

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members³ (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on June 1, 2023.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Anders Franzon
General Counsel

Molly Hartley
Counsel

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) modify the Liquidity Provision tiers by modifying the required criteria under Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, and (ii) modify the Liquidity Removal Tiers by increasing the fee and modifying the required criteria under Liquidity Removal Tier 1 and eliminating Liquidity Removal Tier 2, as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.⁴ 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 May 31, 2023. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

represents approximately 3.2% 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 base rebate of \$0.0018 per share for executions of Added Displayed Volume.⁶ The Exchange also currently offers Liquidity Provision Tiers 1-5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under such Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, as further described below.

First, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0029 per share for executions of Added Displayed Volume for

⁵ Id.

⁶ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume” with a Fee Code of “B”, “D” or “J”, as applicable, on execution reports.

Members that qualify for such tier by achieving: (1) an ADAV⁷ that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is greater than or equal to 2,000,000 shares and a Step-Up Displayed ADAV⁸ from April 2023 that is greater than or equal to 50% of the Member's April 2023 Displayed ADAV.⁹ The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 4 such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. Thus, such proposed change would keep the existing criteria (1) intact and modify the alternative Displayed ADAV and a Step-Up Displayed ADAV thresholds in criteria (2), which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023, which is currently the case under the existing Liquidity Provision Tier 4 criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

⁷ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

⁸ As set forth on the Fee Schedule, "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

⁹ The 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.

Second, the Exchange is proposing to establish a new tier under the Liquidity Provision Tiers, which, as proposed, would be referred to by the Exchange as Liquidity Provision Tier 6. Under the proposed new Liquidity Provision Tier 6, the Exchange would provide an enhanced rebate of \$0.0024 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV that is equal to or greater than 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV.¹⁰ The Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 6 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below \$1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to such executions under each of the existing Liquidity Provision Tiers. Additionally, the Exchange is proposing that Liquidity Provision Tier 6 will expire no later than November 30, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

¹⁰ The proposed pricing for new Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", 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.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-6 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

Liquidity Removal Tiers

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange also currently offers Liquidity Removal Tiers 1 and 2 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Removal Tiers by increasing the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 and

modifying the required criteria under such tier and eliminating Liquidity Removal Tier 2, as further described below.

With respect to Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of \$0.0029 per share for executions of Removed Volume by achieving one of the following two alternative criteria: (1) an ADV¹¹ that is equal to or greater than 0.50% of the TCV¹² and a Remove ADV¹³ that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.

Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.00295 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.50% of the TCV; or (2) a Remove ADV that is equal to or greater than 0.30% of the TCV.¹⁴ Thus, the proposed change to the required criteria would keep the ADV

¹¹ 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.

¹² 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.

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

¹⁴ The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange 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

threshold and Remove ADV thresholds in the current criteria (1) the same, but rather than requiring Members to meet both thresholds as a single criteria, the Remove ADV threshold of 0.30% of the TCV would become an alternative, and the current alternative of an ADV that is equal or greater than 1.00% of the TCV would be eliminated. In other words, the existing “and” in criteria (1) would become an “or”, which would replace the existing criteria (2). The Exchange is not proposing to change the fee for executions of orders in securities priced below \$1.00 per share under such tier.

With respect to Liquidity Removal Tier 2, the Exchange currently charges a discounted fee of \$0.00295 per share for executions of Removed Volume by achieving an ADV that is equal to or greater than 0.25% of the TCV. The Exchange now proposes to eliminate Liquidity Removal Tier 2, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

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

invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

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

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 displayed, liquidity-adding and/or liquidity-removing orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional 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 Tier 4 as modified by the proposed change to the required criteria under such tier, the proposed new Liquidity Provision Tier 6, and the Liquidity Removal Tier 1 as modified by the proposed changes to the fee for executions of Removed Volume and the required criteria under such tier are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive 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 in the form of displayed, liquidity-adding and/or liquidity removing orders, 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, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 4 and the proposed new Liquidity Provision Tier 6, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. While the Exchange has proposed increasing its fees for certain executions of Removed Volume, the Exchange believes that such change represents a modest increase from the current fee applicable to such executions.

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 Act¹⁸ 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

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

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 direct additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and 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 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."¹⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the

¹⁹ See supra note 17.

attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 6, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tier, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the proposed modified criteria under Liquidity Provision 4 and the proposed modified criteria under Liquidity Removal Tier 1, and thus received the enhanced rebate for executions of Added Displayed Volume or be charged the discounted fee for executions of Removed Volume, respectively, would continue to be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange

currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to 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 generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

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

in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ 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’....”²¹ 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)

²⁰ See supra note 17.

²¹ 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)).

