new fee or rebate represents a modest increase or reduction, as applicable, and/or remains commensurate with the corresponding required criteria under such tier, and in each case is reasonably related to the market quality benefits that the applicable tier is designed to achieve while decreasing expenditures or generating additional revenue with respect to the Exchange's transaction pricing.

The Exchange believes that the proposed change to delete the DLI Target Securities requirements from the required criteria under DLI Tiers 1 and 2 is reasonable because, as noted above, the Exchange believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities on the Exchange, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements. The Exchange also believes that such change is equitable and not unfairly discriminatory because it will apply to all Members equally and make the required criteria under such tiers less restrictive, in that Members seeking to qualify for such tiers will no longer be required to meet the quoting requirement in a certain designated list of securities, but rather, would have the flexibility to choose which securities to quote in to meet the applicable general securities requirement under such tiers.

The Exchange also believes the proposed change to increase the general securities requirement under DLI Tier 2 from 250 securities to 400 securities is reasonable, equitable and not unfairly discriminatory because it will apply to all Members equally, in

that all Members will continue to have the opportunity to achieve the required criteria under such tier, and this proposed increase is intended to enhance market quality in a broader range of securities on the Exchange to the benefit of all Members.

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

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to

²⁵ 15 U.S.C. 78f(b)(4) and (5).

direct additional order flow, including through more diverse types of orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁶

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including through more diverse types of orders, to the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers, Step-Up Additive

²⁶ See supra note 24.

Rebate, Liquidity Removal Tier 1 and DLI Tiers, and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume or pay the discounted fee for Removed Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding fee or rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the elimination of the DLI Additive Rebate and the DLI Target Securities requirements under the DLI Tiers will apply to all Members equally, in that the DLI Additive Rebate will no longer be available for any Member, and no Member will be required to meet a DLI Target Securities requirement to qualify for either of the DLI Tiers. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no

single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing and to encourage additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors

and listed companies.”²⁷ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²⁸ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

²⁷ See supra note 24.

²⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.³⁰

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

Not applicable.

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

Exhibit 5. Text of Proposed Fee Schedule.

³⁰ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2022-16]

[Insert date]

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on July 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) reduce certain rebates and modify certain required criteria under the Liquidity Provision Tiers; (ii) modify the required criteria under the Step-Up Additive Rebate; (iii) increase the fee and modify the required criteria under Liquidity Removal Tier 1; (iv) reduce the rebates and modify the required criteria under the Displayed Liquidity Incentive ("DLI") Tiers; and (v) eliminate the DLI Additive Rebate, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading.⁴ Thus, in such a low-

⁴ Market share percentage calculated as of June 30, 2022. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3.5% of the overall market share.⁵ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of \$0.0020 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”). The Exchange also currently offers Liquidity Provision Tiers 1, 2, 3 and 4, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to reduce certain of the rebates for executions of Added Displayed Volume and modify certain required criteria under the Liquidity Provision Tiers, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides

⁵ Id.

an enhanced rebate of \$0.00335 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV⁶ that is equal to or greater than 0.40% of the TCV.⁷ The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to \$0.0033 per share,⁸ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) a Remove ADV⁹ that is equal to or greater than 0.25% of the TCV and a Step-Up ADAV¹⁰ from June 2022 that is equal to or greater than 0.05% of the TCV.

⁶ As set forth on the Fee Schedule, “ADAV” means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and “Displayed ADAV” means ADAV with respect to displayed orders.

⁷ As set forth on the Fee Schedule, “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁸ The proposed pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

⁹ As proposed, the term “Remove ADV” means ADV with respect to orders that remove liquidity. As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis. The Exchange proposes to add the definition of Remove ADV under the “Definitions” section of the Fee Schedule.

¹⁰ As set forth on the Fee Schedule, “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that includes a Remove ADV threshold and a Step-Up ADAV threshold, which are designed to encourage the submission of additional order flow to the Exchange in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under Liquidity Provision Tier 1 merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.00005 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00

per share under such tier.

Second, with respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of \$0.0032 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV; or (2) an ADAV that is equal to or greater than 0.15% of the TCV and a Step-Up ADAV from May 2022 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 such that a Member would qualify for such tier only by achieving an ADAV that is equal to or greater than 0.25% of the TCV. Thus, such proposed change would keep the first of such two alternative criteria intact and eliminate the second of such criteria. The Exchange notes that no Members are presently achieving the second of such criteria, and as such, the Exchange does not believe that the proposed elimination of such criteria will have a significant impact on any Member's trading behavior on the Exchange. The Exchange therefore no longer wishes to, nor is it required to, maintain such criteria. The Exchange is not proposing to change the rebates provided under such tier.

