19b–4(f)(2) [20] 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 should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

☐ Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

☐ Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–53 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–PEARL–2022–53. 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 (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PEARL–2022–53 and should be submitted on or before January 5, 2023. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27162 Filed 12–14–22; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96471; File No. SR–MEMX–2022–33]

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

December 9, 2022.

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 December 1, 2022, 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 [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on December 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) modify the Liquidity Provision Tiers; (ii) modify the Displayed Liquidity Incentive (''DLI'') Tiers; (iii) modify the NBBO Setter Tier to become the NBBO Setter/Joiner Tiers; (iv) reduce the rebates for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange (such orders, ''Added Non-Displayed Volume''); (v) modify the Non-Display Add Tiers; (vi) adopt the Sub-Dollar Rebate Tier; (vii) add a note to the Fee Schedule stating that 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 $0.0036; and (viii) eliminate the Step-Up Additive Rebate, each as further described below.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

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

exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the rebates and required criteria under Liquidity Provision Tiers 1, 3 and 5, and keeping Liquidity Provision Tiers 2 and 4 intact with no changes, as further described below.

First, with respect to Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) a Displayed ADAV[6] that is equal to or greater than 0.40% of the TCV;[7] or (2) a Remove ADV[8] that is equal to or greater than 0.20% of the TCV and a Step-Up ADAV[9] from June 2022 that is equal to or greater than 0.05% of the TCV. The Exchange now proposes to modify Liquidity Provision Tier 1 such that the Exchange would provide an enhanced rebate of $0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) a Displayed ADAV that is equal to or greater than 0.40% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV from November 2022 that is equal to or greater than 0.10% of the TCV.[10] Thus, such proposed changes would increase the rebate for executions of Added Displayed Volume by $0.0001 per share and keep the first of the two existing alternative criteria (based on an overall Displayed ADAV threshold) intact, eliminate the second of the two existing alternative criteria (based on a Remove ADV threshold and a Step-Up ADAV from June 2022 threshold), and add a new second alternative criteria (based on an overall ADAV threshold and a Step-Up ADAV from November 2022 threshold). The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under this tier.

Second, with respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of $0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.12% of the TCV; or (2) a Step-Up ADAV from April 2022 that is equal to or greater than 0.04% of the TCV; or (3) a Step-Up Non-Displayed ADAV[11] from April 2022 that is equal to or greater than 2,000,000 shares. The Exchange now proposes to modify Liquidity Provision Tier 3 such that the Exchange would provide an enhanced rebate of $0.0030 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 0.15% of the TCV; or (2) an ADAV that is equal to or greater than 15,000,000 shares.[12] Thus, such proposed changes would increase the rebate for executions of Added Displayed Volume by $0.0001 per share and would increase the overall ADAV threshold that is expressed as a percentage of the TCV in the first of the three existing alternative criteria, eliminate the second and third of the three existing alternative criteria (based on a Step-Up ADAV from April 2022 threshold and a Step-Up Non-Displayed ADAV from April 2022 threshold), and add a new alternative criteria based on an overall ADAV threshold that is expressed as a number of shares. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

Third, with respect to Liquidity Provision Tier 5, the Exchange currently provides an enhanced rebate of $0.0026 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 0.075% of the TCV; or (2) a Step-Up Displayed ADAV[13] from April 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV[14] that is equal to or greater than 1,000,000 shares. The Exchange now proposes to modify Liquidity Provision Tier 5 such that the Exchange would provide an enhanced rebate of $0.0025 per share for executions of Added Displayed Volume for Members that qualify for such tier by

[5] *Id.*

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

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

[8] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis, and ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[9] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

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

[11] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including Midpoint Peg orders), and ''Step-Up Non-Displayed ADAV'' means Non-Displayed ADAV in the relevant baseline month subtracted from current Non-Displayed ADAV.

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

[13] As set forth on the Fee Schedule, ''Step-Up Displayed ADAV'' means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

[14] As set forth on the Fee Schedule, ''Midpoint ADAV'' means ADAV with respect to Midpoint Peg orders.

achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Midpoint ADAV [15] that is equal to or greater than 1,000,000 shares.[16] Thus, such proposed changes would decrease the rebate for executions of Added Displayed Volume by $0.0001 per share and would eliminate the second of the three existing alternative criteria (based on a Step-Up Displayed ADAV from April 2022 threshold). The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

As noted above, Liquidity Provision Tiers 2 and 4 would remain intact with no changes under this proposal.