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission 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.²³

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.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 15 U.S.C. 78s(b)(2)(B).

Exhibit 5. Text of Proposed Fee Schedule.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2023-09]

[Insert date]

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

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

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on June 1, 2023. 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) modify the Liquidity Provision tiers by modifying the required criteria under Liquidity Provision Tier 4 and adopting a new Liquidity Provision Tier 6, and (ii) modify the Liquidity Removal Tiers by increasing the fee and modifying the required criteria under Liquidity Removal Tier 1 and eliminating Liquidity Removal Tier 2, as further described below.

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

⁴ Market share percentage calculated as of May 31, 2023. 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 3.2% 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

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⁵ Id.

⁶ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume” with a Fee Code of “B”, “D” or “J”, as applicable, on execution reports.

First, with respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of \$0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV⁷ that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is greater than or equal to 2,000,000 shares and a Step-Up Displayed ADAV⁸ from April 2023 that is greater than or equal to 50% of the Member's April 2023 Displayed ADAV.⁹ The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 4 such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Displayed ADAV that is equal to or greater than 0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 that is equal to or greater than 50% of the Member's April 2023 Displayed ADAV of the TCV. Thus, such proposed change would keep the existing criteria (1) intact and modify the alternative Displayed ADAV and a Step-Up Displayed ADAV thresholds in criteria (2), which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023, which is currently the case under the existing Liquidity Provision Tier 4 criteria (2). The Exchange is not proposing

⁷ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

⁸ As set forth on the Fee Schedule, "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

⁹ The 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.

to change the rebate provided under such tier.

Second, the Exchange is proposing to establish a new tier under the Liquidity Provision Tiers, which, as proposed, would be referred to by the Exchange as Liquidity Provision Tier 6. Under the proposed new Liquidity Provision Tier 6, the Exchange would provide an enhanced rebate of \$0.0024 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving a Displayed ADAV that is equal to or greater than 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from May 2023 that is equal to or greater than 50% of the Member's May 2023 Displayed ADAV of the TCV.¹⁰ The Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 6 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below \$1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to such executions under each of the existing Liquidity Provision Tiers. Additionally, the Exchange is proposing that Liquidity Provision Tier 6 will expire no later than November 30, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule.

¹⁰ The proposed pricing for new Liquidity Provision Tier 6 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 6" with a Fee Code of "B6", "D6" or "J6", 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.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-6 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

Liquidity Removal Tiers

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange also currently offers Liquidity Removal Tiers 1 and 2 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Removal Tiers by increasing the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 and

modifying the required criteria under such tier and eliminating Liquidity Removal Tier 2, as further described below.

With respect to Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of \$0.0029 per share for executions of Removed Volume by achieving one of the following two alternative criteria: (1) an ADV¹¹ that is equal to or greater than 0.50% of the TCV¹² and a Remove ADV¹³ that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.

Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.00295 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.50% of the TCV; or (2) a Remove ADV that is equal to or greater than 0.30% of the TCV.¹⁴ Thus, the proposed change to the required criteria would keep the ADV

¹¹ 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.

¹² 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.

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

¹⁴ The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange 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

threshold and Remove ADV thresholds in the current criteria (1) the same, but rather than requiring Members to meet both thresholds as a single criteria, the Remove ADV threshold of 0.30% of the TCV would become an alternative, and the current alternative of an ADV that is equal or greater than 1.00% of the TCV would be eliminated. In other words, the existing “and” in criteria (1) would become an “or”, which would replace the existing criteria (2). The Exchange is not proposing to change the fee for executions of orders in securities priced below \$1.00 per share under such tier.

With respect to Liquidity Removal Tier 2, the Exchange currently charges a discounted fee of \$0.00295 per share for executions of Removed Volume by achieving an ADV that is equal to or greater than 0.25% of the TCV. The Exchange now proposes to eliminate Liquidity Removal Tier 2, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

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

invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

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

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 displayed, liquidity-adding and/or liquidity-removing orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional 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 Tier 4 as modified by the proposed change to the required criteria under such tier, the proposed new Liquidity Provision Tier 6, and the Liquidity Removal Tier 1 as modified by the proposed changes to the fee for executions of Removed Volume and the required criteria under such tier are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive 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 in the form of displayed, liquidity-adding and/or liquidity removing orders, 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, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 4 and the proposed new Liquidity Provision Tier 6, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. While the Exchange has proposed increasing its fees for certain executions of Removed Volume, the Exchange believes that such change represents a modest increase from the current fee applicable to such executions.

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 Act¹⁸ 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

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and 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 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."¹⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and liquidity-removing orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the

¹⁹ See supra note 17.

attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 6, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tier, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the proposed modified criteria under Liquidity Provision 4 and the proposed modified criteria under Liquidity Removal Tier 1, and thus received the enhanced rebate for executions of Added Displayed Volume or be charged the discounted fee for executions of Removed Volume, respectively, would continue to be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange

currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to 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 generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

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

in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ 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’....”²¹ 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 Act²² and Rule 19b-4(f)(2)²³ 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

²⁰ See supra note 17.

²¹ 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)).

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2023-09 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-2023-09. 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-2023-09 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.²⁴

²⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

**MEMX Fee Schedule
(EFFECTIVE [MAY]JUNE 1, 2023)**

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	\$(0.0018)	(0.075% of total dollar value)
B1, D1 or J1	Added displayed volume, Liquidity Provision Tier 1	\$(0.00335)	(0.075% of total dollar value)
B2, D2 or J2	Added displayed volume, Liquidity Provision Tier 2	\$(0.00325)	(0.075% of total dollar value)
B3, D3 or J3	Added displayed volume, Liquidity Provision Tier 3	\$(0.0031)	(0.075% of total dollar value)
B4, D4 or J4	Added displayed volume, Liquidity Provision Tier 4	\$(0.0029)	(0.075% of total dollar value)
B5, D5 or J5	Added displayed volume, Liquidity Provision Tier 5	\$(0.0027)	(0.075% of total dollar value)
<u>B6, D6 or J6</u>	<u>Added displayed volume, Liquidity Provision Tier 6</u>	<u>\$(0.0024)</u>	<u>(0.075% of total dollar value)</u>
Bq1, Dq1 or Jq1	Added displayed volume, DLI Tier 1	\$(0.0031)	(0.075% of total dollar value)

Bq2, Dq2 or Jq2	Added displayed volume, DLI Tier 2	\$(0.0028)	(0.075% of total dollar value)
Br, Dr or Jr	Added displayed volume, Retail Order	\$(0.0034)	(0.075% of total dollar value)
P	Added volume, order subject to Display-Price Sliding that receives price improvement when executed	\$(0.0010)	Free
H	Added non-displayed volume	\$(0.0010)	Free
M	Added non-displayed volume, Midpoint Peg	\$(0.0010)	Free
H1, M1, P1	Added non-displayed volume, Non-Display Add Tier 1	\$(0.0027)	Free
H2, M2, P2	Added non-displayed volume, Non-Display Add Tier 2	\$(0.0024)	Free
H3, M3, P3	Added non-displayed volume, Non-Display Add Tier 3	\$(0.0018)	Free
R	Removed volume from MEMX Book	\$0.0030	0.28% of total dollar value
R1	Removed volume from MEMX Book, Liquidity Removal Tier 1	\$0.00295	0.28% of total dollar value
[R2	Removed volume from MEMX Book, Liquidity Removal Tier 2	\$0.00295	0.28% 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

* * * * *

Liquidity Provision Tiers

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.00335)	Member has an ADAV (excluding Retail Orders) \geq 0.45% of the TCV
Tier 2	\$(0.00325)	Member has (1) an ADAV (excluding Retail Orders) \geq 0.25% of the TCV; and (2) a Non-Displayed ADAV \geq 4,000,000 shares

Tier 3	\$(0.0031)	Member has an ADAV \geq 0.20% of the TCV
Tier 4	\$(0.0029)	Member has (1) an ADAV \geq 0.15% of the TCV; or (2) a Displayed ADAV \geq [2,000,000 shares and a Step-Up Displayed ADAV from April 2023 \geq 50% of the Member's April 2023 Displayed ADAV] <u>0.02% of the TCV and a Step-Up Displayed ADAV of the TCV from April 2023 \geq 50% of the Member's April 2023 Displayed ADAV of the TCV*</u>
Tier 5	\$(0.0027)	Member has an ADAV \geq 0.075% of the TCV
Tier 6	\$(0.0024)	Member has a Displayed ADAV \geq 0.007% of the TCV and has a Step-Up Displayed ADAV of the TCV from <u>May 2023 \geq 50% of the Member's May 2023 Displayed ADAV of the TCV**</u>

* Criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023.

** Liquidity Provision Tier 6 will expire no later than November 30, 2023.

Liquidity Removal Tier[s]

Tier	Fee Per Share	Required Criteria
Tier 1	\$0.00295	Member has (1) an ADV \geq 0.50% of the TCV [and]; <u>or (2) a Remove ADV \geq 0.30% of the TCV[; or (2) an ADV \geq 1.00% of the TCV]</u>
[Tier 2	\$0.00295	Member has an ADV \geq 0.25% of the TCV]

* * * * *