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) of the Act [9] and paragraph (f) of Rule 19b–4 [10] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–017 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–CBOE–2024–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–017 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07966 Filed 4–15–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99934; File No. SR–MEMX–2024–12]

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

April 10, 2024.

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 March 28, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 April 1, 2024. 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 by modifying the required criteria under Liquidity Provision Tier 1 and modifying the required criteria under Liquidity Provision Tier 2; (ii) modify NBBO Setter Tier 1 by modifying the required criteria under such tier; (iii) modify the Tape B Volume Tier 1 by increasing the rebate provided and modifying the required criteria under such tier; (iv) modify the Cross Asset Tiers by adopting new Cross Asset Tiers 1 and 2 and re-numbering the existing Cross Asset Tier 1 to Cross Asset Tier 3; (v) modify the Displayed Liquidity Incentive (''DLI'') Additive Rebate Tier 1 by reducing the rebate provided and modifying the required criteria under such tier; and (vi) adopt a new Display Price-Sliding Tier, 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

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 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).

volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.5% 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 base rebate of $0.0015 per share for executions of Added Displayed Volume.[6] The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under Liquidity Provision Tier 1 and modifying the required criteria under Liquidity Provision Tier 2, 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) an ADAV [7] (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) a Step-Up ADAV [8] (excluding Retail Orders) of the TCV from September 2023 that is equal to or greater than 0.05%, an ADV [9] that is equal to or greater than 0.50% of the TCV, and a Non-Displayed ADAV [10] that is equal to or greater than 5,000,000 shares; or (3) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares.[11] The Fee Schedule indicates that criteria (2) of Liquidity Provision Tier 1 will expire no later than March 31, 2024. Now, given the expiration of criteria (2) of Liquidity Provision Tier 1, it is necessary to modify the Fee Schedule to delete this criteria (2) as well as the footnote under the Liquidity Provision Tiers pricing table that indicates its expiration, as both are no longer applicable and otherwise obsolete. As such, the Exchange now proposes to modify the required criteria under Liquidity Provision Tier 1 such that a Member would qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Thus, such proposed change would keep criteria (1) intact, delete existing criteria (2) (based on a Step-Up ADAV from September 2023 threshold) and the corresponding footnote, and re-number existing criteria (3) as the new criteria (2). The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of $0.0032 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 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) a Step-Up Displayed ADAV of the TCV from September 2023 that is equal to or greater than 0.10% and a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 0.20% of the TCV.[12] The Fee Schedule indicates that criteria (2) of Liquidity Provision Tier 2 will expire no later than March 31, 2024. Now, given the expiration of criteria (2) of Liquidity Provision Tier 2, it is necessary to modify the Fee Schedule to delete this criteria (2) as well as the footnote under the Liquidity Provision Tiers pricing table that indicates its expiration, as both are no longer applicable and otherwise obsolete. As such, the Exchange now proposes to modify the required criteria under Liquidity Provision Tier 2 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 a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) an ADAV that is equal to or greater than 0.35% of the TCV. Thus, such proposed change would keep the existing criteria (1) intact with no changes, delete existing criteria (2) (based on a Step-Up Displayed ADAV from September 2023 threshold) and the corresponding footnote, and replace it with a new criteria (2) that consists of an ADAV threshold. The Exchange is not proposing to change the rebate provided under such tier.

The Exchange believes that 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

[4] Market share percentage calculated as of March 28, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume'' with a Fee Code of ''B'', ''D'' or ''J'', as applicable, on execution reports.

[7] 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.

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

[9] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[10] 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).

[11] 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.

[12] 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.

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.

NBBO Setter Tier

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of $0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO and have a Fee Code B [13] (such orders, ''Setter Volume''), and an additive rebate of $0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (*i.e.,* Fee Codes D and J) [14] 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 0.05% of the TCV and a Step-Up ADAV with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member's December 2023 ADAV with respect to orders with a Fee Code B. Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 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 0.05% of the TCV or 5,000,000 shares and a Step-Up ADAV with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member's March 2024 ADAV with respect to orders with a Fee Code B. Thus, such proposed change keeps the first alternative criteria intact with no changes but modifies the second alternative criteria by adding an alternative 5,000,000 share ADAV threshold and referencing a more recent baseline month in the Step-Up portion of the criteria. Given the more recent baseline month, the Exchange also proposes that criteria (2) of NBBO Setter Tier 1 will expire no later than September 30, 2024. As such, the Exchange proposes to indicate this in the existing note under the NBBO Setter Tier pricing table on the Fee Schedule, by deleting the existing expiration of July 31, 2024, and replacing it with the new expiration date of September 30, 2024.

