

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 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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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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) increase the standard fee for executions of orders that remove liquidity from the Exchange in Tape A Securities priced at or above \$1.00 per share (such orders, "Removed Tape A Volume"); (ii) adopt a new Tape A Liquidity Removal Tier that provides a reduced fee for executions of Removed Tape A Volume; (iii) reduce the rebate provided under the Displayed Liquidity Incentive ("DLI") Tier 1; (iv) modify the required criteria under the Tape A Quoting Tier; (v) reduce the additive rebate provided under the Tape B Volume Tier 1; and (vi) amend the Notes section of the Fee Schedule to bring the Exchange's transactions fees and rebates into compliance with Regulation NMS Rule 610(d), each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 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.⁴ Thus, in such a low-

⁴ Market share percentage calculated as of January 29, 2026. 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 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.

Increase Standard Fee for Removed Tape A Volume

Currently, the Exchange charges a standard fee of \$0.0029 per share for executions of Removed Tape A Volume. The Exchange now proposes to increase the standard fee for executions of Removed Tape A Volume to \$0.0030 per share.⁶ The purpose of increasing the standard fee for executions of Removed Tape A Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange’s current pricing structure, which provides various rebates for liquidity-

⁵ Id.

⁶ The proposed standard fee for executions of Removed Tape A Volume is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Tape A” with a Fee Code of “Ra” on execution reports.

adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the increase proposed herein, the proposed standard fee for executions of Removed Tape A Volume remains in line with the standard fees charged by other exchanges for executions of Removed Tape A Volume.⁷ The Exchange is not proposing to change the fee charged for executions of Removed Tape A Volume in securities priced below \$1.00 per share.

Adoption of Tape A Liquidity Removal Tier

The Exchange proposes to adopt a new tier applicable to Member participation in Tape A securities, referred to by the Exchange as the Tape A Liquidity Removal Tier, in which the Exchange will charge a discounted fee for executions of Removed Tape A Volume for Members that qualify for the Tier by achieving certain volume criteria in Tape A securities. Under the proposed Tape A Liquidity Removal Tier, the Exchange will charge \$0.0029 per share for executions of Tape A Removed Volume for a Member that qualifies for the Tier by achieving a Tape A ADAV⁸ of at least 10,000,000 shares.⁹

The Exchange proposes to charge Members that qualify for the Liquidity Removal Tier a fee of 0.28% of the total dollar value of the transaction for executions of

⁷ See, e.g., the Cboe EDGX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity; see also the Cboe BZX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity.

⁸ 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.

⁹ The proposed pricing for Tape A Liquidity Removal Tier will be referred to by the Exchange on the Fee Schedule under the description "Removed volume from MEMX Book, Tape A Liquidity Removal Tier 1" with a Fee Code of "Ra1" on execution reports.

orders that remove liquidity from the Exchange in securities priced below \$1.00 per share, which is the same fee that would be applicable to such executions for Members that do not qualify for the Tape A Liquidity Removal Tier.

The proposed Tape A Liquidity Removal Tier is designed to encourage Members to strive for higher ADAV on the Exchange in Tape A securities in order to qualify for the discounted fee for executions of Removed Tape A Volume. As such, the proposed tier is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed discounted fee for executions of Removed Tape A Volume applicable to Members that qualify for the Tape A Liquidity Removal Tier is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.¹⁰

DLI Tier 1

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange ("Added Displayed Volume") by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality

¹⁰ See, e.g. the NYSE Arca Equities Fees and Charges, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf, which reflects a Tape B Remove Tier that charges a discounted fee of \$0.0029 per share for executions that remove liquidity in Tape B securities.

by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement¹¹) in a broad base of securities (i.e., through the applicable securities requirements¹²), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders. Now, the Exchange proposes to modify DLI Tier 1 by reducing the rebate for executions of Added Displayed Volume under such tier.

Currently, under DLI Tier 1, the Exchange provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an NBBO Time of at least 50% in an average of at least 1,000 securities per trading day during the month. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under DLI Tier 1 to \$0.0032 per share.¹³ The Exchange is not proposing to change the criteria required to qualify for DLI Tier 1.