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

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of 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 requirement [17]) in a broad base of securities (*i.e.,* through the applicable securities requirements [18]), 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.[19] Now, the Exchange proposes to modify DLI Tiers 1 and 2 by reducing the rebates for executions of Added Displayed Volume under such tiers and modifying the required criteria under DLI Tier 1.

Currently, a Member qualifies for DLI Tier 1 by achieving an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month. The Exchange now proposes to modify the required criteria under DLI Tier 1 such that a Member would now qualify for such tier by achieving: (1) an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV that is equal to or greater than 0.05% of the TCV. Thus, such proposed change would add an overall ADAV threshold into the required criteria, which is intended to encourage Members to maintain or increase their overall order flow that adds liquidity to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants, in addition to the existing quoting requirement designed to promote price discovery and market quality in a broad base of securities on the Exchange.

The Exchange also proposes to reduce the rebates for executions of Added Displayed Volume under DLI Tiers 1 and 2. Currently, the Exchange provides enhanced rebates of $0.0032 per share under DLI Tier 1 and $0.0029 per share under DLI Tier 2 for a qualifying Member's executions of Added Displayed Volume. Now, the Exchange proposes to reduce such rebate provided under DLI Tier 1 to $0.0031 per share and reduce such rebate provided under DLI Tier 2 to $0.0028 per share.[20] The Exchange believes that the proposed reduction of such rebates (*i.e.,* by $0.0001 per share in each case) represents a modest reduction in each case and that each of the proposed rebates under DLI Tiers 1 and 2 remains commensurate with the required criteria under each such tier. The purpose of reducing the rebates for executions of Added Displayed Volume provided under DLI Tiers 1 and 2, as proposed, is for business and competitive reasons, as the Exchange believes the reduction of such rebates 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 rebates provided under such tiers for executions of orders in securities priced below $1.00 per share.

NBBO Setter/Joiner Tiers

The Exchange currently offers the NBBO Setter Tier under which a Member may receive an additive rebate of $0.0003 per share for executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, "Setter Volume") by achieving an ADAV with respect to orders with Fee Code B [21] that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to modify the NBBO Setter Tier to become the NBBO Setter/Joiner Tiers by renaming the existing NBBO Setter Tier as NBBO Setter/Joiner Tier 1, increasing the additive rebate under such tier, making

[15] As set forth on the Fee Schedule, "Midpoint ADAV" means ADAV with respect to Midpoint Peg orders.

[16] The pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, Liquidity Provision Tier 5" with a Fee Code of B5, D5 or J5, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[17] 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.

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

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

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

[21] The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

the additive rebate under such tier also applicable to a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish a new best bid or offer (''BBO'') on the Exchange that matches the NBBO first established on an away market (such orders, ''Joiner Volume''), and establishing an NBBO Setter/Joiner Tier 2.[22] The additive rebate under each of the NBBO Setter/Joiner Tiers will apply to a qualifying Member's executions of Setter Volume, as it does today with respect to the NBBO Setter Tier, as well as Joiner Volume, and the Exchange will indicate this in the note under the NBBO Setter/Joiner Tiers pricing table on the Fee Schedule.

First, with respect to NBBO Setter/Joiner Tier 1, the Exchange proposes to increase the additive rebate from $0.0003 per share to $0.0004 per share for a qualifying Member's executions of Setter Volume and Joiner Volume.[23] As noted above, the additive rebate under such tier will now be provided in addition to the otherwise applicable rebate for a qualifying Member's executions of Setter Volume and Joiner Volume, which the Exchange will indicate in the note under the NBBO Setter/Joiner Tier pricing table on the Fee Schedule. The Exchange is not proposing to modify the required criteria under such tier.

Second, the Exchange proposes to establish the NBBO Setter/Joiner Tier 2 under which the Exchange will provide an additive rebate of $0.0003 per share for executions of Setter Volume and Joiner Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.05% of the TCV and a Displayed ADAV with respect to orders with Fee Code B or J[24] that is equal to or greater than 40% of the Member's Displayed ADAV with respect to orders with Fee Code B, D or J.[25] The additive rebate under such tier will not apply to executions of orders in securities priced below $1.00 per share. The Exchange notes that the inclusion in the required criteria of a threshold based on the amount of a Member's orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market (*i.e.,* order with Fee Code B or J), as a percentage of all such Member's orders that add displayed liquidity to the Exchange (*i.e.,* orders with Fee Code B, D or J), is intended to incentivize Members to submit such aggressively priced displayed liquidity to the Exchange.