The Exchange believes that the proposed modified alternative criteria provides an incremental incentive for Members to strive for higher ADAV on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members. The Exchange is not proposing to change the amount of the additive rebates provided under such tier.

Tape B Volume Tier

The Exchange currently offers Tape B Volume Tier 1 under which qualifying Members may receive an additive rebate of $0.0001 per share for executions of Added Displayed Volume (excluding Retail Orders) in Tape B Securities (such orders, ''Tape B Volume'') by achieving: (1) a Step-Up Tape B ADAV [15] of the Tape B TCV from October 2023 that is equal to or greater than 0.10% (excluding Retail Orders); and (2) a Tape B ADAV that is equal to or greater than 0.25% of the Tape B TCV (excluding Retail Orders). The $0.0001 per share additive rebate is provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' orders that constitutes Tape B Volume (including a rebate provided under another pricing tier/incentive).[16] Now, the Exchange proposes to increase the additive rebate provided for executions of Tape B Volume to $0.0002 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving a Tape B ADAV that is equal to or greater than 0.30% of the Tape B TCV (excluding Retail Orders). Accordingly, the new criteria eliminates the Step-Up Tape B ADAV requirement and increases the Tape B ADAV of the Tape B TCV requirement from 0.25% to 0.30%. In light of the removal of the Step-Up Tape B ADAV requirement, the Exchange also proposes to delete the language under the Tape B Volume Tier pricing table on the Fee Schedule that indicates Tape B Volume Tier 1 will expire no later than April 30, 2024.

The purpose of modifying the required criteria and increasing the additive rebate provided for executions of Tape B Volume is for business and competitive reasons, as the Exchange believes that such changes would incentivize Members to submit additional order flow in Tape B Securities, thereby promoting price discovery and market quality on the Exchange.

Cross Asset Tiers

The Exchange currently offers Cross Asset Tier 1 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume in securities priced at or above $1.00 per share by achieving the corresponding required volume criteria for such tier on the Exchange's equity options platform, MEMX Options. The Exchange now proposes to renumber the existing Cross Asset Tier 1 as Cross Asset Tier 3, and adopt new Cross Asset Tiers 1 and 2, each as described below.

First, the Exchange proposes to adopt Cross Asset Tier 1 under which the Exchange would provide an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV [17] in the Market Maker [18] capacity that is equal to or greater than 250,000 contracts on MEMX Options and an ADAV on MEMX Equities that is equal to or greater than 0.30% of the TCV. The Exchange proposes to provide Members that qualify for Cross Asset Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the

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

[14] 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. 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.

[15] As set forth in the Fee Schedule, ''Step-Up Tape B ADAV'' means the ADAV in Tape B securities as a percentage of the TCV in the relevant baseline month subtracted from the current ADAV in Tape B securities as a percentage of the TCV.

[16] The pricing for the Tape B Volume Tier is referred to by the Exchange on the Fee Schedule under the description ''Tape B Volume Tier'' with a Fee Code of ''b'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

[17] As set forth on the Fee Schedule, a Member's ''Options ADAV'' for purposes of equities pricing means the average daily added volume calculated as a number of contracts added on MEMX Options per day by the Member, which is calculated on a monthly basis.

[18] As set forth on the MEMX Options Fee Schedule, ''Market Maker'' applies to any order for the account of a registered Market Maker. ''Market Maker'' shall have the meaning set forth in Rule 16.1 of the MEMX Rulebook.

same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

The Exchange further proposes to adopt Cross Asset Tier 2 under which the Exchange would provide an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an Options ADAV in the Market Maker capacity that is equal to or greater than 150,000 contracts on MEMX Options. The Exchange proposes to provide Members that qualify for Cross Asset Tier 2 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

Lastly, given the adoption of the aforementioned tiers, the Exchange proposes to renumber the current Cross Asset Tier 1 as Cross Asset Tier 3. The Exchange is not proposing to modify the rebate provided nor the criteria required under this re-numbered tier, however, the adoption of the new Cross Asset Tiers 1 and 2 as well as the re-numbering requires certain modifications to the notes below the Cross Asset Tier pricing table on the Fee Schedule. Specifically, the Exchange is proposing to add a note stating that the definition of Market Maker is set forth in the MEMX Options Fee Schedule, to renumber the existing notes, and to replace prior references in the notes to Cross Asset Tier 1 with Cross Asset Tier 3.