Third, with respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV; or (2) a Step-Up ADAV from December 2021 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to \$0.0029 per

share,¹¹ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.12% of the TCV; or (2) a Step-Up ADAV from April 2022 that is equal to or greater than 0.04% of the TCV; or (3) a Step-Up Non-Displayed ADAV¹² from April 2022 that is equal to or greater than 2,000,000 shares. Thus, such proposed change would lower the ADAV threshold in the first of such alternative criteria, slightly lower the Step-Up ADAV threshold but reference a more recent baseline month in the second of such alternative criteria, and add a third alternative criteria that is based on a Step-Up Non-Displayed ADAV. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the form of non-displayed liquidity-adding volume. While the Exchange's overall pricing philosophy generally encourages displayed liquidity over non-displayed liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria based on a Step-Up Non-Displayed ADAV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.0002 per share), which the Exchange

¹¹ The proposed pricing for Liquidity Provision Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 3" with a Fee Code of "B3", "D3" or "J3", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹² As proposed, the term "Step-Up Non-Displayed ADAV" means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV. As set forth on the Fee Schedule, "Non-Displayed ADAV" means ADAV with respect to non-displayed orders (including Midpoint Peg orders). The Exchange proposes to add the definition of Step-Up Non-Displayed ADAV under the "Definitions" section of the Fee Schedule.

believes remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Fourth, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.05% of the TCV; or (2) a Step-Up Displayed ADAV from February 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 4 to \$0.0026 per share,¹³ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Step-Up Displayed ADAV from April 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV that is equal to or greater than 1,000,000 shares. Thus, such proposed change would slightly increase the ADAV threshold in the first of such alternative criteria, keep the same Step-Up Displayed ADAV threshold but reference a more recent baseline month in the second of such alternative

¹³ The proposed pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

criteria, and keep the third of such alternative criteria intact. Such changes are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. The purpose of reducing the rebate for executions of Added Displayed Volume under such tier as proposed (i.e., by \$0.0001 per share), which the Exchange believes is a modest reduction and remains commensurate with the required criteria, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

Step-Up Additive Rebate

The Exchange currently offers the Step-Up Additive Rebate under which the Exchange provides an additive rebate of \$0.0002 per share that is in addition to the otherwise applicable rebate for a qualifying Member's executions of orders that constitute Added Displayed Volume, except: (i) orders that establish the national best bid or offer ("NBBO") if such Member qualifies for the Exchange's NBBO Setter Tier; and (ii) Retail Orders.¹⁴ Currently, a Member qualifies for the Step-Up Additive Rebate by achieving a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV. Now, the Exchange proposes to modify the required

¹⁴ As set forth in Exchange Rule 11.21(a), 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.

criteria under the Step-Up Additive Rebate such that a Member would now qualify for such tier by achieving: (1) a Step-Up ADAV (excluding Retail Orders) from April 2022 that is equal to or greater than 0.07% of the TCV; or (2) an ADAV \geq 0.70% of the TCV. Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that is based on an ADAV threshold that is higher than the ADAV threshold under any other of the Exchange's pricing tiers and that no Member is currently achieving on the Exchange. The Exchange believes that this proposed alternative criteria provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange notes that, as the proposed change to the required criteria under the Step-Up Additive Rebate merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange is not proposing to change the amount of the additive rebate provided under such tier.

Liquidity Removal Tier 1

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Volume”). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of \$0.00285 per share for executions of Removed Volume by achieving: (1) an ADAV that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 0.60% of the TCV. Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.0029 per share,¹⁵ and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) a Remove ADV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV from April 2022 that is equal to or greater than 0.10% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV. Thus, such proposed changes to the required criteria would replace the ADAV threshold with a Remove ADV threshold and a Step-Up ADAV threshold in the first of such alternative criteria and increase the ADV threshold in the second of such alternative criteria. Such changes are designed to encourage the submission of additional order flow to the Exchange, including in the forms of both liquidity-removing volume and liquidity-adding volume. While the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve,

¹⁵ The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members.

such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The purpose of increasing the fee charged for executions of Removed Volume under such tier as proposed (i.e., by \$0.00005 per share), which the Exchange believes is a modest increase and remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange is not proposing to change the fee charged under such tier for executions of orders in securities priced below \$1.00 per share.