The purpose of making the additive rebate under the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume (in addition to Setter Volume) is, like the original purpose of the NBBO Setter Tier, to attract aggressively priced displayed liquidity to the Exchange. Specifically, the Exchange believes that such change will encourage the submission of orders that establish a new BBO on the Exchange that matches the NBBO first established on an away market, both in order to receive the additive rebate on such executions under each of the NBBO Setter/Joiner Tiers and, with respect to Members seeking to qualify for NBBO Setter/Joiner Tier 2, to meet the required criteria under such tier, and the Exchange believes that the resulting increased submission of such aggressively priced displayed liquidity would enhance market quality by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange. Additionally, the Exchange believes that the additive rebate for executions of Setter Volume and Joiner Volume provided under each of the NBBO Setter/Joiner Tiers is commensurate with the corresponding required criteria under each such tier and is reasonably related to such market quality benefits that each such tier is designed to achieve. The Exchange notes that the NBBO Setter/Joiner Tiers, as modified by the changes proposed herein, are comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), and that the Exchange's proposal to provide an additive rebate for a qualifying Member's executions of Joiner Volume, in addition to Setter Volume, under such tiers is similar in construct to pricing incentives that have been adopted by other exchanges.[26]

Standard Rebates for Added Non-Displayed Volume

The Exchange proposes to reduce the standard rebates for executions of Added Non-Displayed Volume. Added Non-Displayed Volume includes: (i) Pegged Orders[27] with a Midpoint Peg[28] instruction (such orders, ''Midpoint Peg orders'') in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, ''Added Midpoint Peg Volume''); and (ii) orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange, which are not Midpoint Peg orders (such orders, ''Added Non-Midpoint Peg Hidden Volume'').

Currently, the Exchange provides standard rebates of $0.0018 per share for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume. The Exchange now proposes to reduce each of these standard rebates to $0.0015 per share.[29] The purpose of reducing the standard rebates for executions of Added Midpoint Peg Volume and Add Non-Midpoint Peg Hidden Volume is for business and competitive reasons, as the Exchange believes reducing such rebates as proposed 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

[22] In connection with the proposed changes to this tier, the Exchange is proposing to rename the relevant heading on the Fee Schedule from ''NBBO Setter Tier'' to ''NBBO Setter/Joiner Tiers'' and revise the note under the NBBO Setter/Joiner Tiers pricing table to reflect that the additive rebate under each such tier is applicable to executions of Setter Volume and Joiner Volume rather than being limited to Fee Codes associated with Setter Volume.

[23] The pricing for NBBO Setter/Joiner Tier 1 is referred to by the Exchange on the Fee Schedule under the new description ''NBBO Setter/Joiner Tier 1'' with a Fee Code of S1 to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[24] The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market.

[25] The Exchange notes that orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange. The pricing for NBBO Setter/Joiner Tier 2 is referred to by the Exchange on the Fee Schedule under the new description ''NBBO Setter/Joiner Tier 2'' with a Fee Code of S2 to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[26] *See, e.g.,* Securities Exchange Act Release No. 70664 (October 11, 2013), 78 FR 62804 (October 22, 2013) (SR–BATS–2013–054) (notice of filing and immediate effectiveness of fee changes adopted by BATS, including the adoption of an ''NBBO Joiner'' additive rebate provided for executions of orders that join the NBBO when BATS is not already at the NBBO to members that qualify for such incentive by achieving a specified volume threshold).

[27] Pegged Orders are described in Exchange Rules 11.6(h) and 11.8(c) and generally defined as an order that is pegged to a reference price and automatically re-prices in response to changes in the NBBO.

[28] A Midpoint Peg instruction is an instruction that may be placed on a Pegged Order that instructs the Exchange to peg the order to midpoint of the NBBO. *See* Exchange Rule 11.6(h)(2).