The Exchange believes that the proposed reduction of the rebate under DLI Tier 1 (i.e., by \$0.0001 per share) represents a modest reduction and that the proposed rebate

¹¹ As set forth on the Fee Schedule, the term “quoting requirement” means the requirement that a Member’s NBBO Time be at least 25%, and the term “NBBO Time” means the aggregate of the percentage of time during regular trading hours during which one of a Member’s market participant identifiers (“MPIDs”) has a displayed order of at least one round lot at the national best bid or the national best offer.

¹² As set forth on the Fee Schedule, the term “securities requirement” means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

¹³ The pricing for the DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, DLI Tier 1” Tier with a Fee Code of “Bq1, Dq1, Jq1, or Iq1”, as applicable, on execution reports.

under DLI Tier 1 remains commensurate with the required criteria under such tier. The purpose of reducing the rebate for executions of Added Displayed Volume provided under DLI Tier 1, as proposed, is for business and competitive reasons, as the Exchange believes the reduction of such rebate would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange is not proposing to change the rebate provided under such tier for executions of orders in securities priced below \$1.00 per share.

Tape A Quoting Tier

The Exchange currently offers the Tape A Quoting Tier under which a Member may receive an additive rebate of \$0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders)¹⁴ in Tape A securities priced over \$1.00 per share by achieving an NBBO Time of at least 25% in an average of at least 100 Tape A securities per trading day during the month. Now, the Exchange proposes to modify the required criteria under the Tape A Quoting Tier such that a Member would now qualify for such tier by achieving an NBBO time of at least 25% in an average of at least 500 Tape A securities per trading day during the month.¹⁵ Thus, such proposed

¹⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

¹⁵ The pricing for the Tape A Quoting Tier is referred to by the Exchange on the Fee Schedule under the existing description "Tape A Quoting" Tier with a Fee Code of "a" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

change would increase the number of Tape A securities in which a Member is required to quote at the NBBO. The Exchange is not proposing to change the amount of the additive rebate provided under the Tape A Quoting Tier.

Tape B Volume Tier 1

The Exchange currently offers Tape B Volume Tiers 1 and 2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving certain criteria. Currently under Tape B Volume Tier 1, the Exchange provides an additive rebate of \$0.0005 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving: (1) a Tape B ADAV that is equal to or greater than 0.40% of the Tape B TCV¹⁶ (excluding Retail Orders); and (2) a Non-Display ADAV¹⁷ that is equal to or greater than 8,000,000 shares. Now, the Exchange proposes to reduce the additive rebate provided under the Tape B Volume Tier 1 to \$0.0004 per share.¹⁸ The Exchange is not proposing to change the criteria required to qualify for Tape B Volume Tier 1.

The Exchange believes that the proposed reduction of the rebate under Tape B Volume Tier 1 (i.e., by \$0.0001 per share) represents a modest reduction and that the

¹⁶ 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.

¹⁷ 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).

¹⁸ The pricing for the Tape B Volume Tier 1 is referred to by the Exchange on the Fee Schedule under the existing 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.

proposed rebate under Tape B Volume Tier 1 remains commensurate with the required criteria under such tier and is reasonably related to the market quality benefits that the tier is designed to achieve.

Tier/Additive Rebate Qualification

Lastly, the Exchange is proposing to add a note to the Notes section of the Fee Schedule to bring the Exchange's transaction fees and rebates into compliance with Regulation 610(d), which becomes effective on February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Regulation NMS in order to increase the transparency of exchange fees and rebates.¹⁹ New Regulation NMS Rule 610(d) provides that “[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.”²⁰ The compliance date for new Regulation NMS Rule 610(d) is the first business day of February 2026, which is Monday, February 2, 2026.²¹

Currently, unless otherwise noted on the Fee Schedule,²² the Exchange establishes certain transaction fees and rebates for equities executions that are based on tiers

¹⁹ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Regulation NMS: Minimum Pricing increments, Access Fees, and Transparency of Better Priced Orders.) (“Rule 610(d) Adopting Release”).

²⁰ 17 CFR 242.610(d).

²¹ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended).

²² The Exchange currently employs this practice under Cross Asset Tier 1, and as such, is proposing to delete the note under the Cross Asset Tier pricing table on the Fee Schedule that indicates that

calculated using volume figures from trading or quoting activity in the current month.

This means that the fees and rebates currently assessed by the Exchange associated with a given execution often cannot be determined at the time of execution, but rather are determined retroactively at the end of the month in which the execution occurred. Now, in order to ensure that its transaction fees and rebates are compliant with new Regulation NMS Rule 610(d), the Exchange is adding the following text to the Notes section of the Fee Schedule:

In compliance with Rule 610(d) of Regulation NMS, effective February 2, 2026, for purposes of determining quoting or transaction volumes for fee and rebate qualifications under the Tiers and Additive Rebates below, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new Members will receive the base rates in their first month of trading.

This change will ensure that all Exchange participants will be able to ascertain at the time of execution all the transaction fees and rebates associated with an execution of an order in an NMS stock at the Exchange.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ in particular, in that it provides for the equitable allocation of reasonable dues,

Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month. Now that the Exchange will determine qualification for all tiers based on activity during the prior month, this specific note is duplicative and no longer necessary.

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(4) and (5).

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.”²⁵

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 and/or liquidity-removing orders to the Exchange,

²⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 believes that the proposed changes to increase the standard fee charged for executions of Removed Tape A Volume is reasonable because it represents only a modest increase from the current standard fee charged for executions of Removed Tape A Volume on other exchanges.²⁶ The Exchange also believes the proposed standard fee charged for executions of Removed Tape A Volume is equitable and not unfairly discriminatory, as such fee will apply equally to all Members of the Exchange.

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 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 DLI Tier 1, Tape A Quoting Tier, Tape B Volume Tier 1, each as modified by the proposed changes herein, as well as the adoption of a new Tape A Liquidity Removal Tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers will 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 or liquidity-removing

²⁶ See supra note 7.

order flow to the Exchange, 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, because, as noted above, the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume under DLI Tier 1 and the additive rebates provided for applicable executions under the Tape A Quoting Tier and the Tape B Volume Tier 1, are commensurate with the corresponding required criteria under each such tiers and are reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. Additionally, the Exchange believes the proposed new Tape A Liquidity Removal Tier is reasonable, in that it is comparable to pricing incentives adopted by other exchanges that provide a discounted fee for executions of removed volume for firms that achieve a specified volume threshold.²⁷

The Exchange believes that the modification made in this filing to the transaction fees and rebates is reasonable because it attempts to preserve the current quoting and trading incentives, while bringing them into compliance with the requirements of new Regulation NMS Rule 610(d). Currently, Members are assessed certain execution fees, and paid certain execution rebates, based on tiers calculated using volume figures from trading and quoting activity in the current month. In order to bring these existing fees and rebates into compliance with new Regulation NMS Rule 610(d), the Exchange is modifying these fees and rebates so that they are based on tiers calculated using volume figures from trading and quoting activity in the immediate prior month for the relevant

²⁷ See supra note 10.

current month. This way all fees and rebates associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of said order. The Exchange believes that the modified schedule of transaction fees and rebates is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁸ 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

²⁸ 15 U.S.C. 78f(b)(4) and (5).

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."²⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and/or 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 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 Exchange does not believe that the proposed changes to increase the standard fee for executions of Removed Tape A Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly in that the proposed standard fee for such executions would be the fee applicable to all Members, and the opportunity to qualify for a discounted fee, as applicable, is available to all Members. Further, the opportunity to qualify for DLI Tier 1, and thus receive the proposed enhanced rebate for executions of Added Non-Displayed Volume under such tier, the opportunity to qualify for the modified Tape A Quoting Tier and Tape B Volume Tier 1, and thus receive the proposed additive rebate for executions of Tape A Volume

²⁹ See supra note 25.

and Tape B Volume, respectively, and the opportunity to qualify for the discounted fee under the newly proposed Tape A Liquidity Removal Tier, would be available to all Members that meet the associated volume or quoting 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, Removed, Displayed, Tape A 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 and quoting-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.

The Exchange's proposal to add a note to the Fee Schedule to bring the Exchange's methods for calculating fees and rebates into compliance with new Regulation NMS Rule 610(d) will not result in any burden on competition due to the fact that such change is being made solely to comply with Regulation NMS 610(d) and not for competitive purposes.

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."³⁰ 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,

³⁰ Id.

‘[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’....”³¹ 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,³² 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

³¹ 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)).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

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.³³

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.

³³ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2026-05]

[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). As is further described below, the Exchange proposes to: (i) increase the standard fee for executions of orders that remove liquidity from the Exchange in Tape A Securities priced at or above \$1.00 per share (such orders, "Removed Tape A Volume"); (ii) adopt a new Tape A Liquidity Removal Tier that provides a reduced fee for executions of Removed Tape A Volume; (iii) reduce the rebate provided under the Displayed Liquidity Incentive ("DLI") Tier 1; (iv) modify the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

required criteria under the Tape A Quoting Tier; (v) reduce the additive rebate provided under the Tape B Volume Tier 1; and (vi) amend the Notes section of the Fee Schedule to bring the Exchange's transactions fees and rebates into compliance with Regulation NMS Rule 610(d). 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

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) increase the standard fee for executions of orders that remove liquidity from the Exchange in Tape A Securities priced at or above \$1.00 per share (such orders, "Removed Tape A Volume"); (ii) adopt a new Tape A Liquidity Removal Tier that provides a reduced fee for executions of Removed Tape A Volume; (iii) reduce the rebate provided under the Displayed Liquidity Incentive ("DLI") Tier 1; (iv) modify the required criteria under the Tape A Quoting Tier; (v) reduce the additive rebate provided under the Tape B Volume Tier 1; and (vi) amend the Notes section of the Fee Schedule to bring the Exchange's transactions fees and rebates into compliance with Regulation NMS

Rule 610(d), each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 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.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 represents approximately 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.

⁴ Market share percentage calculated as of January 29, 2026. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁵ Id.

Increase Standard Fee for Removed Tape A Volume

Currently, the Exchange charges a standard fee of \$0.0029 per share for executions of Removed Tape A Volume. The Exchange now proposes to increase the standard fee for executions of Removed Tape A Volume to \$0.0030 per share.⁶ The purpose of increasing the standard fee for executions of Removed Tape A Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the increase proposed herein, the proposed standard fee for executions of Removed Tape A Volume remains in line with the standard fees charged by other exchanges for executions of Removed Tape A Volume.⁷ The Exchange is not proposing to change the fee charged for executions of Removed Tape A Volume in securities priced below \$1.00 per share.

Adoption of Tape A Liquidity Removal Tier

The Exchange proposes to adopt a new tier applicable to Member participation in Tape A securities, referred to by the Exchange as the Tape A Liquidity Removal Tier, in

⁶ The proposed standard fee for executions of Removed Tape A Volume is referred to by the Exchange on the Fee Schedule under the existing description "Removed volume from MEMX Book, Tape A" with a Fee Code of "Ra" on execution reports.

⁷ See, e.g., the Cboe EDGX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity; see also the Cboe BZX equities fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/) which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity.

which the Exchange will charge a discounted fee for executions of Removed Tape A Volume for Members that qualify for the Tier by achieving certain volume criteria in Tape A securities. Under the proposed Tape A Liquidity Removal Tier, the Exchange will charge \$0.0029 per share for executions of Tape A Removed Volume for a Member that qualifies for the Tier by achieving a Tape A ADAV⁸ of at least 10,000,000 shares.⁹

The Exchange proposes to charge Members that qualify for the Liquidity Removal Tier a fee of 0.28% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below \$1.00 per share, which is the same fee that would be applicable to such executions for Members that do not qualify for the Tape A Liquidity Removal Tier.

The proposed Tape A Liquidity Removal Tier is designed to encourage Members to strive for higher ADAV on the Exchange in Tape A securities in order to qualify for the discounted fee for executions of Removed Tape A Volume. As such, the proposed tier is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed discounted fee for executions of Removed Tape A Volume applicable to Members that qualify for the Tape A Liquidity Removal Tier is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based

⁸ 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.

⁹ The proposed pricing for Tape A Liquidity Removal Tier will be referred to by the Exchange on the Fee Schedule under the description "Removed volume from MEMX Book, Tape A Liquidity Removal Tier 1" with a Fee Code of "Ra1" on execution reports.

tiers.¹⁰

DLI Tier 1

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange ("Added Displayed Volume") by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement¹¹) in a broad base of securities (i.e., through the applicable securities requirements¹²), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders. Now, the Exchange proposes to modify DLI Tier 1 by reducing the rebate for executions of Added Displayed Volume under such tier.

¹⁰ See, e.g. the NYSE Arca Equities Fees and Charges, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf, which reflects a Tape B Remove Tier that charges a discounted fee of \$0.0029 per share for executions that remove liquidity in Tape B securities.

¹¹ As set forth on the Fee Schedule, the term "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%, and the term "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

¹² As set forth on the Fee Schedule, the term "securities requirement" means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

Currently, under DLI Tier 1, the Exchange provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an NBBO Time of at least 50% in an average of at least 1,000 securities per trading day during the month. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under DLI Tier 1 to \$0.0032 per share.¹³ The Exchange is not proposing to change the criteria required to qualify for DLI Tier 1.

The Exchange believes that the proposed reduction of the rebate under DLI Tier 1 (i.e., by \$0.0001 per share) represents a modest reduction and that the proposed rebate under DLI Tier 1 remains commensurate with the required criteria under such tier. The purpose of reducing the rebate for executions of Added Displayed Volume provided under DLI Tier 1, as proposed, is for business and competitive reasons, as the Exchange believes the reduction of such rebate would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange is not proposing to change the rebate provided under such tier for executions of orders in securities priced below \$1.00 per share.

Tape A Quoting Tier

The Exchange currently offers the Tape A Quoting Tier under which a Member may receive an additive rebate of \$0.0002 per share for a qualifying Member's executions

¹³ The pricing for the DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" Tier with a Fee Code of "Bq1, Dq1, Jq1, or Iq1", as applicable, on execution reports.

of Added Displayed Volume (other than Retail Orders)¹⁴ in Tape A securities priced over \$1.00 per share by achieving an NBBO Time of at least 25% in an average of at least 100 Tape A securities per trading day during the month. Now, the Exchange proposes to modify the required criteria under the Tape A Quoting Tier such that a Member would now qualify for such tier by achieving an NBBO time of at least 25% in an average of at least 500 Tape A securities per trading day during the month.¹⁵ Thus, such proposed change would increase the number of Tape A securities in which a Member is required to quote at the NBBO. The Exchange is not proposing to change the amount of the additive rebate provided under the Tape A Quoting Tier.

Tape B Volume Tier 1

The Exchange currently offers Tape B Volume Tiers 1 and 2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving certain criteria. Currently under Tape B Volume Tier 1, the Exchange provides an additive rebate of \$0.0005 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving: (1) a Tape B ADAV that is equal to or greater than 0.40%

¹⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

¹⁵ The pricing for the Tape A Quoting Tier is referred to by the Exchange on the Fee Schedule under the existing description "Tape A Quoting" Tier with a Fee Code of "a" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

of the Tape B TCV¹⁶ (excluding Retail Orders); and (2) a Non-Display ADAV¹⁷ that is equal to or greater than 8,000,000 shares. Now, the Exchange proposes to reduce the additive rebate provided under the Tape B Volume Tier 1 to \$0.0004 per share.¹⁸ The Exchange is not proposing to change the criteria required to qualify for Tape B Volume Tier 1.

The Exchange believes that the proposed reduction of the rebate under Tape B Volume Tier 1 (i.e., by \$0.0001 per share) represents a modest reduction and that the proposed rebate under Tape B Volume Tier 1 remains commensurate with the required criteria under such tier and is reasonably related to the market quality benefits that the tier is designed to achieve.

Tier/Additive Rebate Qualification

Lastly, the Exchange is proposing to add a note to the Notes section of the Fee Schedule to bring the Exchange's transaction fees and rebates into compliance with Regulation 610(d), which becomes effective on February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Regulation NMS in order to increase the transparency of exchange fees and rebates.¹⁹

¹⁶ 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.

¹⁷ 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).