The proposed new Cross Asset Tier 1 and Cross Asset Tier 2 are designed to encourage Members to maintain or increase their order flow to the MEMX Options Exchange in the Market Maker capacity in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume. The Exchange believes that the addition of the new Cross Asset Tier 1 and Cross Asset Tier 2 would encourage the submission of additional order flow in the Market Maker capacity on MEMX Options, 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. As a result of achieving a higher rebate for activity on MEMX Options, and given the equities component of Cross Asset Tier 1, the Exchange further believes that the proposed tiers will encourage greater participation on MEMX Equities by qualifying participants, 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.

DLI Additive Rebate

The Exchange currently offers the DLI Additive Rebate Tier 1 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that otherwise qualify for the applicable rebate under Liquidity Provision Tier 1 or Liquidity Provision Tier 2 as well as the applicable criteria under DLI Tier 1.[19] The Exchange now proposes to modify the DLI Additive Rebate Tier 1 by decreasing the additive rebate provided and updating the required applicable criteria under Liquidity Provision Tiers 1 and 2 in accordance with this proposal, as further described below.

As noted above, under DLI Additive Rebate Tier 1, the Exchange currently provides an additive rebate of $0.0001 per share for executions of Added Displayed Volume that first meet the criteria under DLI Tier 1, which include 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 0.10% of the TCV,[20] as well as the applicable criteria under Liquidity Provision Tier 1 or Liquidity Provision Tier 2. Under Liquidity Provision Tier 1, the Exchange is now proposing (as described above) Members will received the enhanced rebate by achieving: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.45% of the TCV; or (2) an ADAV that is equal to or greater than 0.30% of the TCV and a Non-Displayed ADAV that is equal to or greater than 7,000,000 shares. Thus, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 1 criteria described above. Under Liquidity Provision Tier 2, the Exchange is now proposing (as described above) that Members will receive the enhanced rebate by achieving: (1) an ADAV that is greater than or equal to 0.25% of the TCV and a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares; or (2) an ADAV that is greater than or equal to 0.35% of the TCV. Thus, the Exchange proposes to modify the criteria for the DLI Additive Rebate to correspond to the modifications to Liquidity Provision Tier 2 criteria described above. Again, the Exchange notes that Members qualify for the DLI Additive rebate by achieving both the criteria under DLI Tier 1 and either Liquidity Provision Tier 1 or Liquidity Provision Tier 2.

Additionally, the Exchange proposes to reduce the additive rebate under the DLI Additive Rebate Tier 1 to $0.00005 per share. Other than the criteria changes noted above associated with the Exchange's proposed changes to the required criteria under Liquidity Provision Tiers 1 and 2, the Exchange does not propose to make any additional changes to the criteria required under the DLI Additive Rebate Tier 1. The purpose of reducing the additive rebate under the DLI Additive Rebate Tier 1, which the Exchange believes represents a modest reduction, is for business and competitive reasons, as the Exchange believes that such reduction would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's philosophy of encouraging added displayed liquidity as well as consistently quoting at the NBBO on the Exchange.[21]

Display-Price Sliding Tier

Currently, the Exchange provides a base rebate of $0.0008 per share for executions of orders subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed (such orders, ''Added Price-Improved Volume'') in securities priced at or above $1.00 per share.[22] Further, such orders are subject to the Exchange's Non-Display Add Tiers such that a Member that qualifies for a Non-Display Add Tier would receive the rebates provided under such tier that are applicable to executions of orders that add non-displayed liquidity to the Exchange with respect to its

[19] This pricing is referred to by the Exchange on the Fee Schedule under the existing description ''DLI Additive Rebate'' with a Fee Code of ''q'' to be appended to the otherwise applicable Fee Code for qualifying executions.

[20] The enhanced rebate provided under DLI Tier 1 is $0.0031 per share for executions of Added Displayed Volume.

[21] In light of the newly proposed Display-Price Sliding Tier set forth below, the Exchange also proposes to include Fee Code ''I'' as a possible fee code to which the DLI additive rebate may apply in the note under the DLI Additive Rebate pricing table in the Fee Schedule.