[29] The standard pricing for executions of Added Midpoint Peg Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Midpoint Peg'' and such orders will continue to receive a Fee Code of M on execution reports. The standard pricing for executions of Added Non-Midpoint Peg Hidden Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume'' and such orders will continue to receive a Fee Code of H on execution reports.

encouraging added and/or displayed liquidity. The Exchange notes that the proposed standard rebate for executions of Added Midpoint Peg Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[30] The Exchange also notes that the proposed standard rebate for executions of Added Non-Midpoint Peg Hidden Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[31]

Non-Display Add Tiers

As noted above, the Exchange currently provides a standard rebate of $0.0018 per share for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), which the Exchange is proposing to reduce to $0.0015 per share, as described above. The Exchange also currently offers Non-Display Add Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Non-Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Non-Display Add Tiers by modifying the required criteria under Non-Display Add Tiers 1 and 2, and establishing a new Non-Display Add Tier 3, as further described below.

First, with respect to Non-Display Add Tier 1, the Exchange currently provides an enhanced rebate of $0.0027 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 3,000,000 shares.[32] The Exchange now proposes to modify Non-Display Add Tier 1 such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 5,000,000 shares. Thus, such proposed change would increase the Non-Displayed ADAV threshold in the required criteria, which is designed to encourage Members to maintain or increase their liquidity-adding non-displayed order flow to the Exchange in order to qualify for the enhanced rebate for executions of Added Non-Displayed Volume provided under such tier. The Exchange is not proposing to change the rebates provided under this tier.

Second, with respect to Non-Display Add Tier 2, the Exchange currently provides an enhanced rebate of $0.0024 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares.[33] The Exchange now proposes to modify Non-Display Add Tier 2 such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 2,000,000 shares. Thus, such proposed change would increase the Non-Displayed ADAV threshold in the required criteria, which is designed to encourage Members to maintain or increase their liquidity-adding non-displayed order flow to the Exchange in order to qualify for the enhanced rebate for executions of Added Non-Displayed Volume provided under such tier. The Exchange is not proposing to change the rebates provided under this tier.

Third, the Exchange is proposing to establish a new tier under the Non-Display Add Tiers, which, as proposed, would be referred to by the Exchange as Non-Display Add Tier 3. Under the proposed new Non-Display Add Tier 3, the Exchange would provide an enhanced rebate of $0.0020 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares.[34] The Exchange proposes to provide Members that qualify for the proposed new Non-Display Add Tier 3 free executions of orders in securities priced below $1.00 per share that add non-displayed liquidity to the Exchange, which is the same rebate that is currently applicable to such executions for all Members.

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

Sub-Dollar Rebate Tier

The Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the Sub-Dollar Rebate Tier, under which the Exchange will provide an enhanced rebate for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Sub-Dollar Volume''). Currently, the Exchange provides a standard rebate of 0.075% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume, and this standard rebate is applicable to all such executions for all Members (including those that qualify for any of the Exchange's existing volume tiers). Now, under the proposed Sub-Dollar Rebate Tier, the Exchange will provide an enhanced rebate of 0.15% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the

[30] *See, e.g.,* the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard rebate of $0.0014 per share for executions of orders in Tape A and Tape B securities priced at or above $1.00 per share that add non-displayed midpoint liquidity and a standard rebate of $0.0010 per share for executions of orders in Tape C securities priced at or above $1.00 per share that add non-displayed midpoint liquidity.

[31] *See, e.g.,* the Cboe BZX Exchange, Inc. equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a standard rebate of $0.0010 per share for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity.

[32] The pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 1'' with a Fee Code of H1 or M1, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[33] The pricing for Non-Display Add Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 2'' with a Fee Code of H2 or M2, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[34] The pricing for the proposed new Non-Display Add Tier 3 is referred to by the Exchange on the Fee Schedule under the new description ''Added non-displayed volume, Non-Display Add Tier 3'' with a Fee Code of H3 or M3, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

TCV.[35] The Exchange notes that the Sub-Dollar Rebate Tier will not apply to executions of orders in securities priced at or above $1.00 per share.

