staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 10, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–03244 Filed 2–10–22; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 94181; File No. SR–NYSE–2021–74]

Self-Regulatory Organizations; New York Stock Exchange LLC, Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Provisions of Rule 7.35B

February 8, 2022.

On December 14, 2021, New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 7.35B relating to the cancellation of MOC, LOC, and Closing IO Orders before the Closing Auction. The proposed rule change was published for comment in the **Federal Register** on December 29, 2021.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the proposed rule change is February 12, 2022. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.[5] Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates March 29, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change (File No. SR–NYSE–2021–74).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–03018 Filed 2–11–22; 8:45 am]

BILLING CODE 8011–01–P

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93849 (Dec. 22, 2021), 86 FR 74204 (Dec. 29, 2021 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] The Commission notes that the exchange has a different pending proposed rule change that also relates to the NYSE Closing Auction. *See* Securities Exchange Act Release No. 93809 (Dec. 17, 2022), 86 FR 73060 (Dec. 23, 2021) (File No. SR–NYSE–2021–44) (Order Instituting Proceedings).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94189; File No. SR–MEMX–2021–10]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing of Amendment No. 1 to, and Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove, a Proposed Rule Change To Establish a Retail Midpoint Liquidity Program

February 8, 2022.

On August 18, 2021, MEMX LLC (''MEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Midpoint Liquidity Program (''Program''). The proposed rule change was published for comment in the **Federal Register** on September 8, 2021.[3] On October 19, 2021, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On December 7, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.[5] On January 27, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which supersedes the original filing in its entirety, and is described in Items I and II below, which Items have been prepared by the Exchange.[6] The Commission is

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92844 (September 1, 2021), 86 FR 50411 (September 8, 2021). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-memx-2021-10/srmemx202110.htm.*

[4] *See* Securities Exchange Act Release No. 93383 (October 19, 2021), 86 FR 58964 (October 25, 2021).

[5] *See* Securities Exchange Act Release No. 93727 (December 7, 2021), 86 FR 70874 (December 13, 2021).

[6] In Amendment No. 1, the Exchange, among other things: (1) Eliminated the ability for Users (defined below) to elect whether to designate an RML Order to be identified as such for purposes of the Retail Liquidity Identifier, (2) proposes to allow Retail Midpoint Orders to trade with both displayed odd lot and non-displayed orders priced better than the Midpoint Price (defined below) at those orders' ranked prices rather than at the less aggressive Midpoint Price, and (3) proposes to allow a Retail Midpoint Order to interact with midpoint peg orders (*i.e.,* non-RML Orders) that have elected to be able to execute in the Retail Midpoint Liquidity Program, though only *after* the Retail Midpoint Order has executed against any better priced liquidity and any RML Orders. *Cf.* Investors

Continued

publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is designating a longer period within which to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

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 establish a Retail Midpoint Liquidity Program. This Amendment No. 1 supersedes the original filing in its entirety. 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 Exchange is filing this Amendment No. 1 to SR–MEMX–2021–10 [7] in order to address issues the Commission raised in the OIP and make other related modifications.

Background

The Exchange proposes to adopt new Exchange Rule 11.22 to establish a Retail Midpoint Liquidity Program (the ''RML Program''). As proposed, the RML Program is designed to provide retail investors with meaningful price improvement opportunities such that liquidity-providing Users [8] will be incentivized to direct additional orders designed to execute at the midpoint of the national best bid and offer (''NBBO'') (such price, the ''Midpoint Price'') to the Exchange to interact with orders that originate from retail investors that are also designed to execute at the Midpoint Price.

As former Commission Chairman Jay Clayton noted in a 2018 speech, forty-three million U.S. households hold a retirement or brokerage account, with $3.6 trillion in balance sheet assets in 128 million customer accounts serviced by more than 2,800 registered broker-dealers.[9] He also noted the importance of continued broad, long-term retail participation in our capital markets, and that retail investors count on the capital markets to fund major life events such as paying for their children's higher education or funding their own retirements.[10]

Against this backdrop, the RML Program is designed to provide retail investors with access to a pool of midpoint liquidity on the Exchange by introducing a new mechanism for retail-oriented liquidity provision in which liquidity-providing Users can provide price-improving liquidity at the Midpoint Price specifically to retail investors, and liquidity-removing RMOs submitting orders on behalf of retail investors can interact with such price-improving liquidity, thereby providing enhanced opportunities for meaningful price improvement for retail investors. The Exchange believes that introducing the RML Program could provide retail investors with a competitive alternative to existing exchange and over-the-counter (''OTC'') retail programs, by attracting counterparty liquidity to the Exchange from Users and their clients seeking to interact with retail liquidity.

