





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) make certain additions and amendments related to Step-Up tiers in the Definitions section of the Fee Schedule, both in general and in light of Regulation NMS Rule 610(d), and (ii) modify the required criteria under Liquidity Provision Tier 2, 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 15% of the total market share of executed volume of equities trading.<sup>4</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>5</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

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<sup>4</sup> Market share percentage calculated as of February 25, 2026. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

<sup>5</sup> Id.

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.

### **Amendments and Additions to Definitions Section**

On September 18, 2024, the Commission adopted several amendments to Regulation NMS in order to increase the transparency of exchange fees and rebates.<sup>6</sup> 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.”<sup>7</sup> The compliance date for new Regulation NMS Rule 610(d) was the first business day of February 2026. Effective February 2, 2026, the Exchange added a note to the Fee Schedule that made clear that for purposes of determining quoting or transaction volumes for fee and rebate qualifications under the Exchange's tiers and additive rebates, all volume figures would be derived from quoting or trading activity in the prior month.<sup>8</sup> However, the Exchange inadvertently

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<sup>6</sup> 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”).

<sup>7</sup> 17 CFR 242.610(d).

<sup>8</sup> See Securities Exchange Act Release No. 104812 (February 10, 2026) 91 FR 6943 (February 13, 2026) (SR-MEMX-2026-05).

omitted amendments to definitions in the Fee Schedule related to Step-Up tiers in order to provide additional clarity regarding certain volume calculations related thereto, which the Exchange is proposing to do at this time.

Specifically, the Exchange proposes to revise the definitions of the terms "Step-Up ADAV"<sup>9</sup>, "Step-Up Displayed ADAV"<sup>10</sup>, "Step-Up Non-Displayed ADAV"<sup>11</sup>, and "Step-Up Tape B ADAV",<sup>12</sup> to remove the word "current" and replace this word with the term "the prior month's". This change is necessary to ensure that certain definitions that currently exist on the Exchange's Fee Schedule are also consistent with and reflect the Exchange's compliance with Regulation NMS Rule 610(d).

In addition, in order to provide additional clarity as to how the Exchange calculates whether a Member may meet criteria under a Step-Up Tier when that Member's ADAV<sup>13</sup> is measured relative to the TCV<sup>14</sup> of a certain baseline month, the Exchange is proposing to add a new defined term, "Step-Up Add TCV", to the Fee Schedule. Specifically, the Exchange is proposing that "Step-Up Add TCV" shall mean ADAV as a percentage of TCV in the relevant baseline month subtracted from the prior month's ADAV as a percentage of TCV. As noted above, the addition of this definition

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<sup>9</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

<sup>10</sup> "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

<sup>11</sup> "Step-Up Non-Displayed ADAV" means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV.

<sup>12</sup> "Step-Up Tape B ADAV" means ADAV in Tape B securities in the relevant baseline month subtracted from current ADAV in Tape B securities.

<sup>13</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.

<sup>14</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

seeks to avoid any potential confusion regarding the Exchange's current practice of determining whether a Member meets the required Step-Up Add TCV criteria under certain tiers.

### **Liquidity Provision Tier 2**

The Exchange currently provides a standard rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume").<sup>15</sup> The Exchange also currently offers Liquidity Provision Tiers 1-5, among other volume-based tiers, 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 required criteria under Liquidity Provision Tier 2, as further described below.

The Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV<sup>16</sup> that is equal to or greater than 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 equal to or greater than 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 that is equal to or

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<sup>15</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 displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

<sup>16</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.

greater than 0.05% of the TCV from August 2025.<sup>17</sup> A note underneath the Liquidity Provision Tiers pricing table on the Fee Schedule indicates that criteria (3) of Liquidity Provision Tier 2 will expire no later than February 28, 2026. In light of this expiration, the Exchange now wishes to modify the required criteria under Liquidity Provision Tier 2 by keeping alternative criteria (1) and (2) without changes, but modifying criteria (3) such that a Member may meet alternative criteria (3) by achieving: an ADAV that is equal to or greater than 0.10% of the TCV and a Step-Up Add TCV from December 2025 that is equal to or greater than 0.05%.<sup>18</sup> The Exchange will add a note indicating that criteria (3) under Liquidity Provision Tier 2 will expire no later than June 30, 2026. Thus, the Exchange now proposes to keep existing alternative criteria (1) and (2) intact while updating the baseline month for the step-up requirement under alternative criteria (3).

The proposed change to Liquidity Provision Tier 2 is designed to encourage Members to maintain or increase their order flow, including in the form of orders that add liquidity on the Exchange in order to qualify for the enhanced Liquidity Provision Tier 2 rebate, which may contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>19</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of

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<sup>17</sup> The 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.

<sup>18</sup> As noted above, the Exchange is proposing to add the definition of "Step-Up Add TCV" to the Definitions section of the Fee Schedule in connection with this filing.

<sup>19</sup> 15 U.S.C. 78f.

the Act,<sup>20</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.

The Exchange believes the addition of the definition of Step-Up Add TCV and the amendments to the step-up related definitions on the Fee Schedule provides for the equitable allocation of reasonable dues, fees and other charges among its Members because it allows the Exchange to preserve its current pricing incentives while also complying with Regulation NMS 610(d). Additionally, the Exchange's new and modified definitions section of the Fee Schedule is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated Members.

Additionally, 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.”<sup>21</sup>

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<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 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 Liquidity Provision Tier 2, as modified by the proposed changes to alternative criteria (3) is reasonable, equitable and not unfairly discriminatory, as such tier will continue to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, is available to all Members on an equal basis, and, as described above, is designed to encourage Members to maintain or increase their order flow, including in the

form of displayed, liquidity-adding orders 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 tier reflects 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 Liquidity Provision Tier 2 is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that such 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>22</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

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<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

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>23</sup>

#### *Intramarket Competition*

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 Exchange does not believe that the proposed changes to the definitions on the Fee Schedule or the modification of the required criteria under Liquidity Provision Tier 2 would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange's proposal will apply equally in that all members are subject to Regulation NMS Rule 610(d) and will be able to determine their applicable transaction fees and rebates based on tiers by utilizing the

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<sup>23</sup> See supra note 21.

previous month's trading and quoting activity. As it relates to Liquidity Provision Tier 2, such change to the required criteria will apply to all Members uniformly in that the opportunity to qualify for the enhanced rebate for executions of Added Displayed Volume under such tier would be available to all Members that meet the associated volume requirements in any month. 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 15% 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 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 new definition to the Fee Schedule and amend certain existing definitions 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 changes are being made solely to add clarity and 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."<sup>24</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:

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<sup>24</sup> Id.

“[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>25</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>26</sup> 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

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<sup>25</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>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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>27</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>27</sup> 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2026-07]

[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) make certain additions and amendments related to Step-Up tiers in the Definitions section of the Fee Schedule, both in general and in light of Regulation NMS Rule 610(d), and (ii) modify the required criteria under Liquidity Provision Tier 2. 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

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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).

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) make certain additions and amendments related to Step-Up tiers in the Definitions section of the Fee Schedule, both in general and in light of Regulation NMS Rule 610(d), and (ii) modify the required criteria under Liquidity Provision Tier 2, 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 15% of the total market share of executed volume of equities trading.<sup>4</sup> Thus, in such a low-

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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>5</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.

### **Amendments and Additions to Definitions Section**

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<sup>5</sup> Id.

<sup>6</sup> 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”).

<sup>7</sup> 17 CFR 242.610(d).

February 2, 2026, the Exchange added a note to the Fee Schedule that made clear that for purposes of determining quoting or transaction volumes for fee and rebate qualifications under the Exchange's tiers and additive rebates, all volume figures would be derived from quoting or trading activity in the prior month.<sup>8</sup> However, the Exchange inadvertently omitted amendments to definitions in the Fee Schedule related to Step-Up tiers in order to provide additional clarity regarding certain volume calculations related thereto, which the Exchange is proposing to do at this time.

Specifically, the Exchange proposes to revise the definitions of the terms "Step-Up ADAV"<sup>9</sup>, "Step-Up Displayed ADAV"<sup>10</sup>, "Step-Up Non-Displayed ADAV"<sup>11</sup>, and "Step-Up Tape B ADAV",<sup>12</sup> to remove the word "current" and replace this word with the term "the prior month's". This change is necessary to ensure that certain definitions that currently exist on the Exchange's Fee Schedule are also consistent with and reflect the Exchange's compliance with Regulation NMS Rule 610(d).

In addition, in order to provide additional clarity as to how the Exchange calculates whether a Member may meet criteria under a Step-Up Tier when that Member's ADAV<sup>13</sup> is measured relative to the TCV<sup>14</sup> of a certain baseline month, the

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<sup>8</sup> See Securities Exchange Act Release No. 104812 (February 10, 2026) 91 FR 6943 (February 13, 2026) (SR-MEMX-2026-05).

<sup>9</sup> "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

<sup>10</sup> "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

<sup>11</sup> "Step-Up Non-Displayed ADAV" means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV.

<sup>12</sup> "Step-Up Tape B ADAV" means ADAV in Tape B securities in the relevant baseline month subtracted from current ADAV in Tape B securities.

<sup>13</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.

<sup>14</sup> As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the

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### **Liquidity Provision Tier 2**

The Exchange currently provides a standard rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume").<sup>15</sup> The Exchange also currently offers Liquidity Provision Tiers 1-5, among other volume-based tiers, 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 required criteria under Liquidity Provision Tier 2, as further described below.

The Exchange currently provides an enhanced rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.20% of the TCV and an ADV<sup>16</sup>

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volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply

<sup>15</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 displayed volume" with a Fee Code of "B", "D" or "J", as applicable, on execution reports.

<sup>16</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.

that is equal to or greater than 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 equal to or greater than 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 that is equal to or greater than 0.05% of the TCV from August 2025.<sup>17</sup> A note underneath the Liquidity Provision Tiers pricing table on the Fee Schedule indicates that criteria (3) of Liquidity Provision Tier 2 will expire no later than February 28, 2026. In light of this expiration, the Exchange now wishes to modify the required criteria under Liquidity Provision Tier 2 by keeping alternative criteria (1) and (2) without changes, but modifying criteria (3) such that a Member may meet alternative criteria (3) by achieving: an ADAV that is equal to or greater than 0.10% of the TCV and a Step-Up Add TCV from December 2025 that is equal to or greater than 0.05%.<sup>18</sup> The Exchange will add a note indicating that criteria (3) under Liquidity Provision Tier 2 will expire no later than June 30, 2026. Thus, the Exchange now proposes to keep existing alternative criteria (1) and (2) intact while updating the baseline month for the step-up requirement under alternative criteria (3).

The proposed change to Liquidity Provision Tier 2 is designed to encourage Members to maintain or increase their order flow, including in the form of orders that add liquidity on the Exchange in order to qualify for the enhanced Liquidity Provision Tier 2 rebate, which may contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

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<sup>17</sup> The 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.

<sup>18</sup> As noted above, the Exchange is proposing to add the definition of "Step-Up Add TCV" to the Definitions section of the Fee Schedule in connection with this filing.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>19</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>20</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.

The Exchange believes the addition of the definition of Step-Up Add TCV and the amendments to the step-up related definitions on the Fee Schedule provides for the equitable allocation of reasonable dues, fees and other charges among its Members because it allows the Exchange to preserve its current pricing incentives while also complying with Regulation NMS 610(d). Additionally, the Exchange's new and modified definitions section of the Fee Schedule is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated Members.

Additionally, 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

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<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(4) and (5).

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 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 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 Liquidity Provision Tier 2, as modified by the proposed changes to alternative criteria (3)

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<sup>21</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

is reasonable, equitable and not unfairly discriminatory, as such tier will continue to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, is available to all Members on an equal basis, and, as described above, is designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding orders 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 tier reflects 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 Liquidity Provision Tier 2 is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that such 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>22</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

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<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

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>23</sup>

#### *Intramarket Competition*

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 Exchange does not believe that the proposed changes to the definitions on the Fee Schedule or the modification of the required criteria under Liquidity Provision Tier 2

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<sup>23</sup> See supra note 21.

would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange's proposal will apply equally in that all members are subject to Regulation NMS Rule 610(d) and will be able to determine their applicable transaction fees and rebates based on tiers by utilizing the previous month's trading and quoting activity. As it relates to Liquidity Provision Tier 2, such change to the required criteria will apply to all Members uniformly in that the opportunity to qualify for the enhanced rebate for executions of Added Displayed Volume under such tier would be available to all Members that meet the associated volume requirements in any month. 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 15% 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 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 new definition to the Fee Schedule and amend certain existing definitions 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 changes are being made solely to add clarity and 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.”<sup>24</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>25</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>26</sup> and Rule 19b-4(f)(2)<sup>27</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

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<sup>24</sup> Id.

<sup>25</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>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>27</sup> 17 CFR 240.19b-4(f)(2).

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<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-2026-07 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-2026-07. 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-2026-07 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>28</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>28</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 [FEBRUARY]MARCH 2, 2026)**

**Transaction Fees**

\* \* \* \* \*

**Definitions:**

\* \* \* \* \*

- "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from [current]the prior month's ADAV.
- "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from the prior month's ADAV as a percentage of TCV.
- "Step-Up Displayed ADAV" means Displayed ADAV in the relevant baseline month subtracted from [current]the prior month's Displayed ADAV.
- "Step-Up Non-Displayed ADAV" means Non-Displayed ADAV in the relevant baseline month subtracted from [current]the prior month's Non-Displayed ADAV.
- "Step-Up Tape B ADAV" means ADAV in Tape B securities in the relevant baseline month subtracted from [current]the prior month's ADAV in Tape B securities.

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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
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 Step-Up <u>Add TCV from December 2025</u> [ADAV] $\geq$ 0.05%[ of the TCV from August 2025]*
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]June [28]30, 2026.

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