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which qualifying Members are provided an enhanced rebate for executions of Added Displayed Volume. The DLI Tiers are designed to encourage Members, through the provision of such enhanced rebates for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement¹⁶) in a large number of securities, generally,

¹⁶ As set forth on the Fee Schedule, the term "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%, and the term "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

and in the DLI Target Securities,¹⁷ in particular (i.e., through the applicable securities requirements¹⁸), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities, including the DLI Target Securities specifically, and committing capital to support the execution of orders.¹⁹ Now, the Exchange proposes to modify DLI Tiers 1 and 2 by modifying the required criteria and reducing the rebates for executions of Added Displayed Volume under such tiers.

Currently, a Member qualifies for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities, at least 125 of which must be DLI Target Securities, per trading day during the month; and a Member qualifies for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 250 securities, at least 75 of which must be DLI Target Securities, per trading day during the month. First, the

¹⁷ As set forth on the Fee Schedule, the term “DLI Target Securities” refers to a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange’s website.

¹⁸ As set forth on the Fee Schedule, the term “securities requirement” means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in a specified number of any securities traded on the Exchange (the “general securities requirement”) as well as a securities requirement that must be achieved by a Member meeting the quoting requirement in a specified number of DLI Target Securities (the “DLI Target Securities requirement”).

¹⁹ See the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>) for additional details regarding the Exchange’s DLI Tiers and the DLI Target Securities. See also Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

Exchange proposes to modify the required criteria under DLI Tiers 1 and 2 by deleting the requirement for a Member to meet the quoting requirement in a specified number of DLI Target Securities (i.e., the DLI Target Securities requirement) in each of such tiers. Thus, the Exchange is proposing to delete the DLI Target Securities requirements and the concept of DLI Target Securities altogether, and the required criteria under each of DLI Tiers 1 and 2 would now only be based on a Member meeting the quoting requirement in the applicable number of securities, which may be comprised of any securities traded on the Exchange (i.e., the general securities requirement).²⁰ The existing DLI Target Securities requirements under DLI Tiers 1 and 2 were initially designed to incentivize additional quoting competition with respect to a designated list of securities (i.e., the DLI Target Securities) in which the Exchange specifically sought to enhance market quality. Since the initial adoption of the DLI program, each of the DLI Tiers have included a DLI Target Securities requirement, and the Exchange has seen significant improvement in market quality with respect to the DLI Target Securities. The Exchange now believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements.

In addition to the proposed deletion of the DLI Target Securities requirements under DLI Tiers 1 and 2, the Exchange also proposes to increase the general securities requirement under DLI Tier 2 such that a Member would now qualify for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 400 (i.e., increased from 250)

²⁰ In connection with this proposed change, the Exchange is proposing to delete the definition of “DLI Target Securities” from the Fee Schedule as it will no longer be used.

securities per trading day during the month. While the Exchange is proposing to delete the DLI Target Securities requirement, this proposed increase in the general securities requirement under DLI Tier 2 is designed to achieve the DLI's market quality benefits described above in a broader base of securities under such tier.

In addition to the proposed changes to the required criteria under DLI Tiers 1 and 2 described above, the Exchange is also proposing to reduce the rebates for executions of Added Displayed Volume under such tiers. Currently, the Exchange provides enhanced rebates of \$0.0033 per share under DLI Tier 1 and \$0.0030 per share under DLI Tier 2 for executions of Added Displayed Volume for Members that qualify for such tiers. Now, the Exchange proposes to reduce the rebate provided under DLI Tier 1 to \$0.0032 per share and the rebate provided under DLI Tier 2 to \$0.0029 per share.²¹ The purpose of reducing the enhanced rebates for executions of Added Displayed Volume provided under DLI Tiers 1 and 2 as proposed (i.e., by \$0.0001 per share in each case), which the Exchange believes is a modest decrease and remains commensurate with the proposed new required criteria in each case, is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity and promoting the price discovery and market quality objectives of the DLI Tiers

²¹ The proposed pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" with a Fee Code of "Bq1", "Bq1" or "Jq1", as applicable, and the proposed pricing for DLI Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 2" with a Fee Code of "Bq2", "Dq2" or "Jq2", as applicable.

described above. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below \$1.00 per share.

DLI Additive Rebate

Lastly, the Exchange proposes to eliminate the DLI Additive Rebate. Currently, the Exchange offers a DLI Additive Rebate incentive that is applicable to DLI Tier 1, which provides an additive rebate of \$0.0001 per share for executions of Added Displayed Volume where, for a Member that qualifies for DLI Tier 1, such Member has an ADAV that is equal to or greater than 0.30% of the TCV. The Exchange now proposes to eliminate such DLI Additive Rebate. The purpose of eliminating the DLI Additive Rebate is for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would decrease the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. For these reasons, the Exchange no longer wishes to, nor is it required to, maintain such tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²² in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²³ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(4) and (5).