¹⁸ The pricing for the Tape B Volume Tier 1 is referred to by the Exchange on the Fee Schedule under the existing 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.

¹⁹ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Regulation NMS: Minimum Pricing increments, Access Fees, and Transparency of Better Priced Orders.) ("Rule 610(d) Adopting Release").

New Regulation NMS Rule 610(d) provides that “[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.”²⁰ The compliance date for new Regulation NMS Rule 610(d) is the first business day of February 2026, which is Monday, February 2, 2026.²¹

Currently, unless otherwise noted on the Fee Schedule,²² the Exchange establishes certain transaction fees and rebates for equities executions that are based on tiers calculated using volume figures from trading or quoting activity in the current month. This means that the fees and rebates currently assessed by the Exchange associated with a given execution often cannot be determined at the time of execution, but rather are determined retroactively at the end of the month in which the execution occurred. Now, in order to ensure that its transaction fees and rebates are compliant with new Regulation NMS Rule 610(d), the Exchange is adding the following text to the Notes section of the Fee Schedule:

In compliance with Rule 610(d) of Regulation NMS, effective February 2, 2026, for purposes of determining quoting or transaction volumes for fee and rebate

²⁰ 17 CFR 242.610(d).

²¹ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended).

²² The Exchange currently employs this practice under Cross Asset Tier 1, and as such, is proposing to delete the note under the Cross Asset Tier pricing table on the Fee Schedule that indicates that Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month. Now that the Exchange will determine qualification for all tiers based on activity during the prior month, this specific note is duplicative and no longer necessary.

qualifications under the Tiers and Additive Rebates below, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new Members will receive the base rates in their first month of trading.

This change will ensure that all Exchange participants will be able to ascertain at the time of execution all the transaction fees and rebates associated with an execution of an order in an NMS stock at the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ 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

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(4) and (5).

in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵

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 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 believes that the proposed changes to increase the standard fee charged for executions of Removed Tape A Volume is reasonable because it represents only a modest increase from the current standard fee charged for executions of Removed Tape A Volume on other exchanges.²⁶ The Exchange also believes the proposed standard fee charged for executions of Removed Tape A Volume is equitable and not unfairly discriminatory, as such fee will apply equally to all Members of the Exchange.

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

²⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ See supra note 7.

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 DLI Tier 1, Tape A Quoting Tier, Tape B Volume Tier 1, each as modified by the proposed changes herein, as well as the adoption of a new Tape A Liquidity Removal Tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers will 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 or liquidity-removing order flow to the Exchange, 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, because, as noted above, the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume under DLI Tier 1 and the additive rebates provided for applicable executions under the Tape A Quoting Tier and the Tape B Volume Tier 1, are commensurate with the corresponding required criteria under each such tiers and are reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. Additionally, the Exchange believes the proposed new Tape A Liquidity Removal Tier is reasonable, in that it is comparable to pricing incentives

adopted by other exchanges that provide a discounted fee for executions of removed volume for firms that achieve a specified volume threshold.²⁷

The Exchange believes that the modification made in this filing to the transaction fees and rebates is reasonable because it attempts to preserve the current quoting and trading incentives, while bringing them into compliance with the requirements of new Regulation NMS Rule 610(d). Currently, Members are assessed certain execution fees, and paid certain execution rebates, based on tiers calculated using volume figures from trading and quoting activity in the current month. In order to bring these existing fees and rebates into compliance with new Regulation NMS Rule 610(d), the Exchange is modifying these fees and rebates so that they are based on tiers calculated using volume figures from trading and quoting activity in the immediate prior month for the relevant current month. This way all fees and rebates associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of said order. The Exchange believes that the modified schedule of transaction fees and rebates is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁸ 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

²⁷ See supra note 10.

²⁸ 15 U.S.C. 78f(b)(4) and (5).

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."²⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and/or 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 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

²⁹ See supra note 25.

