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–NYSEARCA–2023–16 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–NYSEARCA–2023–16. 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–NYSEARCA–2023–16 and should be submitted on or before March 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04689 Filed 3–7–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97028; File No. SR–MEMX–2023–05]

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

March 2, 2023.

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 February 28, 2023, 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 March 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange included statements concerning 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) reduce the base rebate 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''); (ii) reduce the base rebate for executions of Retail Orders[4] in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Retail Volume''); (iii) reduce the base 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''); (iv) modify the Liquidity Provision Tiers; (v) modify the required criteria under NBBO Setter/Joiner Tier 1; (vi) modify the Non-Display Add Tiers; (vii) modify Liquidity Removal Tier 1 and adopt a new Liquidity Removal Tier 2; (viii) modify the required criteria under the Sub-Dollar Rebate Tier; and (ix) eliminate the special pricing for executions of Pegged Orders[5] with a Midpoint Peg[6] instruction (such orders, ''Midpoint Peg Orders'') and a time-in-force (''TIF'') instruction of IOC[7] or FOK[8] that execute at the midpoint of the national best bid and offer (''NBBO'') and remove liquidity from the Exchange upon entry (such orders, ''Midpoint Peg IOC/FOK Orders'').

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

[33] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

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

[5] *See* Exchange Rule 11.6(h).

[6] *See* Exchange Rule 11.6(h)(2).

[7] *See* Exchange Rule 11.6(o)(1).

[8] *See* Exchange Rule 11.6(o)(3).

available information, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading.[9] 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 3% of the overall market share.[10] 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.

Reduce Base Rebate for Added Displayed Volume

Currently, the Exchange provides a base rebate of $0.0020 per share for executions of Added Displayed Volume. The Exchange now proposes to reduce the base rebate for executions of Added Displayed Volume to $0.0018 per share.[11] The purpose of reducing the base rebate for executions of Added Displayed Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate 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 encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed base rebate for executions of Added Displayed Volume remains in line with, or higher than, the base rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[12]

Reduce Base Rebate for Added Displayed Retail Volume

Currently, the Exchange provides a base rebate of $0.0035 per share for executions of Added Displayed Retail Volume. The Exchange now proposes to reduce the base rebate for executions of Added Displayed Retail Volume to $0.0034 per share.[13] The purpose of reducing the base rebate for executions of Added Displayed Retail Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate 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 encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed base rebate for executions of Added Displayed Retail Volume remains higher than, and competitive with, the base rebates provided by other exchanges for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity.[14]

Reduce Base Rebates for Added Non-Displayed Volume

The Exchange is proposing to uniformly reduce the base rebates provided for executions of Added Non-Displayed Volume, which is comprised of the three following types of orders: (i) Midpoint Peg Orders in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, ''Added Midpoint Volume''); (ii) orders, which are not orders subject to Display-Price Sliding that receive price improvement when executed or Midpoint Peg Orders, in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange (such orders, ''Added Non-Midpoint Hidden Volume''); and (iii) orders in securities priced at or above $1.00 per share subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement when executed (such orders, ''Added Price-Improved Volume'').

Currently, the Exchange provides base rebates of $0.0015 per share for executions of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume. The Exchange now proposes to reduce each of these base rebates to $0.0010 per share.[15] The purpose of uniformly reducing the standard rebates for executions of Added Midpoint Volume, Add Non-Midpoint Hidden Volume, and Added Price-Improved 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 encouraging added displayed liquidity. The Exchange notes that the proposed base rebate for executions of Added Midpoint Volume remains in line and competitive with the base rebates provided by at least one other exchange for executions of similar orders.[16] The

[9] Market share percentage calculated as of February 28, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[10] *Id.*

[11] The proposed 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.

[12] *See, e.g.,* the Nasdaq Stock Market LLC (''Nasdaq'') Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a base rebate of $0.0018 per share for executions of orders in Tape A and Tape B securities priced at or above $1.00 per share that add displayed liquidity and a base rebate of $0.0013 per share for executions of orders in Tape C securities priced at or above $1.00 per share that add displayed liquidity; the Cboe BZX Exchange, Inc. (''Cboe BZX'') equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a base rebate of $0.0016 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.

[13] The proposed base rebate for executions of Added Displayed Retail Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Retail Order'' with a Fee Code of ''Br'', ''Dr'' or ''Jr'', as applicable, on execution reports.

[14] *See, e.g.,* the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a base rebate of $0.0032 per share for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity; the Cboe EDGX Exchange, Inc. (''Cboe EDGX'') equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a base rebate of $0.0032 per share for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity.

[15] The proposed base rebate for executions of Added Midpoint 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 proposed base rebate for executions of Added Non-Midpoint 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. The proposed base rebate for executions of Added Price-Improved Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added volume, order subject to Display-Price Sliding that receives price improvement when executed'' and such orders will continue to receive a Fee Code of ''P'' on execution reports.

[16] *See, e.g.,* the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a base rebate of $0.0014 per share for executions of orders in Tape A and Tape B securities priced at

Exchange also notes that the proposed base rebate for executions of Added Non-Midpoint Hidden Volume remains in line and competitive with the base rebate provided by at least one other exchange for executions of similar orders.[17] Additionally, the Exchange believes it is appropriate to also provide the same base rebate for executions of Added Price-Improved Volume as for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume, as all of these orders similarly add liquidity to the Exchange and are executed at prices that are not displayed on the Exchange's order book, and the Exchange notes that all of these orders are also currently subject to the same base rebate and pricing structure today.

Liquidity Provision Tiers

The Exchange currently provides a base rebate of $0.0020 per share for executions of Added Displayed Volume, which the Exchange is proposing to reduce to $0.0018 per share, as described above. The Exchange also currently offers Liquidity Provision Tiers 1–6 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 reducing the rebates for executions of Added Displayed Volume and modifying the required criteria under such tiers and eliminating Liquidity Provision Tier 6, as further described below.

With respect to Liquidity Provision Tier 1, the Exchange currently provides 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 [18] that is equal to or greater than 0.40% of the TCV; [19] or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Step-Up ADAV [20] from November 2022 that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to $0.00335 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV.[21] The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 2, 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) an ADAV that is equal to or greater than 0.25% of the TCV; and (2) a Non-Displayed ADAV [22] that is equal to or greater than 5,000,000 shares. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 2 to $0.00325 per share and to modify the required criteria such that a Member would qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV; and (2) a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares.[23] Thus, such proposed change would lower the Non-Displayed ADAV threshold in the second of the two existing alternative criteria. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 3, the Exchange currently provides an enhanced rebate of $0.0032 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; or (2) an ADAV that is equal to or greater than 15,000,000 shares and a Step-Up ADAV from October 2022 that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 3 to $0.0031 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving an ADAV that is equal to or greater than 0.20% of the TCV.[24] Thus, such proposed change would keep the first of the two existing alternative criteria intact with no changes and eliminate the second of the two existing alternative criteria. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 4, the Exchange currently provides 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. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 4 to $0.0029 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the TCV.[25] Thus, such proposed change would keep the first of the two existing alternative criteria intact with no changes and eliminate the second of the two existing alternative criteria. The Exchange is not proposing to change the rebate for executions of orders in

or above $1.00 per share that add non-displayed midpoint liquidity and a base 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.

[17] *See, e.g.,* the Cboe BZX 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.

[18] 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.

[19] 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.

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

[21] The proposed 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.

[22] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[23] The proposed pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 2'' with a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[24] The proposed 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.

[25] The proposed pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 4'' with a Fee Code of ''B4'', ''D4'' or ''J4'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 5, the Exchange currently provides an enhanced rebate of $0.0028 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 0.10% of the TCV; or (2) a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 750,000 shares and a Step-Up Displayed ADAV [26] (excluding Retail Orders) from October 2022 that is equal to or greater than 30% of the Member's October 2022 Displayed ADAV (excluding Retail Orders). The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 5 to $0.0027 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 750,000 shares and a Step-Up Displayed ADAV (excluding Retail Orders) from October 2022 that is equal to or greater than 30% of the Member's October 2022 Displayed ADAV (excluding Retail Orders).[27] Thus, such proposed change would lower the overall ADAV threshold in the first of the two existing alternative criteria and keep the second of the two existing alternative criteria intact with no changes. The Exchange is not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 6, the Exchange currently provides an enhanced rebate of $0.0025 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 Midpoint ADAV [28] that is equal to or greater than 1,000,000 shares. The Exchange now proposes to eliminate Liquidity Provision Tier 6, as the Exchange no longer wishes to, nor is it required to, maintain such tier, and the Exchange would rather redirect the associated resources and funding into other programs and tiers intended to incentivize increased order flow or enhance market quality.

The purpose of reducing the rebates for executions of Added Displayed Volume under Liquidity Provision Tiers 1–5 as proposed, which the Exchange believes in each case represents a modest reduction and remains commensurate with the required criteria as modified, and eliminating Liquidity Provision Tier 6 is for business and competitive reasons, as the Exchange believes that such rebate reductions and tier elimination 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 liquidity. The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1–5 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter/Joiner Tier 1

The Exchange currently offers NBBO Setter/Joiner Tiers 1–2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, ''Setter Volume'') and executions of Added Displayed Volume (other than Retail Orders) that establish a new best bid or offer on the Exchange that matches the NBBO first established on an away market (such orders, ''Joiner Volume''). With respect to NBBO Setter/Joiner Tier 1, the Exchange currently provides an additive rebate of $0.0004 per share for executions of Setter Volume and Joiner Volume for Members that qualify for such tier by achieving an ADAV with respect to orders with Fee Code B [29] that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.10% of the TCV; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 10,000,000 shares.[30] Thus, such proposed change would keep the existing criteria based on an ADAV threshold that is expressed as a percentage of TCV intact with no changes and add a new alternative criteria based on an ADAV threshold that is expressed as a number of shares. The Exchange notes that, as the proposed change to the required criteria under NBBO Setter/Joiner Tier 1 merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange believes that the additive rebate for executions of Setter Volume and Joiner Volume provided under NBBO Setter/Joiner Tier 1, which the Exchange is not proposing to change with this proposal, remains commensurate with the required criteria under such tier, as modified, and is reasonably related to the market quality benefits that such tier is designed to achieve.

Non-Display Add Tiers

The Exchange currently offers Non-Display Add Tiers 1–3 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

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

[27] The proposed 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.

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

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

[30] The pricing for NBBO Setter/Joiner Tier 1 is referred to by the Exchange on the Fee Schedule under the existing 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.

Add Tiers by modifying the required criteria under Non-Display Add Tier 2 and reducing the rebate for executions of Added Non-Displayed Volume and modifying the required criteria under Non-Display Add Tier 3.

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 2,000,000 shares.[31] 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 1,500,000 shares. Thus, such proposed change would lower the Non-Displayed ADAV threshold in the required criteria, which the Exchange believes would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange is not proposing to change the rebates provided under this tier.

With respect to Non-Display Add Tier 3, the Exchange currently provides 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. The Exchange now proposes to reduce the rebate for executions of Added Non-Displayed Volume under Non-Display Add Tier 3 to $0.0018 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 500,000 shares.[32] Thus, such proposed change would lower the Non-Displayed ADAV threshold in the required criteria, which the Exchange believes would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify, or strive to qualify, for such tier than currently do, resulting in the submission of additional order flow to the Exchange.

The purpose of reducing the rebate for executions of Added Non-Displayed Volume under Non-Display Add Tier 3 as proposed, which the Exchange believes represents a modest reduction and remains commensurate with the required criteria as modified to include a lower Non-Displayed ADAV threshold, is for business and competitive reasons, as the Exchange believes that such rebate reduction 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 liquidity. 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 volume, to the Exchange, thereby contributing to a deeper and more robust and well-balanced market ecosystem to the benefit of all Members and market participants.

Liquidity Removal Tiers

The Exchange currently charges a base fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of $0.00295 per share for executions of Removed Volume by achieving (1) an ADV[33] that is equal to or greater than 0.50% of the TCV and a Remove ADV[34] that is equal to or greater than 0.25% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV. Now, the Exchange proposes to reduce the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to $0.0029 per share and to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADV that is equal to or greater than 0.50% of the TCV and a Remove ADAV that is equal to or greater than 0.30% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.[35] Thus, the proposed change to the required criteria would increase the Remove ADV threshold by 0.05% (*i.e.,* from 0.25% to 0.30%) of the TCV in the first of the existing alternative criteria and keep the second of the existing alternative criteria intact with no changes. The proposed change to increase the Remove ADV threshold in the first of such alternative criteria is designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the discounted fee for executions of Removed Volume under such tier. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing criteria under certain tiers that are based on different types of volume that Members may choose to achieve, such as the existing criteria that includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The reason the Exchange is proposing to reduce the fee charged for executions of Removed Volume under such tier by $0.00005 per share, which the Exchange believes represents a modest reduction and remains commensurate with the proposed new required criteria, is because the Exchange is increasing the Remove ADV threshold in the alternative criteria, as described above, and the Exchange is also proposing to adopt a second Liquidity Removal Tier under which a qualifying Member may still qualify for a discounted fee of $0.00295 per share for executions of Removed Volume by achieving a lower volume threshold, as further described below.

The Exchange proposes to adopt a new Liquidity Removal Tier 2 under which the Exchange would charge a discounted fee of $0.00295 per share for executions of Remove Volume for Members that qualify for such tier by achieving an ADV that is equal to or

[31] 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'', ''M2'' or ''P2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[32] The proposed pricing for Non-Display Add Tier 3 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 3'' with a Fee Code of ''H3'', ''M3'' or ''P3'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[33] 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.

[34] As set forth on the Fee Schedule, ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[35] The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R1'' to be provided by the Exchange on the monthly invoices provided to Members.

greater than 0.25% of the TCV.[36] The Exchange proposes to charge Members that qualify for the proposed new Liquidity Removal Tier 2 a fee of 0.28% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that remove liquidity from the Exchange, which is the current base fee for such executions as well as the same fee that is currently applicable to such executions under the existing Liquidity Removal Tier 1. The proposed new Liquidity Removal Tier 2 is designed to encourage Members to maintain or increase their order flow to the Exchange in order to qualify for the proposed discounted fee for executions of Removed Volume, which, in turn, would encourage the submission of additional Removed Volume, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

Sub-Dollar Rebate Tier

The Exchange currently provides a base rebate of 0.075% of the total dollar value of the transaction 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''). The Exchange also currently offers the Sub-Dollar Rebate Tier under which the Exchange provides 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: (1) an ADAV that is equal to or greater than 0.15% of the TCV; or (2) a Sub-Dollar ADAV[37] that is equal to or greater than 5,000,000 shares. Now, the Exchange proposes to modify the required criteria under the Sub-Dollar Rebate Tier such that a Member would now qualify for such tier by achieving a Sub-Dollar ADAV that is equal to or greater than 5,000,000 shares. Thus, such proposed change would eliminate the first of the two existing alternative criteria and keep the second of the two existing alternative criteria intact with no changes. The Exchange is not proposing to modify the pricing associated with the Sub-Dollar Rebate Tier, but the Exchange believes the enhanced rebate for executions of Added Displayed Sub-Dollar Volume provided under the Sub-Dollar Rebate Tier remains commensurate with the required criteria as modified.

Midpoint Peg IOC/FOK Orders

As noted above, the Exchange currently charges a standard fee of $0.0030 per share for executions of Removed Volume. The Exchange also currently charges a discounted fee of $0.0027 per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry (*i.e.,* Midpoint Peg IOC/FOK Orders).[38] The Exchange adopted this special pricing for executions of Midpoint Peg IOC/FOK Orders in September 2022 for the purpose of incentivizing the submission of such orders and, in turn, attracting additional contra-side orders designed to execute at the midpoint to be posted on the Exchange, thereby increasing execution opportunities at the midpoint on the Exchange.[39]

The Exchange now proposes to eliminate this special pricing for executions of Midpoint Peg IOC/FOK Orders. Therefore, as proposed, such executions would be treated the same as other executions of Removed Volume, as they were before the adoption of special pricing in September 2022, and thus would either be subject to the base fee of $0.0030 per share or a discounted fee under the Liquidity Removal Tiers. The Exchange notes that the Fee Code ''Rm'' associated with executions of Midpoint Peg IOC/FOK Orders would also be deleted (and such executions would receive the otherwise applicable Fee Code for Removed Volume), as such executions no longer receive special pricing, and therefore, the Exchange does not believe it is appropriate to designate such executions with a different Fee Code. The purpose of eliminating the special pricing for executions of Midpoint Peg IOC/FOK Orders is for business and competitive reasons, as the Exchange believes that subjecting such orders to the base fee or otherwise applicable fee for such executions would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. The Exchange notes that it is not required to maintain such discounted fee (or any special pricing) for executions of Midpoint Peg IOC/FOK Orders, and the Exchange would rather redirect the associated resources and funding into other programs and tiers intended to incentivize increased order flow or enhance market quality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[40] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[41] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[42]

The Exchange believes that the ever-shifting market share among the

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[36] The proposed pricing for new Liquidity Removal Tier 2 is referred to by the Exchange on the Fee Schedule under the new description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R2'' to be provided by the Exchange on the monthly invoices provided to Members.

[37] As set forth on the Fee Schedule, the term ''Sub-Dollar ADAV'' means ADAV with respect to orders in securities priced below $1.00 per share.

[38] The pricing for executions of Midpoint Peg IOC/FOK Orders is currently referred to by the Exchange on the Fee Schedule under the description ''Removed volume from MEMX Book, Midpoint Peg (IOC/FOK)'' and such orders receive a Fee Code of ''Rm'' assigned by the Exchange. The Exchange notes that it proposes to delete this description from the Fee Schedule in connection with the elimination of special pricing for such orders, as further described below.

[39] *See* Securities Exchange Act Release No. 95688 (September 7, 2022), 87 FR 56132 (September 13, 2022) (SR–MEMX–2022–23) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the discounted fee for executions of Midpoint Peg IOC/FOK Orders).

[40] 15 U.S.C. 78f.

[41] 15 U.S.C. 78f(b)(4) and (5).

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

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 and generate additional revenue with respect to its transaction pricing and incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the proposed changes to reduce the base rebates provided for executions of Added Displayed Volume and Added Displayed Retail 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 liquidity, and the proposed new base rebates for executions of Added Displayed Volume and Added Displayed Retail Volume remain in line or higher than, and competitive with, the base rebates provided by other exchanges in each case for executions of similar orders.[43] The Exchange also believes the proposed base rebates for executions of Added Displayed Volume and Added Displayed Retail Volume are equitable and not unfairly discriminatory, as such base rebates will apply equally to all Members.

Similarly, the Exchange believes that the proposed changes to reduce the base rebates provided for executions of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved 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 liquidity and the proposed new base rebates for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume remain in line and competitive with the base rebates provided by other exchanges in each case for executions of similar orders.[44] Additionally, as noted above, and the Exchange believes that providing the same base rebate for executions of Added Price-Improved Volume as for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume is reasonable and appropriate because all of these orders similarly add liquidity to the Exchange, are executed at prices that are not displayed on the Exchange's order book, and are currently subject to the same base rebate and pricing structure today. The Exchange also believes the proposed base rebates for executions of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume are equitable and not unfairly discriminatory, as such base rebates will apply equally to all Members.

The Exchange notes that volume-based incentives and discounts (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 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 each of the Liquidity Provision Tiers 1–5, NBBO Setter/Joiner Tier 1, Non-Display Add Tiers 2–3, Liquidity Removal Tier 1, and the Sub-Dollar Rebate Tier, each as modified by the changes proposed herein, as well as the proposed new Liquidity Removal Tier 2, 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 order flow, including in the various forms of liquidity-adding and liquidity-removing volume under the required criteria, 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 rebates for executions of Added Displayed Volume, Added Non-Displayed Volume, and Added Displayed Sub-Dollar Volume, as well as the discounted fee for executions of Removed 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.

With respect to the proposed change to eliminate Liquidity Provision Tier 6, the Exchange believes such change is reasonable because, as noted above, it would enable the Exchange to redirect the associated resources and funding into other programs and tiers intended to incentivize increased order flow or enhance market quality, and the Exchange is not required to maintain such tier or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such tier is also equitable and not unfairly discriminatory because it would apply equally to all Members, in that the incentive would no longer be available for any Member.

Similarly, the Exchange also believes the proposed change to eliminate the special pricing for executions of Midpoint Peg IOC/FOK Orders is reasonable because, as noted above, the Exchange believes that subjecting such orders to the base fee or otherwise applicable fee for such executions may generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity, the Exchange is not required to maintain such discounted fee (or any special pricing) for executions of Midpoint Peg IOC/FOK Orders, and the Exchange would rather redirect the associated resources and funding into other programs and tiers intended to incentivize increased order flow or enhance market quality. The Exchange believes the proposal to eliminate such special pricing is also equitable and not unfairly discriminatory because it would apply equally to all Members, in

[43] *See supra* notes 12 and 14.

[44] *See supra* notes 16 and 17.

that the special pricing 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 [45] 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 proposal is intended to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing and incentivize market participants to direct additional order flow 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. 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.'' [46]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would decrease the Exchange's expenditures and generate additional revenue 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 would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, 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 reduce the base rebates for executions of Added Displayed Volume, Add Displayed Retail Volume, Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the proposed base rebates for such executions would be the base rebates applicable to all Members, and the opportunity to qualify for enhanced rebates or discounted fees, as applicable, is available to all Members. The opportunity to qualify for each of the Liquidity Provision Tiers 1–5, NBBO Setter/Joiner Tier 1, Non-Display Add Tiers 2–3, Liquidity Removal Tier 1, and the Sub-Dollar Rebate Tier, each as modified by the changes proposed herein, as well as the proposed new Liquidity Removal Tier 2, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. Additionally, Exchange does not believe that the proposed change to eliminate special pricing for executions of Midpoint Peg IOC/FOK Orders would impose any burden on intramarket competition because such change will apply to all Members uniformly, in that the special pricing would no longer be available for any Member. 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 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 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 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 and generate additional revenue with respect to its transaction pricing and incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [47] The

[45] 15 U.S.C. 78f(b)(4) and (5).

[46] *See supra* note 42.

[47] *See supra* note 42.

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'. . . .''.[48] 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 [49] and Rule 19b–4(f)(2) [50] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2023–05 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2023–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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–2023–05 and should be submitted on or before March 29,2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–04688 Filed 3–7–23; 8:45 am]

BILLING CODE 8011–01–P

[48] *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)).

[49] 15 U.S.C. 78s(b)(3)(A)(ii).

[50] 17 CFR 240.19b–4(f)(2).

[51] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0023]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify an existing system of records entitled, Repository of Electronic Authentication Data Master File (60–0373). This notice publishes details of the system as set forth below under the caption, **SUPPLEMENTARY INFORMATION.**

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective April 7, 2023.

We invite public comment on the routine uses or other aspects of this SORN. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by April 7, 2023.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Please reference docket number SSA–2022–0023. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Bellitto, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: *Melissa.M.Bellitto@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are modifying this SORN to accurately reflect the information we collect and to further support advancing our objectives in continuing and expanding our digital identity processes. We are modifying the system of records name from ''Repository of Electronic Authentication Data Master File'' to ''Digital Identity File Record System.''