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including through more diverse types of orders, to the Exchange, which the Exchange believes would enhance liquidity and market quality on the

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

Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, through the proposed reduced rebates and increased fees under certain pricing tiers, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers, the Step-Up Additive Rebate, Liquidity Removal Tier 1 and the DLI Tiers, as modified by the proposed changes to the rebates and fees, as well as the required criteria, as applicable, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to provide Members with incremental incentives to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including through various forms of diverse order types, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, thereby deepening liquidity, promoting price discovery and contributing to a more robust and well-balanced market ecosystem to the benefit of all

Members. The Exchange also believes that the proposed changes to such tiers reflect a reasonable and equitable allocation of fees and rebates because, as noted above, the Exchange believes in each case that the proposed new fee or rebate represents a modest increase or reduction, as applicable, and/or remains commensurate with the corresponding required criteria under such tier, and in each case is reasonably related to the market quality benefits that the applicable tier is designed to achieve while decreasing expenditures or generating additional revenue with respect to the Exchange's transaction pricing.

The Exchange believes that the proposed change to delete the DLI Target Securities requirements from the required criteria under DLI Tiers 1 and 2 is reasonable because, as noted above, the Exchange believes the DLI Target Securities requirements are no longer needed to maintain the desired level of market quality with respect to the DLI Target Securities on the Exchange, and the Exchange therefore no longer wishes to, nor is it required to, maintain such requirements. The Exchange also believes that such change is equitable and not unfairly discriminatory because it will apply to all Members equally and make the required criteria under such tiers less restrictive, in that Members seeking to qualify for such tiers will no longer be required to meet the quoting requirement in a certain designated list of securities, but rather, would have the flexibility to choose which securities to quote in to meet the applicable general securities requirement under such tiers.

The Exchange also believes the proposed change to increase the general securities requirement under DLI Tier 2 from 250 securities to 400 securities is reasonable, equitable and not unfairly discriminatory because it will apply to all Members equally, in

that all Members will continue to have the opportunity to achieve the required criteria under such tier, and this proposed increase is intended to enhance market quality in a broader range of securities on the Exchange to the benefit of all Members.

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

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to

²⁵ 15 U.S.C. 78f(b)(4) and (5).

direct additional order flow, including through more diverse types of orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁶

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including through more diverse types of orders, to the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers, Step-Up Additive

²⁶ See supra note 24.

Rebate, Liquidity Removal Tier 1 and DLI Tiers, and thus receive the corresponding enhanced rebate for executions of Added Displayed Volume or pay the discounted fee for Removed Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding fee or rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, as noted above, the elimination of the DLI Additive Rebate and the DLI Target Securities requirements under the DLI Tiers will apply to all Members equally, in that the DLI Additive Rebate will no longer be available for any Member, and no Member will be required to meet a DLI Target Securities requirement to qualify for either of the DLI Tiers. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 17% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no

single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume and Removed Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing and to encourage additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors

and listed companies.”²⁷ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁸ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁹ and Rule 19b-4(f)(2)³⁰ thereunder.

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

²⁷ See supra note 24.

²⁸ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2022-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MEMX-2022-16. 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-2022-16 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.³¹

³¹ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

MEMX Fee Schedule
(EFFECTIVE [JUNE]JULY 1, 2022)

Transaction Fees

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

Fee Code	Description	Fee/(Rebate) - Securities at or above \$1.00 ("A")	Fee/(Rebate) - Securities below \$1.00 ("B")
B, D or J	Added displayed volume	\$(0.0020)	(0.05% of total dollar value)
B1, D1 or J1	Added displayed volume, Liquidity Provision Tier 1	\$(0.0033[5])	(0.05% of total dollar value)
B2, D2 or J2	Added displayed volume, Liquidity Provision Tier 2	\$(0.0032)	(0.05% of total dollar value)
B3, D3 or J3	Added displayed volume, Liquidity Provision Tier 3	\$(0.0029[31])	(0.05% of total dollar value)
B4, D4 or J4	Added displayed volume, Liquidity Provision Tier 4	\$(0.0026[7])	(0.05% of total dollar value)
Bq1, Dq1 or Jq1	Added displayed volume, DLI Tier 1	\$(0.0032[3])	(0.05% of total dollar value)
Bq2, Dq2 or Jq2	Added displayed volume, DLI Tier 2	\$(0.0029[30])	(0.05% of total dollar value)
Br, Dr or Jr	Added displayed volume, Retail Order	\$(0.0035)	(0.05% of total dollar value)
H	Added non-displayed volume	\$(0.0018)	Free
M	Added non-displayed volume, Midpoint Peg	\$(0.0018)	Free
H1, M1	Added non-displayed volume, Non-Display Add Tier 1	\$(0.0027)	Free
H2, M2	Added non-displayed volume, Non-Display Add Tier 2	\$(0.0024)	Free
R	Removed volume from MEMX Book	\$0.0030	0.25% of total dollar value