The Exchange understands that many professional market participants, such as market makers, view interacting with orders of retail investors as more desirable than interacting with orders of other professional market participants. For example, as the Commission staff noted in a 2016 memorandum to the Equity Market Structure Advisory Committee (''EMSAC Memorandum''), ''[m]arket makers are interested in retail customer order flow because retail investors are, on balance, less informed than other traders about short-term price movements . . . [and t]rading against retail customer order flow enables market makers to avoid adverse selection by informed professional traders and to more reliably profit from market-making activity.'' [11] Consistent with the EMSAC Memorandum's conclusions, and based on informal discussions with market participants and the knowledge and experience of its staff, the Exchange believes that market makers and other sophisticated market participants generally value interacting with retail orders because they are smaller and not likely to be part of a larger parent order that can move a stock price, causing a loss to the market maker. The proposed rule change thus seeks to provide enhanced price improvement opportunities for retail customers by incentivizing Users and their clients to provide price-improving liquidity to interact with the orders of retail investors at the Midpoint Price. The RML Program would therefore be consistent with the goals of the Commission to encourage markets that are structured to benefit ordinary investors,[12] while facilitating order interaction to the benefit of all market participants.

As proposed, through the RML Program, the Exchange would enable Retail Member Organizations [13] to submit a new type of Retail Order designed to execute at the Midpoint Price (*i.e.,* a Retail Midpoint Order, described below) to the Exchange, and any User would be permitted to provide

Exchange Rule 11.232(e)(3)(A)(iii) (providing that Retail Liquidity Provider orders (the equivalent to MEMX's proposed RML Orders) do not have a priority advantage over other non-displayed orders priced to execute at the midpoint of the national best bid and offer; they instead are ranked in time priority with other midpoint interest).

[7] Securities Exchange Act Release No. 92844 (September 1, 2021), 86 FR 50411 (September 8, 2021) (the ''Initial Proposal''). The Commission issued an Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Initial Proposal. *See* Securities Exchange Act Release No. 93727 (December 7, 2021), 86 FR 70874 (December 13, 2021) (the ''OIP'').

[8] As defined in Exchange Rule 1.5(jj), a ''User'' is a member of the Exchange (''Member'') or sponsored participant of a Member who is authorized to obtain access to the System pursuant to Exchange Rule 11.3. The term ''System'' refers to the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing. *See* Exchange Rule 1.5(gg).

[9] *See* The Evolving Market for Retail Investment Services and Forward-Looking Regulation—Adding Clarity and Investor Protection while Ensuring Access and Choice, Chairman Jay Clayton, Commission (May 2, 2018), available at *https://www.sec.gov/news/speech/speech-clayton-2018-05-02.*

[10] *Id.*

[11] *See* January 26, 2016 Memorandum entitled ''Certain Issues Affecting Customers in the Current Equity Market Structure'' from the staff of the Commission's Division of Trading and Markets, available at *https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-emsac-012616.pdf.*

[12] *See, e.g.,* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf* (''Commission Strategic Plan'').

[13] A ''Retail Member Organization'' or ''RMO'' is a Member (or a division thereof) that has been approved by the Exchange under Exchange Rule 11.21 to submit Retail Orders. 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, 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).

price improvement to such order in the form of another new order type that is designed to execute at the Midpoint Price and that is only eligible to execute against a Retail Midpoint Order (*i.e.,* an RML Order, described below). The Exchange expects that the introduction of Retail Midpoint Orders and RML Orders, through the proposed RML Program, would result in a balanced mix of retail brokerage firms and their wholesaling partners submitting Retail Midpoint Orders to the Exchange to access the additional midpoint liquidity provided by RML Orders that the Exchange anticipates resulting from the RML Program.

The Exchange notes that the proposed RML Program is comparable in purpose and effect to the Investors Exchange LLC (''IEX'') Retail Price Improvement Program (the ''IEX Retail Program''), which is also designed to provide retail investors with meaningful price improvement opportunities.[14] Further, the Commission recently approved several changes to the IEX Retail Program that make certain features of the IEX Retail Program substantially similar to proposed features of the RML Program.[15] The Exchange will describe certain differences between the proposed RML Program and the IEX Retail Program under the appropriate headings below.

The Exchange will submit a separate proposal to amend its Fee Schedule in connection with the proposed RML Program. Under that proposal, the Exchange expects to provide free executions or charge a fee to Users for executions of their orders against Retail Midpoint Orders at the Midpoint Price (*i.e.,* RML Orders or Eligible Midpoint Peg Orders, as defined below), and in turn would provide a rebate or free executions to RMOs for executions of their Retail Midpoint Orders against such orders.

Definitions

The Exchange proposes to adopt the following definitions under paragraph (a) of proposed Exchange Rule 11.22 (Retail Midpoint Liquidity Program). First, the term ''Retail Midpoint Order'' would be defined as a Retail Order submitted by an RMO that is a Pegged Order[16] with a Midpoint Peg[17] instruction (''Midpoint Peg Order'') and that is only eligible to execute against RML Orders (a proposed new order type described below), orders priced more aggressively than the Midpoint Price, and Midpoint Peg Orders that are not RML Orders but are designated as eligible to execute against Retail Midpoint Orders (*i.e.,* Eligible Midpoint Peg Orders, which are further described below), through the execution process described in proposed Exchange Rule 11.22(c). As proposed, a Retail Midpoint Order must have a time-in-force (''TIF'') instruction of IOC.[18]

Second, the term ''Retail Midpoint Liquidity Order'' or ''RML Order'' would be defined as a Midpoint Peg Order that is only eligible to execute against Retail Midpoint Orders through the execution process described in proposed Exchange Rule 11.22(c). As proposed, an RML Order must have a TIF instruction of Day,[19] RHO,[20] or GTT[21] and may not include a Minimum Execution Quantity[22] instruction. Any User would be permitted, but not required, to submit RML Orders. RML Orders would only execute at the Midpoint Price, as stated in proposed Exchange Rule 11.22(c)(1). The Exchange notes that an RML Order is substantially similar in effect to IEX's Retail Liquidity Provider Order (''IEX RLP Order'') offered under the IEX Retail Program, in that an RML Order is an order that is designed to execute at the Midpoint Price, is only eligible to execute against retail order interest, and may be submitted by any User.[23]

Third, the term ''Eligible Midpoint Peg Order'' would be defined as a Midpoint Peg Order that is not an RML Order but includes an instruction that such order is eligible to execute against Retail Midpoint Orders through the execution process described in proposed Exchange Rule 11.22(c). Thus, as proposed, a User submitting a Midpoint Peg Order that is not an RML Order would have the ability, but is not required, to include an instruction that such order is eligible to execute against Retail Midpoint Orders (*i.e.,* to designate such order as an Eligible Midpoint Peg Order).[24]

The RML Program is generally intended to facilitate the execution of Retail Midpoint Orders against RML Orders at the Midpoint Price. Nevertheless, the Exchange believes that it is appropriate to permit Retail Midpoint Orders to also execute against non-RML Midpoint Peg Orders resting on the MEMX Book that are designated as eligible to execute against Retail Midpoint Orders (*i.e.,* Eligible Midpoint Peg Orders). While retail orders are typically smaller in size, and would thus generally be fully executed through interactions with RML Orders and/or orders priced more aggressively than the Midpoint Price, allowing Retail Midpoint Orders to trade with Eligible Midpoint Orders would increase the potential pool of liquidity that larger Retail Midpoint Orders may interact with to the benefit of retail investors. At the same time, although many market participants that post liquidity at the Midpoint Price through Midpoint Peg Orders may be willing to trade with retail order flow that is generally considered less informed, the Exchange believes that it is important to allow Users to choose whether they would like their Midpoint Peg Orders to execute against Retail Midpoint Orders

[14] *See* IEX Rule 11.232; *see also* Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (SR–IEX–2021–06) (order approving changes to the IEX Retail Program including dissemination of a retail liquidity identifier and limiting IEX Retail Liquidity Provider orders to midpoint peg orders) (the ''IEX Retail Approval Order''). The Exchange notes that the IEX Retail Program, as amended, supports executions of retail orders described in IEX Rule 11.190(b)(15) (''IEX Retail Orders'') at the Midpoint Price as well as prices that are more aggressive than the Midpoint Price. The Exchange notes that this aspect of the IEX Retail Program is similar to the proposed RML Program in that executions of Retail Midpoint Orders would be supported at the Midpoint Price as well as prices that are more aggressive than the Midpoint Price, as further described below. The Exchange further notes that Retail Orders would still be eligible to execute at any prices (including prices that are less aggressive than the Midpoint Price) outside of the RML Program as they are today.

[15] *See* IEX Retail Approval Order, *supra* note 14.

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

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

[18] ''IOC'' is an instruction the User may attach to an order stating the order is to be executed in whole or in part as soon as such order is received, and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the MEMX Book. *See* Exchange Rule 11.6(o)(1). The term ''MEMX Book'' refers to the System's electronic file of orders. *See* Exchange Rule 1.5(q).

[19] *See* Exchange Rule 11.6(o)(2).

[20] *See* Exchange Rule 11.6(o)(5).

[21] *See* Exchange Rule 11.6(o)(4).

[22] The Minimum Execution Quantity instruction is described in Exchange Rule 11.6(f) and is generally defined as an instruction a User may attach to an order with a Non-Displayed instruction or a TIF of IOC instruction requiring the System to execute the order only to the extent that a minimum quantity can be satisfied. A Non-Displayed instruction is an instruction a User may attach to an order stating that the order is not to be displayed by the System on the MEMX Book. *See* Exchange Rule 11.6(c)(2).

[23] *See* IEX Rule 11.190(b)(14), which describes the IEX RLP Order. *See also* IEX Retail Approval Order, *supra* note 14.

[24] The Exchange is also proposing to amend Exchange Rule 11.6(h)(2), which describes Midpoint Peg Orders generally, to reflect that a User may, but is not required to, include an instruction that a Midpoint Peg Order that is not an RML Order is eligible to execute against a Retail Midpoint Order.

in the RML Program where such orders may be subject to a different fee structure.[25] Similar to liquidity swap instructions available on other U.S. equity exchanges,[26] the Exchange would therefore allow these Users to control their economics by choosing to opt in or out of interacting with Retail Midpoint Orders entered into the RML Program. The Exchange notes that regardless of whether the User chooses to opt in (*i.e.,* designate a non-RML Midpoint Peg Order as an Eligible Midpoint Peg Order), such order would remain available on the MEMX Book where it is accessible to all market participants outside of the RML Program, including market participants submitting orders on behalf of retail investors, as it is today.[27] The Exchange notes that enabling a User to choose whether its Midpoint Peg Orders may interact with Retail Midpoint Orders is different than the IEX Retail Program in which all such orders are eligible to interact against incoming Retail Orders; however, the Exchange believes that providing such optionality is appropriate for the reasons described above.

As Retail Midpoint Orders and RML Orders are types of Pegged Orders, and are designed to execute on the Exchange against each other through the RML Program, such orders would not be eligible for routing.[28]

Retail Liquidity Identifier

Under the RML Program, the Exchange proposes to disseminate a Retail Liquidity Identifier through the Exchange's proprietary market data feeds, MEMOIR Depth[29] and MEMOIR Top,[30] and the appropriate securities information processor (''SIP'') when RML Order interest (''RML Interest'') aggregated to form at least one round lot for a particular security is available in the System (''Retail Liquidity Identifier''), provided that such RML Interest is resting at the Midpoint Price and is priced at least $0.001 better than the national best bid (''NBB'') or national best offer (''NBO''). The purpose of the Retail Liquidity Identifier is to provide relevant market information to RMOs that there is available RML Interest on the Exchange, thereby incentivizing them to send Retail Midpoint Orders to the Exchange seeking execution at the Midpoint Price. The Retail Liquidity Identifier would reflect the symbol and the side (buy and/or sell) of the RML Interest but would not include the price or size.[31] While an explicit price would not be disseminated, because RML Orders are only eligible to execute at the Midpoint Price, dissemination of the Retail Liquidity Identifier would thus reflect the availability of price improvement at the Midpoint Price. The Exchange notes that the Exchange's proposed Retail Liquidity Identifier is substantively identical to the Retail Liquidity Identifier disseminated by IEX under the IEX Retail Program.[32]