[22] The pricing 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'' with a Fee Code of ''P'' to be provided by the Exchange on the monthly invoices provided to Members.

executions of Added Price-Improved Volume.[23]

As background regarding the mechanics of Added Price-Improved Volume, the Exchange notes that pursuant to the Exchange's Display-Price Sliding functionality, an order that would lock or cross a protected quotation is ranked on the Exchange's order book at the locking price and displayed at one minimum price variation less aggressive than the locking price. For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer, and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid. Additionally, Exchange Rule 11.10(a)(4)(D) allows an order subject to the Display-Price Sliding process that is not executable at its most aggressive price to be executed at one-half minimum price variation less aggressive than the price at which it is ranked. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than an order displayed on the Exchange's order book (*i.e.,* the incoming order is priced more aggressive than the locking price), the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order.

Based on this functionality, orders executed as described above will receive price improvement over the price at which such orders are ranked. Because price slid orders subject to the order handling process described above will receive price improvement, the Exchange provides the base rebate noted above of $0.0008 per share.

Now, the Exchange proposes to adopt a volume-based tier, referred to by the Exchange as the Display-Price Sliding Tier, under which the Exchange will provide an enhanced rebate for executions of Added Price-Improved Volume for qualifying Members who meet a certain specified Added Price-Improved Volume threshold on the Exchange, as further described below.

Specifically, under Display-Price Sliding Tier 1, the Exchange is proposing that if a Member achieves an ADAV with respect to orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.* Added Price-Improved Volume) (excluding Retail Orders) that is equal to or greater than 5,000,000 shares, the Exchange will provide a rebate for those Added Price-Improved Volume executions equaling the highest possible rebate otherwise achieved for that Member for its Added Displayed Volume during that month. In order to ascertain the applicable rebate, at the end of each month, if a Member's Added Price-Improved Volume ADAV equals or exceeds 5,000,000 shares, the applicable executions (which are currently assigned a Fee Code of ''P'') will be assigned the Fee Code ''I'', and the Exchange will provide that Member's highest Added Displayed Volume[24] rebate for all of its transactions marked ''I'' during that month, plus any otherwise achieved additive rebates under the Tape B Volume Tier and DLI Additive Rebate Tier.[25] As an example, if Member A meets the criteria under the Display-Price Sliding Tier 1 for its Added Price-Improved Volume, and that Member also met the required criteria during that month under Liquidity Provision Tier 1, as well as the required criteria under the Tape B Volume Tier, the Exchange would provide a total enhanced rebate of $0.0035 per share (*i.e.* the $0.0033 rebate under Liquidity Provision Tier 1 plus the proposed $0.0002 additive rebate under the Tape B Volume Tier) for its total Added Price-Improved Volume executed during that month. In this same example, if Member A also achieved the required criteria under Cross Asset Tier 1 (which provides an enhanced rebate of $0.00026 per share), it would still receive $0.0035 per share for its Added-Price Improved Volume given that the under the proposed Display-Price Sliding Tier, the *highest* possible rebate otherwise achieved for the Member's Added Displayed Volume is awarded.

Along those same lines, as noted on the Fee Schedule, to the extent a Member qualifies or multiple fees/rebates with respect to a particular transaction, the lowest fee/highest rebate shall apply. Accordingly, in the event that the rebate a Member would be awarded for its Added-Price Improved Volume by meeting the criteria under the Non-Display Add Tiers exceeds the rebate it would be awarded by also meeting the criteria under the Display-Price Sliding Tier, the Exchange proposes that it will continue to mark those executions ''P'' and award the rebate earned under the Non-Display Add Tiers, if applicable.

The Exchange proposes to provide Members that qualify for Display-Price Sliding Tier 1 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that is applicable to the majority of executions on the Exchange for all Members (*i.e.,* including those that do not qualify for any tier).

The Exchange believes that the proposed Display-Price Sliding Tier provides an incremental incentive for Members to maintain or strive for higher ADAV on the Exchange in Added Price-Improved Volume in order to receive the enhanced rebate provided under the tier. The Exchange believes that this resulting additional displayed, liquidity-adding volume, 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[26] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[27] 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

[23] Executions of Added Price-Improved Volume for Members that qualify for the Non-Display Add Tiers receive a Fee Code of ''P1'', ''P2'', ''P3'', or ''P4'', as applicable, for such executions on the monthly invoices provided to Members.

[24] Specifically, the possible rebates are those that the Exchange is proposing to identify in the Transaction Fees table on the Fee Schedule with the Fee Code ''I'' and include the base rebate for Added Displayed Volume, as well as the enhanced rebates under the Liquidity Provision Tiers, DLI Tiers, and Cross Asset Tiers.

[25] Given that the additive rebate under the NBBO Setter Tier is only applied towards executions of Added Displayed Volume with the Fee Codes B, D or J, the Exchange is not proposing that any Added Price-Improved Volume be awarded the NBBO Setter Tier Additive Rebate.