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 Exchange does not believe that the proposed changes to increase the standard fee for executions of Removed Tape A Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly in that the proposed standard fee for such executions would be the fee applicable to all Members, and the opportunity to qualify for a discounted fee, as applicable, is available to all Members. Further, the opportunity to qualify for DLI Tier 1, and thus receive the proposed enhanced rebate for executions of Added Non-Displayed Volume under such tier, the opportunity to qualify for the modified Tape A Quoting Tier and Tape B Volume Tier 1, and thus receive the proposed additive rebate for executions of Tape A Volume and Tape B Volume, respectively, and the opportunity to qualify for the discounted fee under the newly proposed Tape A Liquidity Removal Tier, would be available to all Members that meet the associated volume or quoting 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, Removed, Displayed, Tape A 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 and quoting-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.

The Exchange's proposal to add a note to the Fee Schedule to bring the Exchange's methods for calculating fees and rebates into compliance with new Regulation NMS Rule 610(d) will not result in any burden on competition due to the fact

that such change is being made solely to comply with Regulation NMS 610(d) and not for competitive purposes.

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.”³⁰ 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’”³¹ 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.

³⁰ Id.

³¹ 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)).

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 Act³² and Rule 19b-4(f)(2)³³ 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 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. Please include file number SR-MEMX-2026-05 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.

³² 15 U.S.C. 78s(b)(3)(A)(ii).

³³ 17 CFR 240.19b-4(f)(2).

All submissions should refer to file number SR-MEMX-2026-05. 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-2026-05 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.³⁴

Sherry R. Haywood,

Assistant Secretary.

³⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

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

**MEMX Equities Fee Schedule
(EFFECTIVE FEBRUARY 2[OCTOBER 1], 2026[5])**

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, J or I*	Added displayed volume	\$(0.0015)	(0.15% of total dollar value)
B1, D1, J1 or I1	Added displayed volume, Liquidity Provision Tier 1	\$(0.0033)	(0.15% of total dollar value)
B2, D2, J2 or I2	Added displayed volume, Liquidity Provision Tier 2	\$(0.0031)	(0.15% of total dollar value)
B3, D3, J3 or I3	Added displayed volume, Liquidity Provision Tier 3	\$(0.0029)	(0.15% of total dollar value)
B4, D4, J4 or I4	Added displayed volume, Liquidity Provision Tier 4	\$(0.0028)	(0.15% of total dollar value)
B5, D5, J5 or I5	Added displayed volume, Liquidity Provision Tier 5	\$(0.0024)	(0.15% of total dollar value)
Bq1, Dq1, Jq1 or Iq1	Added displayed volume, DLI Tier 1	\$(0.0032[3])	(0.15% of total dollar value)
Bq2, Dq2, Jq2 or Iq2	Added displayed volume, DLI Tier 2	\$(0.0026)	(0.15% of total dollar value)
Br, Dr or Jr	Added displayed volume, Retail Order	\$(0.0034)	(0.15% of total dollar value)
Br1, Dr1 or Jr1	Added displayed volume, Retail Tier 1	\$(0.0037)	(0.15% of total dollar value)
BO1, DO1, JO1 or IO1	Added displayed volume, Cross Asset Tier 1	\$(0.0026)	(0.15% of total dollar value)
P	Added volume, order subject to Display-Price Sliding that receives price improvement when executed	\$(0.0025)	(0.15% of total dollar value)

H	Added non-displayed volume	\$(0.0025)	(0.15% of total dollar value)
M	Added non-displayed volume, Midpoint Peg	\$(0.0025)	(0.15% of total dollar value)
H1, M1, P1	Added non-displayed volume, Non-Display Add Tier 1	\$(0.0028)	(0.15% of total dollar value)
Ra	Removed volume from MEMX Book, Tape A	\$0.0030[29]	0.28% of total dollar value
<u>Ra1</u>	<u>Removed volume from MEMX Book, Tape A Liquidity Removal Tier 1</u>	<u>\$0.0029</u>	<u>0.28% of total dollar value</u>
Rb	Removed volume from MEMX Book, Tape B	\$0.0030	0.28% of total dollar value
Rc	Removed volume from MEMX Book, Tape C	\$0.0030	0.28% of total dollar value
RrA	Removed volume from MEMX Book, Retail Order	\$0.0029	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

*Fee Code B includes orders, other than Retail Orders, that establish the NBBO. Fee Code D includes orders, other than Retail Orders, that add displayed liquidity to the Exchange but do not establish or join the NBBO. Fee Code J includes orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Fee Code I is assigned to a Member's "P" orders if that Member meets the criteria under Display-Price Sliding Tier 1.

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Notes:

- In compliance with Rule 610(d) of Regulation NMS, effective February 2, 2026, for purposes of determining quoting or transaction volumes for fee and rebate qualifications under the Tiers and Additive Rebates below, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new Members will receive the base rates in their first month of trading.
- To the extent a Member qualifies for multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply.
- The Exchange excludes from its calculations of ADAV, ADV and TCV, and for purposes of determining qualification for the Displayed Liquidity Incentive or Additive Rebates:

(1) any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours; (2) the day that Russell Investments reconstitutes its family of indexes (i.e., the last Friday in June); (3) any day that the MSCI Equities Indexes are rebalanced (i.e., on a quarterly basis); (4) any day that the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (i.e., on a quarterly basis); and (5) any day with a scheduled early market close.

- Routed shares are not included in ADAV or ADV calculation.
- With prior notice to the Exchange, a Member may aggregate ADAV and ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).
- The Reserve Quantity of an order is treated as adding displayed volume, and thus, the rebate for adding displayed volume applies to any Reserve Quantity of an order.
- To the extent a single execution qualifies for one or more additive rebates, the maximum combined rebate per share provided by the Exchange shall be \$0.0037.
- To the extent certain tiers have required criteria that applies only to securities priced at or above \$1.00 per share, the Exchange determines whether a security should be included in the calculation of the ADV, ADAV, or TCV, as applicable, in securities priced at or above \$1.00 per share by utilizing the closing price of the security on the date of execution.
- Unless otherwise indicated, rebates provided or fees charged under the tiers below apply only to executions in securities priced at or above \$1.00.
- To the extent certain tiers have required criteria which include a quoting requirement, on a daily basis, MEMX will determine the number of securities in which each of a Member's MPIDs meets the quoting requirement for that day. MEMX will aggregate the number of securities in which each of a Member's MPIDs meets the quoting requirement to determine the number of securities in which such Member meets the quoting requirement for that day, provided that a single security in which more than one of such Member's MPIDs meets the quoting requirement for that day will only be counted once for this purpose. The quoting requirement with respect to a security must be met by a single MPID and MEMX will not aggregate the NBBO Time across all of a Member's MPIDs to determine if the quoting requirement has been met.
- In order to determine whether a Member meets the applicable securities requirements during a month, the average number of applicable securities in which such Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which each of such Member's MPIDs met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month.
- With prior notice to the Exchange, a Member may aggregate the quoting activity (but not the NBBO Time) of its MPIDs, consistent with the above, with that of the MPIDs of other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).

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Tape A Liquidity Removal Tier

Tier	Fee Per Share	Required Criteria
Tier 1	\$0.0029	Member has a Tape A ADAV \geq 10,000,000 shares

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Cross Asset Tier

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.0026)	Member has an Options ADAV in the Customer/Professional capacity* \geq 20,000 contracts on MEMX Options[**]

* The definitions of Customer and Professional are set forth in the MEMX Options fee schedule.

[** Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month.]

Displayed Liquidity Incentive (DLI) Tiers

Tier	Rebate Per Share*	Required Criteria
Tier 1	\$(0.0032[3])	Member has an NBBO Time of at least 50% in an average of at least 1,000 securities per trading day during the month
Tier 2	\$(0.0026)	Member has an NBBO Time of at least 25% in an average of at least 500 securities per trading day during the month

Additive Rebates

Tier	Additive Rebate Per Share	Required Criteria	Fee Code*
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 25% in an average of at least [1]500 Tape A securities per trading day during the month	a
Tape B Volume Tier 1	\$(0.0004[5])***	Member has (1) a Tape B ADAV \geq 0.40% of the Tape B TCV (excluding Retail Orders); and (2) a Non-Display ADAV \geq 8,000,000 shares	b1
Tape B Volume Tier 2	\$(0.0002)***	Member has a Tape B ADAV \geq 0.25% of the Tape B TCV (excluding Retail Orders)	b2

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
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*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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