The Exchange believes that the proposed Sub-Dollar Rebate Tier provides an incremental incentive for Members to maintain or strive for higher ADAV on the Exchange in order to receive the proposed enhanced rebate for executions of Added Displayed Sub-Dollar Volume. As such, the proposed Sub-Dollar Rebate Tier is designed to incentivize Members that provide liquidity on the Exchange to increase their orders that add liquidity to the Exchange in order to qualify for the enhanced rebate for executions of Added Displayed Sub-Dollar Volume, which, in turn, the Exchange believes would also encourage the submission by qualifying Members of additional Added Displayed Sub-Dollar Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, including with respect to sub-dollar securities. The Exchange believes that this resulting additional liquidity-adding volume, including in the form of displayed volume in sub-dollar securities, would contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants and, in turn, enhance the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed new Sub-Dollar Rebate Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including pricing incentives that provide an enhanced rebate for executions of liquidity-adding orders in securities priced below $1.00 per share for firms that achieve a specified volume threshold that have been adopted by other exchanges.[36]

Maximum Rebate per Share

As noted above, in response to the competitive environment with respect to order execution, the Exchange offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. In this regard, the Exchange offers various volume-based tiers that provide qualifying Members an enhanced rebate or an additive rebate (which applies in addition to the otherwise applicable rebate) with respect to qualifying executions. Under the Exchange's current pricing, the highest rebate per share applicable to any execution is $0.0036, and for business and competitive reasons the Exchange does not wish to introduce a higher rebate per share with this proposal despite the fact that a higher rebate for certain executions would be possible after giving effect to the pricing changes described above. Thus, in order to maintain the same maximum rebate per share provided under the Exchange's current pricing, the Exchange proposes to add a note on the Fee Schedule stating that 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 $0.0036. The Exchange notes that since $0.0036 is the highest rebate per share currently provided by the Exchange, this proposed change, by itself, will not result in any Member receiving a lower maximum rebate per share than it is currently provided for any execution. The Exchange also notes that other exchanges limit the maximum rebate per share in connection with the provision of enhanced and/or additive rebates.[37]

Eliminate Step-Up Additive Rebate

Finally, the Exchange proposes to eliminate the Step-Up Additive Rebate. The Exchange currently offers the Step-Up Additive Rebate, which is a volume-based tier, under which the Exchange provides an additive rebate of $0.0002 per share in addition to the otherwise applicable rebate for executions of Added Displayed Volume (other than orders that establish the NBBO, if such Member qualifies for the NBBO Setter Tier, and Retail Orders) for Members that qualify for such tier by achieving one of the two specified alternative criteria based on Step-Up ADAV and/or ADAV thresholds. The Exchange adopted the Step-Up Additive Rebate in May 2022 for the purpose of encouraging Members that provide liquidity on the Exchange to increase their liquidity-adding order flow in order to achieve the applicable volume thresholds, thereby providing greater execution opportunities on the Exchange.[38] However, the Exchange no longer wishes to, nor is it required to, maintain such tier. Thus, the proposed rule change removes such tier, as the Exchange would rather redirect future resources and funding into other incentives and tiers designed to incentivize increased order flow or otherwise enhance market quality on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[39] in general, and with sections 6(b)(4) and 6(b)(5) of the Act,[40] 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

[35] The pricing for the proposed new Sub-Dollar Rebate Tier is referred to by the Exchange on the Fee Schedule under the new description ''Sub-Dollar Rebate Tier'' with a Fee Code of ''L'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[36] *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 standard credit of 0.0% of the total dollar value for executions of securities priced below $1.00 per share, as well as the ''Sub-Dollar Adding Step Up Tier'' pricing structure under which NYSE Arca provides higher credits (ranging from 0.05% to 0.15% of the total dollar value) for executions of orders in securities priced below $1.00 per share for firms that qualify for any such tier by achieving certain specified volume thresholds.

[37] *See, e.g.,* the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects various maximum rebates in connection with the provision of an additive rebate for executions of certain midpoint liquidity; the NYSE Arca Equities Fees and Charges (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*), which provides that in connection with the ''Tape B Additional Credit'' the credit shall be in addition to the ETP Holder's Tiered or Standard credit(s) and such combined credit(s) in Tape B shall not exceed $0.0032, subject to certain exceptions for Lead Market Makers, which are subject to a higher, but still limited, per share credit for the applicable executions.

[38] *See* Securities Exchange Act Release No. 94863 (May 6, 2022), 87 FR 29197 (May 12, 2022) (SR–MEMX–2021–11) [sic] (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of the Step-Up Additive Rebate).

[39] 15 U.S.C. 78f.

[40] 15 U.S.C. 78f(b)(4) and (5).

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." [41]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to decrease the Exchange's expenditures with respect to its transaction pricing and incentivize market participants to direct additional order flow, including various forms of liquidity-adding volume and aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers 1, 3 and 5, the DLI Tiers 1 and 2, and the Non-Display Add Tiers 1 and 2, each as modified by the changes proposed herein, as well as the proposed new Non-Display Add Tier 3 and the proposed new Sub-Dollar Rebate Tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their liquidity-adding order flow, including in the forms of Added Displayed Volume, Added Non-Displayed Volume and Added Displayed Sub-Dollar Volume, as applicable, to the Exchange, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume, Added Non-Displayed Volume, and Added Displayed Sub-Dollar Volume, as applicable, under each such tier is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. Additionally, the Exchange believes the proposed new Sub-Dollar Rebate Tier is reasonable, in that it is comparable to pricing incentives adopted by other exchanges that provide an enhanced rebate for executions of liquidity-adding orders in securities priced below $1.00 per share for firms that achieve a specified volume threshold.[42]

The Exchange believes that the proposed NBBO Setter/Joiner Tiers are a reasonable means to attract aggressively priced displayed liquidity to the Exchange. As noted above, the proposed NBBO Setter/Joiner Tiers are comparable to other volume-based tiers, and the Exchange believes such tiers are reasonable, equitable and not unfairly discriminatory for the same reasons described above with respect to volume-based tiers, as the proposed NBBO Setter/Joiner Tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to incentivize the entry of aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market. As such, the Exchange believes the additive rebates for executions of Setter Volume and Joiner Volume provided under the NBBO Setter/Joiner Tiers are reasonably related to the market quality benefits that such tiers are designed to promote.

Specifically, the Exchange believes that its proposal to make the additive rebate under each of the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume (in addition to Setter Volume, as is the case under the NBBO Setter Tier today) is reasonable, equitable and not unfairly discriminatory because, as described above, the Exchange believes that doing so would incentivize the submission of additional orders that establish a new BBO on the Exchange that matches the NBBO first established on an away market (in addition to orders that establish the NBBO, which are currently incentivized under the NBBO Setter Tier and will continue to be incentivized under the NBBO Setter/Joiner Tiers), and the Exchange believes that the resulting increased submission of such aggressively priced displayed liquidity would benefit all Members and market participants, including public investors, by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange. Moreover, the Exchange believes such proposal is reasonable, in that it is similar in construct to pricing incentives that have been adopted by other exchanges that provide an additive rebate for executions of orders that join the NBBO for members that achieve certain specified volume criteria.[43]

The Exchange further believes that the proposed additive rebate for executions of Setter Volume and Joiner Volume under each of the NBBO Setter/Joiner Tiers is reasonable and consistent with an equitable allocation of fees because, as described above, the Exchange believes that each such rebate is commensurate with the corresponding required criteria under each such tier and is reasonably related to such market quality benefits that each such tier is designed to achieve.

The Exchange believes that the proposed changes to reduce the standard rebates provided for executions of Added Non-Displayed Volume (*i.e.,* both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume) are reasonable because, as described above, such changes are designed to 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

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

[42] *See supra* note 36.

[43] *See supra* note 26.

liquidity, and the proposed new standard rebates for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume remain higher than, and competitive with, the standard rebates provided by at least one other exchange in each case for executions of similar orders.[44] The Exchange also believes the proposed standard rebates for executions of Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume are equitable and not unfairly discriminatory, as such standard rebates will apply equally to all Members.

The Exchange believes that its proposal to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates to $0.0036 is reasonable, equitable and not unfairly discriminatory, as this limitation will apply to all Members equally, in that no Member may be eligible to receive such a rebate that is greater than $0.0036. Moreover, the highest rebate per share applicable to any execution under the Exchange's current pricing is $0.0036, so this proposed change, by itself, will not result in any Member receiving a lower maximum rebate per share than it is currently provided for any execution. The Exchange notes that it is not required to provide Members any opportunities to receive rebates or, to the extent that it does provide rebates under its transaction pricing, to maintain any specific level of rebate with respect to any type of transaction. The Exchange further notes that other exchanges also limit the maximum rebate per share in connection with the provision of enhanced and/or additive rebates, and therefore, this aspect of the proposal does not raise any new or novel issues that have not previously been considered by the Commission.[45]

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

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of sections 6(b)(4) and 6(b)(5) of the Act[46] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the changes to the Exchange transaction pricing under this proposal are intended to decrease the Exchange's expenditures with respect to its transaction pricing and attract order flow to the Exchange by continuing to offer competitive pricing while also incentivizing market participants to submit various forms of liquidity-adding volume and aggressively priced displayed liquidity, thereby promoting price discovery and 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.''[47]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including various forms of liquidity-adding volume and aggressively priced displayed orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, to the Exchange, thereby promoting price discovery and enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The opportunity to qualify for the proposed new criteria under the Liquidity Provision Tiers 1, 3 and 5, the DLI Tiers 1 and 2, and the Non-Display Add Tiers 1 and 2, as well as the proposed new Non-Display Add Tier 3 and the proposed new Sub-Dollar Rebate Tier, and thus receive the corresponding rebates for executions of Added Displayed Volume, Added Non-Displayed Volume and Added Displayed Sub-Dollar Volume, as applicable, would be available to all Members that meet the associated volume requirements in any month. Similarly, the opportunity to qualify for the NBBO Setter/Joiner Tiers 1 and 2, and thus receive the corresponding additive rebates for executions of Setter Volume and Joiner Volume, would be available to all Members that meet the associated volume requirements in any month. The Exchange believes its proposal to make the additive rebate under the NBBO Setter/Joiner Tiers applicable to a qualifying Member's executions of Joiner Volume will benefit competition by rewarding Members that help the Exchange to join other market centers at the NBBO. As described above, the Exchange believes that, after giving effect to the changes proposed herein, the required criteria under each of the tiers described above is commensurate with the corresponding rebate under each such tier and is reasonably related to the enhanced liquidity and market quality that each such tier is designed to promote. Additionally, as noted above, the proposed reduced standard rebates for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume) would continue to apply equally to all Members in the same manner that such standard rates currently do today.

The Exchange does not believe the proposed change to eliminate the Step-Up Additive Rebate will impose any

[44] *See supra* notes 30–31.

[45] *See supra* note 37.

[46] 15 U.S.C. 78f(b)(4) and (5).

[47] *See supra* note 41.

burden on intramarket competition because such change will apply to all Members uniformly, in that such incentive will no longer be available to any Member. Additionally, the Exchange does not believe the proposed change to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates will impose any burden on intramarket competition because, as described above, such limitation will apply to all Members equally, in that no Member may be eligible to receive such a rebate that is greater than $0.0036, and, as this is the highest rebate per share applicable to any execution under the Exchange's current pricing, no Member will receive a lower maximum rebate per share than it is currently provided for any execution as a result of this proposed change.

For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), Added Displayed Sub-Dollar Volume, Setter Volume and Joiner Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable.

As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures with respect to its transaction pricing and attract additional order flow to the Exchange through the provision of certain enhanced and additive rebates under volume-based tiers, which have been widely adopted by exchanges, and standard pricing that is comparable to, and competitive with, pricing for similar executions in place at other exchanges.[48] 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 standard pricing for executions of Added Non-Displayed Volume (including both Added Midpoint Peg Volume and Added Non-Midpoint Peg Hidden Volume), as well as similar pricing incentives and discounts to market participants that achieve certain volume criteria and thresholds. With respect to the Exchange's proposal to make the additive rebates provided under the NBBO Setter/Joiner Tiers applicable to executions of Joiner Volume (in addition to Setter Volume, as is the case under the NBBO Setter Tier today), the Exchange believes that the promotion of displayed liquidity at the NBBO, whether through orders that establish the NBBO or establish a new BBO on the Exchange that matches the NBBO first established on an away market, enhances market quality for all market participants and promotes competition amongst market centers. Additionally, as noted above, eliminating the Step-Up Additive Rebate would allow the Exchange to redirect the associated resources and funding into other incentives and tiers designed to enhance market quality on the Exchange, which would ultimately enable the Exchange to better compete with other market centers. The Exchange does not believe that its proposal to limit the maximum combined rebate per share provided for any execution on the Exchange that qualifies for one or more additive rebates will impose any burden on intermarket competition, and the Exchange notes that limiting the maximum rebate per share in connection with similar types of incentives is consistent with the practices of other exchanges.[49]

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.'' [50] 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' . . . .''.[51] 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 [52] and Rule 19b–4(f)(2) [53] 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

[48] *See supra* notes 30–31.

[49] *See supra* note 37.

[50] *See supra* note 41.

[51] *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)).

[52] 15 U.S.C. 78s(b)(3)(A)(ii).

[53] 17 CFR 240.19b–4(f)(2).

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–33 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2022–33. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–33 and should be submitted on or before January 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27161 Filed 12–14–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34770; File No. 812–15382]

MidCap Financial Investment Corporation, et al.