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4) and (5).

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.'' [28]

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 incentivize market participants to direct additional order flow, including displayed, liquidity-adding, aggressively priced orders to the Exchange, as well as to the Exchange's equity options platform, MEMX Options, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange and on MEMX Options 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 and 2 and NBBO Setter Tier 1, each as modified by the proposed changes to the required criteria under such tier, the Tape B Volume Tier as modified by the proposed changes to the additive rebate and required criteria under such tier, the proposed new Cross Asset Tiers 1 and 2, the DLI Additive Rebate as modified by the proposed changes to the additive rebate and required criteria under such tier, and the new proposed Display-Price Sliding 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 (and in the case of the Cross Asset Tiers, MEMX Options), are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Added Price-Improved Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tiers 1 and 2 and the proposed new Cross Asset Tiers 1 and 2, the additive rebates for executions of Added Displayed Volume under the proposed modified NBBO Setter Tier 1, Tape B Volume Tier 1, and DLI Additive Rebate Tier 1, as well as the enhanced rebate for executions of Added Price-Improved Volume under the new proposed Display-Price Sliding Tier, each 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, as described above. In addition, the Exchange believes that the proposed Display-Price Sliding Tier, which will award the highest Added Displayed Volume rebate possible to qualifying Members, is reasonable and equitable because orders subject to Display-Price Sliding are, in fact, displayed on the Exchange and thus contribute to price discovery and other benefits to the Exchange and the market generally, but also can be executed at prices not displayed on the Exchange, as described above. The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to provide Members that qualify for the newly proposed Cross Asset Tiers 1 and 2 and Display-Price Sliding Tier with the same rebate for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange as is applicable to the majority of executions on the Exchange for all Members (*i.e.* including those that do not qualify for any tier).

As it relates to the proposed Cross Asset Tiers 1 and 2, to the extent a Member participates on the Exchange but not on MEMX Options, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of MEMX Options. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on MEMX Options or not. The proposed pricing program is also fair and equitable in that membership on MEMX Options is available to all market participants which would provide them with access to the benefits on MEMX Options provided by the proposal, even where a member of MEMX Options is not necessarily eligible for the proposed enhanced rebates on the Exchange. Lastly, the Exchange believes that the proposal is still reasonable, equitably allocated and non-discriminatory because as a result of achieving a higher rebate for activity on MEMX Options, and given the equities component of Cross Asset Tier 1, the Exchange further believes that the newly proposed Cross Asset Tiers 1 and 2 will encourage greater participation on MEMX Equities by qualifying participants, 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.

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 [29] 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.

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

[29] 15 U.S.C. 78f(b)(4) and (5).

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding, and/or aggressively priced orders to the Exchange, and MEMX Options, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue and 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. 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.'' [30]

Intramarket Competition

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

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 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 Added Displayed Volume and Added Price-Improved Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [31] 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'. . .''.[32] 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 is effective upon filing pursuant to Section

[30] *See supra* note 28.

[31] *Id.*

[32] *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)).

19(b)(3)(A) [33] of the Act and subparagraph (f)(2) of Rule 19b–4 [34] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [35] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–12 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–2024–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–12 and should be submitted on or before May 7, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

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[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(2).

[35] 15 U.S.C. 78s(b)(2)(B).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–609, OMB Control No. 3235–0706]

Proposed Collection; Comment Request; Extension: Form ABS–EE

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ABS–EE (17 CFR 249.1401) is filed by asset-backed issuers to provide asset-level information for registered offerings of asset-backed securities at the time of securitization and on an ongoing basis required by Item 1111(h) of Regulation AB (17 CFR 229.1111(h)). The purpose of the information collected on Form ABS–EE is to implement the disclosure requirements of Section 7(c) of the Securities Act of 1933 (15 U.S.C. 77g(c)) to provide information regarding the use of representations and warranties in the asset-backed securities markets. Form ABS–EE takes approximately 50.87152 hours per response to prepare and is filed by 5,463 securitizers annually. We estimate that 25% of the approximately 50.87152 hours per response (12.71788 hours) is prepared by the securitizers internally for a total annual reporting burden of 69,478 hours (12.71788 hours per response × 5,463 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 17, 2024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 11, 2024.

Vanessa A. Countryman,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–270, OMB Control No. 3235–0292]

Proposed Collection; Comment Request; Extension: Form F–6—Registration Statement

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission