





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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Members<sup>3</sup> (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 immediately.

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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Rule 1.5(p).

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 required criteria under Liquidity Provision Tiers 1 and 2; and (ii) adopt a new Tape B Volume Tier, each as further described below.<sup>4</sup>

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 18 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 14% of the total market share of executed volume of equities trading.<sup>5</sup> Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2% of the overall market share.<sup>6</sup> 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

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<sup>4</sup> The Exchange initially filed the proposed Fee Schedule changes on August 29, 2025 (SR-MEMX-2025-27). On September 8, 2025, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> Market share percentage calculated as of August 28, 2025. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

<sup>6</sup> Id.

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 \$0.0015 per share for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume").<sup>7</sup> 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 Liquidity Provision Tiers 1 and 2, as further described below.

First with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of \$0.0033 a share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV<sup>8</sup> (excluding Retail Orders)

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<sup>7</sup> The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description "Added non-displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

<sup>8</sup> 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.

that is equal to or greater than 0.40% of the TCV;<sup>9</sup> or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV<sup>10</sup> that is equal to or greater than 6,000,000 shares.<sup>11</sup> The Exchange is now proposing to modify the criteria under Liquidity Provision Tier 1 by keeping the first criteria (1) intact with no changes but deleting the alternative criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume under such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV<sup>12</sup> that is greater than or equal to 0.50% of the TCV; or (2) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is greater than or equal to 6,000,000 shares.<sup>13</sup> Now, the Exchange proposes to modify the required criteria such that a Member would now qualify for Liquidity Provision Tier 2 by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV that is greater than or equal to 0.50% of the

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<sup>9</sup> 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.

<sup>10</sup> As set forth on the Fee Schedule, “Non-Displayed ADAV” means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

<sup>11</sup> The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

<sup>12</sup> As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

<sup>13</sup> The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 2” with a Fee Code of “B2”, “D2” or “J2”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

TCV; or (2) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is greater than or equal to 6,000,000 shares; or (3) an ADAV that is equal to or greater than 0.10% of the TCV and a Step-Up ADAV<sup>14</sup> that is equal to or greater than 0.05% of the TCV from August 2025. Thus, such proposed change keeps the first two alternative criteria intact with no changes but adds a third alternative criteria that includes both an ADAV requirement and a Step-Up ADAV requirement using August 2025 as the baseline month. Given this, the Exchange is also proposing that the newly proposed criteria (3) of Liquidity Provision Tier 2 will expire no later than February 28, 2026, which it will indicate in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. The Exchange is not proposing to change the rebate provided under such tier.

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

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<sup>14</sup> As set forth on the Fee Schedule, "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from the current ADAV.

effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-5 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.

### **New Tape B Volume Tier**

The Exchange currently offers the Tape B Volume Tier under which qualifying Members may receive an additive rebate of \$0.0002 per share for executions of Added Displayed Volume (excluding Retail orders) in Tape B securities (such orders, "Tape B Volume") by achieving certain volume criteria. The additive rebate is provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' executions that constitutes Tape B Volume (including a rebate provided under another pricing tier/incentive). The Exchange now proposes to adopt a new tier under the Tape B Volume Tiers, which as proposed, would be the new Tape B Volume Tier 1, and the existing Tape B Volume Tier would be renamed Tape B Volume Tier 2 (hereinafter referred to as such). The additive rebate and required criteria under the renamed Tape B Volume Tier 2 would remain unchanged.

Under the proposed new Tape B Volume Tier 1, the Exchange would provide an additive rebate of \$0.0005 per share for executions of Tape B Volume for Members that qualify for such tier by achieving: (1) a Tape B ADAV that is equal to or greater than

0.40% of the Tape B TCV (excluding Retail Orders); and (2) a Non-Display ADAV that is equal to or greater than 8,000,000 shares.<sup>15</sup>

The Tape B Volume Tiers are designed to attract displayed liquidity to the Exchange in Tape B securities by providing an additive rebate for executions of Tape B Volume to Members, thereby promoting price discovery and market quality on the Exchange. The Exchange notes that the proposed additive rebate under the newly proposed Tape B Volume Tier 1 is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that the tier is designed to achieve.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>17</sup> 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

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<sup>15</sup> The proposed pricing for the Tape B Volume Tier 1 is referred to by the Exchange on the Fee Schedule under the description "Tape B Volume Tier 1" with a Fee Code of "b1" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions. The new Tape B Volume Tier 2 (previously named Tape B Volume Tier) will be referred to under the description "Tape B Volume Tier 2" with a Fee Code of "b2" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>18</sup>

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 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 displayed liquidity-adding 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 and quoting-based incentives (such as tiers) 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

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<sup>18</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

and provide additional benefits 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 1 and 2, each as modified by the proposed changes to the required criteria under such tier, and the newly proposed Tape B Volume Tier 1, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to 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, orders to the Exchange in both all securities and a smaller subset of securities (i.e. Tape B securities) in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Tape B 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 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 rebates under the Liquidity Provision Tiers and the new additive rebate under Tape B Volume Tier 1 remain commensurate with the corresponding required criteria under such tiers, and are reasonably related to the market quality benefits that each tier is designed to achieve.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>19</sup> 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 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 to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>20</sup>

*Intramarket Competition*

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<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>20</sup> See supra note 18.

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tiers 1 and 2, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tiers, and the opportunity to qualify for the newly proposed Tape B Volume Tier 1 and thus receive the proposed additive rebate for executions of Tape B Volume, would be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intermarket Competition*

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 17 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 14% 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 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 Tape B 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.”<sup>21</sup> 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’ ....”<sup>22</sup> 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,<sup>23</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-

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<sup>21</sup> Id.

<sup>22</sup> 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)).

<sup>23</sup> 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.<sup>24</sup>

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.

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<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2025-28]

[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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 Members<sup>3</sup> (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). As is further described below, the Exchange proposes to (i) modify the required criteria under Liquidity Provision Tiers 1 and 2; and (ii) adopt a new Tape B Volume Tier. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Rule 1.5(p).

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in 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 required criteria under Liquidity Provision Tiers 1 and 2; and (ii) adopt a new Tape B Volume Tier, each as further described below.<sup>4</sup>

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 18 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 14% of the total market share of executed volume of equities trading.<sup>5</sup> 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

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<sup>4</sup> The Exchange initially filed the proposed Fee Schedule changes on August 29, 2025 (SR-MEMX-2025-27). On September 8, 2025, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> Market share percentage calculated as of August 28, 2025. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

represents approximately 2% of the overall market share.<sup>6</sup> 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 \$0.0015 per share for executions of displayed orders in securities priced at or above \$1.00 per share that add liquidity to the Exchange (such orders, "Added Displayed Volume").<sup>7</sup> 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 Liquidity Provision Tiers 1 and 2, as further described below.

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

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<sup>6</sup> Id.

<sup>7</sup> The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description “Added non-displayed volume” with a Fee Code of “B”, “D” or “J”, as applicable, on execution reports.

an enhanced rebate of \$0.0033 a share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV<sup>8</sup> (excluding Retail Orders) that is equal to or greater than 0.40% of the TCV;<sup>9</sup> or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV<sup>10</sup> that is equal to or greater than 6,000,000 shares.<sup>11</sup> The Exchange is now proposing to modify the criteria under Liquidity Provision Tier 1 by keeping the first criteria (1) intact with no changes but deleting the alternative criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume under such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV<sup>12</sup> that is greater than or equal to 0.50% of the TCV; or (2) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is greater than or equal to 6,000,000 shares.<sup>13</sup> Now, the

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> As set forth on the Fee Schedule, “Non-Displayed ADAV” means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

<sup>11</sup> The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

<sup>12</sup> As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

<sup>13</sup> The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 2”

Exchange proposes to modify the required criteria such that a Member would now qualify for Liquidity Provision Tier 2 by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV that is greater than or equal to 0.50% of the TCV; or (2) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV that is greater than or equal to 6,000,000 shares; or (3) an ADAV that is equal to or greater than 0.10% of the TCV and a Step-Up ADAV<sup>14</sup> that is equal to or greater than 0.05% of the TCV from August 2025. Thus, such proposed change keeps the first two alternative criteria intact with no changes but adds a third alternative criteria that includes both an ADAV requirement and a Step-Up ADAV requirement using August 2025 as the baseline month. Given this, the Exchange is also proposing that the newly proposed criteria (3) of Liquidity Provision Tier 2 will expire no later than February 28, 2026, which it will indicate in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. The Exchange is not proposing to change the rebate provided under such tier.

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.

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with a Fee Code of “B2”, “D2” or “J2”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

<sup>14</sup> As set forth on the Fee Schedule, "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from the current ADAV.

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 1-5 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.

#### **New Tape B Volume Tier**

The Exchange currently offers the Tape B Volume Tier under which qualifying Members may receive an additive rebate of \$0.0002 per share for executions of Added Displayed Volume (excluding Retail orders) in Tape B securities (such orders, "Tape B Volume") by achieving certain volume criteria. The additive rebate is provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' executions that constitutes Tape B Volume (including a rebate provided under another pricing tier/incentive). The Exchange now proposes to adopt a new tier under the Tape B Volume Tiers, which as proposed, would be the new Tape B Volume Tier 1, and the existing Tape B Volume Tier would be renamed Tape B Volume Tier 2 (hereinafter referred to as such). The additive rebate and required criteria under the renamed Tape B Volume Tier 2 would remain unchanged.

Under the proposed new Tape B Volume Tier 1, the Exchange would provide an additive rebate of \$0.0005 per share for executions of Tape B Volume for Members that

qualify for such tier by achieving: (1) a Tape B ADAV that is equal to or greater than 0.40% of the Tape B TCV (excluding Retail Orders); and (2) a Non-Display ADAV that is equal to or greater than 8,000,000 shares.<sup>15</sup>

The Tape B Volume Tiers are designed to attract displayed liquidity to the Exchange in Tape B securities by providing an additive rebate for executions of Tape B Volume to Members, thereby promoting price discovery and market quality on the Exchange. The Exchange notes that the proposed additive rebate under the newly proposed Tape B Volume Tier 1 is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that the tier is designed to achieve.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>16</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>17</sup> 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

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<sup>15</sup> The proposed pricing for the Tape B Volume Tier 1 is referred to by the Exchange on the Fee Schedule under the description "Tape B Volume Tier 1" with a Fee Code of "b1" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions. The new Tape B Volume Tier 2 (previously named Tape B Volume Tier) will be referred to under the description "Tape B Volume Tier 2" with a Fee Code of "b2" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>18</sup>

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 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 displayed liquidity-adding 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 and quoting-based incentives (such as tiers) have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable

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<sup>18</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits 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 1 and 2, each as modified by the proposed changes to the required criteria under such tier, and the newly proposed Tape B Volume Tier 1, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would continue to 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, orders to the Exchange in both all securities and a smaller subset of securities (i.e. Tape B securities) in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Tape B 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 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 rebates under the Liquidity Provision Tiers and the new additive rebate under Tape B Volume Tier 1 remain commensurate with the corresponding required criteria under such tiers, and are reasonably related to the market quality benefits that each tier is designed to achieve.

For the reasons discussed above, the Exchange submits that the proposal satisfies

the requirements of Sections 6(b)(4) and 6(b)(5) of the Act<sup>19</sup> 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 rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>20</sup>

*Intramarket Competition*

As discussed above, the Exchange believes that the proposal would incentivize

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<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>20</sup> See supra note 18.

Members to submit additional order flow, including displayed, liquidity-adding orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tiers 1 and 2, and thus receive the proposed enhanced rebate for executions of Added Displayed Volume under such tiers, and the opportunity to qualify for the newly proposed Tape B Volume Tier 1 and thus receive the proposed additive rebate for executions of Tape B Volume, would be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *Intermarket Competition*

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 17 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 14% 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 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 Tape B 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.”<sup>21</sup> 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’ ....”<sup>22</sup> 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 Act<sup>23</sup> and Rule 19b-4(f)(2)<sup>24</sup> 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

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<sup>21</sup> Id.

<sup>22</sup> 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)).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-MEMX-2025-28 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-2025-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from

publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2025-28 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

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

**MEMX Equities Fee Schedule  
(EFFECTIVE [JULY 1]SEPTEMBER 7, 2025)**

**Transaction Fees**

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**Liquidity Provision Tiers**

<b>Tier</b>	<b>Rebate Per Share</b>	<b>Required Criteria</b>
Tier 1	\$(0.0033)	(1) Member has an ADAV (excluding Retail Orders) $\geq$ 0.40% of the TCV[; or (2) Member has an ADAV $\geq$ 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV $\geq$ 6,000,000 shares]
Tier 2	\$(0.0031)	(1) Member has an ADAV $\geq$ 0.20% of the TCV and an ADV $\geq$ 0.50% of the TCV; or (2) Member has an ADAV $\geq$ 0.20% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV $\geq$ 6,000,000 shares; or (3) Member has an ADAV $\geq$ 0.10% of the TCV and a <u>Step-Up ADAV <math>\geq</math> 0.05% of the TCV from August 2025*</u>
Tier 3	\$(0.0029)	(1) Member has an ADAV $\geq$ 0.20% of the TCV in securities priced at or above \$1.00 per share; or (2) Member has an ADAV $\geq$ 0.175% of the TCV
Tier 4	\$(0.0028)	Member has an ADAV (excluding Retail Orders) $\geq$ 0.09% of the TCV
Tier 5	\$(0.0024)	Member has an ADAV $\geq$ 0.06% of the TCV

\* Criteria (3) of Liquidity Provision Tier 2 will expire no later than February 28, 2026.

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**Additive Rebates**

<b>Tier</b>	<b>Additive Rebate Per Share</b>	<b>Required Criteria</b>	<b>Fee Code*</b>

NBBO Setter	\$(0.0003) for Fee Code B**	Member has an ADAV with respect to orders with Fee Code B $\geq$ 0.05% of the TCV	S1
Tape A Quoting	\$(0.0002)***	Member has an NBBO Time of at least 50% in an average of at least 500 Tape A securities per trading day during the month	a
<u>Tape B Volume Tier 1</u>	<u>\$(0.0005)***</u>	<u>Member has (1) a Tape B ADAV <math>\geq</math> 0.40% of the Tape B TCV (excluding Retail Orders); and (2) a Non-Display ADAV <math>\geq</math> 8,000,000 shares</u>	<u>b1</u>
<u>Tape B Volume Tier 2</u>	<u>\$(0.0002)***</u>	<u>Member has a Tape B ADAV <math>\geq</math> 0.25% of the Tape B TCV (excluding Retail Orders)</u>	<u>b2</u>
Tape C Quoting	\$(0.0002)***	Member has an NBBO Time of at least 50% in an average of at least 500 Tape C securities per trading day during the month****	c

\*MEMX will append the applicable Fee Codes below to the otherwise applicable Fee Code for qualifying executions.

\*\*Rebate is in addition to otherwise applicable rebate for executions of added displayed volume (other than Retail Orders) in securities priced at or above \$1.00 per share that establish the NBBO.

\*\*\*For the Tape-specific Quoting or Volume Additive Rebates, the rebate is in addition to otherwise applicable rebate for executions of added displayed volume (excluding Retail Orders) in Tape A, B, or C securities (as applicable) priced over \$1.00 per share.

\*\*\*\*The Exchange's calculation of NBBO Time in Tape C securities for purposes of the Tape C Quoting Rebate will exclude any Tape C securities on a particular day that have a closing price of less than \$1.00 per share on that day.

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