December 9, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: MidCap Financial Investment Corporation, Apollo Senior Floating Rate Fund Inc., Apollo Tactical Income Fund Inc., Apollo Debt Solutions BDC, Apollo Diversified Credit Fund, Apollo Investment Management, L.P., Apollo Credit Management, LLC, Apollo Capital Credit Adviser, LLC, AA Direct, L.P., A–A European Senior Debt Fund, L.P., AA Infrastructure Fund 1 Ltd., ACE Credit Fund, L.P., AESI II, L.P., AGRE Debt Fund I, L.P., AGRE U.S. Real Estate Fund, L.P., ALM V, Ltd., ALM VI, Ltd., ALM VII (R), Ltd., ALM VII (R)-2, Ltd., ALM VII, Ltd., ALM VIII, Ltd., ALM XII, Ltd., ALM XIX, Ltd., ALM XVI, Ltd., ALM XVII, Ltd., ALM XVIII, Ltd., ALME Loan Funding IV B.V., Amissima Diversified Income ICAV, AMN Loan Fund, L.P., AP Kent Credit Master Fund, L.P., Apollo Accord Master Fund II, L.P., Apollo Accord Master Fund III, L.P., Apollo Accord Fund III B, L.P., Apollo Accord Fund IV, L.P., Apollo A–N Credit Fund, L.P., Apollo Asia Real Estate Fund II, L.P., Apollo Atlas Master Fund, LLC, Apollo Chiron Credit Fund, L.P., Apollo Commercial Real Estate Finance, Inc., Apollo Credit Master Fund Ltd., Apollo Credit Opportunity Fund III LP, Apollo Credit Strategies Master Fund Ltd., Apollo European Principal Finance Fund III (Dollar A), L.P., Apollo Hybrid Value Fund, L.P., Apollo Hybrid Value Fund II, L.P., Apollo Humber Partners, L.P., Apollo Humber Management, L.P., Apollo Impact Mission Fund, L.P., Apollo Infrastructure Opportunities Fund II, L.P., Apollo Investment Fund IX, L.P., Apollo Investment Fund VII, L.P., Apollo Investment Fund VIII, L.P., Apollo Kings Alley Credit Fund, L.P., Apollo Lincoln Fixed Income Fund, L.P., Apollo Lincoln Private Credit Fund, L.P., Apollo Moultrie Credit Fund, L.P., Apollo Natural Resources Partners II, L.P., Apollo Natural Resources Partners III, L.P., Apollo Navigator Aviation Fund I, L.P., Apollo Revolver Fund, L.P., Apollo Structured Credit Recovery Master Fund IV LP, Apollo Strategic Origination Partners, L.P., Apollo Tactical Value SPN Investments, L.P., Apollo Total Return Master Fund Enhanced LP, Apollo Total Return Master Fund L.P., Apollo Tower Credit Fund, L.P., Apollo U.S. Real Estate Fund II L.P., Apollo U.S. Real Estate Fund III, L.P., Apollo Zeus Strategic Investments, L.P., Apollo/Cavenham European Managed Account II, L.P., Athene Holding Ltd., Athora Lux Invest S.C.Sp., Financial Credit Investment II, L.P., Financial Credit Investment III, L.P., Financial Credit Investment IV, L.P., MidCap FinCo Holdings Ltd, NNN Investor 1, L.P., Athora Lux Invest NL S.C.Sp., ACE Credit Management, LLC, ACF Europe Management, LLC, ACREFI Management, LLC, Aegon Ireland plc, AGRE—CRE Debt Manager, LLC, AGRE NA Management, LLC, AP Kent Management, LLC, Apollo Accord Management II, LLC, Apollo Accord Management III, LLC, Apollo Accord Management III B, L.P., Apollo Accord Management IV, L.P., Apollo A–N Credit Management, LLC, Apollo Asia Management II, L.P., Apollo Asset Management Europe LLP, Apollo Atlas Management, LLC, Apollo Capital Management, L.P., Apollo Centre Street Management, LLC, Apollo Centre Street Partnership L.P., Apollo Chiron Management, LLC, Apollo Credit Management (CLO), LLC, Apollo Credit Opportunity Management III, LLC, Apollo EPF Management III, LLC, Apollo Europe Management III, LLC,

[54] 17 CFR 200.30–3(a)(12).