R1	Removed volume from MEMX Book, Liquidity Removal Tier 1	\$0.0029[85]	0.25% of total dollar value
Rr0	Removed volume from MEMX Book upon entry, Retail Order (Day/GTT/RHO)	Free	Free
Z	Routed to another market, removed liquidity	\$0.0030	0.30% of total dollar value

Definitions:

- “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.
- “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.
- “Displayed ADAV” means ADAV with respect to displayed orders.
- “Midpoint ADAV” means ADAV with respect to Midpoint Peg orders.
- “Non-Displayed ADAV” means ADAV with respect to non-displayed orders (including Midpoint Peg orders).
- “Remove ADV” means ADV with respect to orders that remove liquidity.
- “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.
- “Step-Up Displayed ADAV” means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.
- “Step-Up Non-Displayed ADAV” means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV.
- “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

* * * * *

Liquidity Provision Tiers

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.0033[5])	Member has <u>(1) a Displayed ADAV \geq 0.40% of the TCV or (2) a Remove ADV \geq 0.25% of the TCV and a Step-Up ADAV from June 2022 \geq 0.05% of the TCV</u>
Tier 2	\$(0.0032)	Member has [(1) an ADAV \geq 0.25% of the TCV; or (2) an ADAV \geq 0.15% of the TCV and a Step-Up ADAV from May 2022 \geq 0.05% of the TCV]

Tier 3	\$(0.0029[31])	Member has (1) an ADAV $\geq 0.12[0]\%$ of the TCV; or (2) a Step-Up ADAV from <u>April 2022[December 2021]</u> $\geq 0.04[5]\%$ of the TCV; or (3) a <u>Step-Up Non-Displayed ADAV from April 2022 $\geq 2,000,000$ shares</u>
Tier 4	\$(0.0026[7])	Member has (1) an ADAV $\geq 0.075\%$ of the TCV; or (2) a Step-Up Displayed ADAV from <u>April[February] 2022 $\geq 0.02\%$ of the TCV</u> ; or (3) a Midpoint ADAV of $\geq 1,000,000$ shares

Step-Up Additive Rebate

Tier	Additive Rebate Per Share*	Required Criteria
Tier 1	\$(0.0002)	Member has <u>(1) a Step-Up ADAV (excluding Retail Orders) from April 2022 $\geq 0.07\%$ of the TCV; or (2) an ADAV $\geq 0.70\%$ of the TCV</u>

*Rebate is in addition to otherwise applicable rebate for executions of added displayed volume (other than orders that establish the NBBO for Members that qualify for the NBBO Setter Tier and Retail Orders) in securities priced at or above \$1.00 per share. MEMX will append Fee Code "X" to the otherwise applicable Fee Code for qualifying executions.

Liquidity Removal Tier

Tier	Fee Per Share	Required Criteria
Tier 1	\$0.0029[85]	Member has (1) a[n] <u>Remove ADV[ADAV] $\geq 0.30\%$ of the TCV and a Step-Up ADAV from April 2022 $\geq 0.10\%$ of the TCV</u> ; or (2) an ADV $\geq 1.00[0.60]\%$ of the TCV

* * * * *

Displayed Liquidity Incentive (DLI) Tiers

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.0032[3])	Member has an NBBO Time of at least 25% in an average of at least 1,000 securities[, at least 125 of which must be DLI Target Securities,] per trading day during the month
Tier 2	\$(0.0029[30])	Member has an NBBO Time of at least 25% in an average of at least 400[250] securities[, at least 75 of which must be DLI Target Securities,] per trading day during the month

[DLI Additive Rebate

Additive Rebate Per Share*	Required Criteria
\$(0.0001)	DLI Tier 1 – Member has an ADAV \geq 0.30% of the TCV

*Rebate is in addition to otherwise applicable rebate under DLI Tier 1 for executions of added displayed volume in securities priced at or above \$1.00 per share. MEMX will append Fee Code “Y” to the otherwise applicable Fee Code for qualifying executions.]

Definitions and Notes

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

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

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

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

* * * * *