As noted above, the Exchange would only disseminate the Retail Liquidity Identifier when RML Interest would provide at least $0.001 of price improvement, which is consistent with the rules of the other exchanges that disseminate Retail Liquidity Identifiers[33] as well as the SIP Plans' requirements.[34] Because RML Orders are proposed to be only Midpoint Peg Orders, they will always represent at least $0.001 price improvement over the NBB or NBO, with two exceptions: (1) In a locked or crossed market; and (2) a sub-dollar quote when the security's spread is less than $0.002.[35] Under Exchange Rule 11.8(c)(6), a Pegged Order resting on the MEMX Book is not eligible for execution when the market is locked or crossed; thus, an RML Order would not be eligible for execution when the market is locked or crossed and would rest on the MEMX Book and become eligible for execution again when the market ceases to be locked or crossed.[36] Because an RML Order would not be eligible for execution when the market is locked or crossed, such order would not provide any price improvement to an incoming Retail Midpoint Order (*i.e.,* would not be priced at least $0.001 better than the NBB or NBO) and therefore would not comprise eligible RML Interest for purposes of the Retail Liquidity Identifier. Similarly, when a particular security is priced less than $1.00 per share, its MPV is $0.0001, so the Midpoint Price will not always represent at least $0.001 in price improvement.[37] Therefore, the Exchange would only disseminate the Retail Liquidity Identifier for sub-dollar securities if the spread in the security is greater than or equal to $0.002, meaning the Midpoint Price represents at least $0.001 price improvement over the NBB or NBO. With respect to the requirement that an RML Order must be resting at the Midpoint Price in order to be included in the RML Interest to be disseminated pursuant to the Retail Liquidity Identifier, the Exchange notes that an RML Order could have a limit price that is less aggressive than the Midpoint Price in which case it would not be eligible to trade with an incoming Retail Midpoint Order and therefore should not be included for purposes of Retail Liquidity Identifier dissemination since it would not reflect interest available to trade with Retail Midpoint Orders. The Exchange notes that not including: (1) RML Interest for a security when the market for the security is locked or crossed; (2) RML Interest for a sub-dollar security if the spread in the security is greater [sic] than or equal [sic] to $0.002; and (3) RML Interest that is not resting at the Midpoint Price (*i.e.,* RML Interest that is constrained by a limit price that is less aggressive than the Midpoint Price), for purposes of Retail Liquidity Identifier dissemination is consistent with the Retail Liquidity Identifier disseminated by IEX under the IEX Retail Program.[38]

The Exchange also proposes to remove the Retail Liquidity Identifier previously disseminated through the

[25] As noted above, the Exchange will submit a separate proposal to amend its Fee Schedule in connection with the implementation of the RML Program. Under that proposal, the Exchange expects to provide free executions or charge a fee to Users for executions of their liquidity-providing Eligible Midpoint Peg Orders against incoming Retail Midpoint Orders, whereas liquidity-providing Midpoint Peg Orders ordinarily receive a rebate under the Exchange's pricing.

[26] *See, e.g.,* Cboe BZX Exchange, Inc. (''Cboe BZX'') Rule 11.3(c)(12) (Non-Displayed Swap Order). A Non-Displayed Swap (''NDS'') Order entered on Cboe BZX elects to remove liquidity against an incoming Post Only Order that would otherwise not trade on entry. In such situations the NDS Order is treated as liquidity remover and would pay associated fees.

[27] For example, a Retail Order could be entered onto the MEMX Book outside of the RML Program where it would be eligible to trade with other liquidity-providing orders, including Midpoint Peg Orders that have not opted into trading with Retail Midpoint Orders.

[28] *See* Exchange Rule 11.8(c)(5), which provides that Pegged Orders are not eligible for routing.

[29] *See* Exchange Rule 13.8(a).

[30] *See* Exchange Rule 13.8(b).

[31] The Exchange plans to submit a letter requesting exemptive relief from obligations set forth in Rule 602 of Regulation NMS.

[32] *See* IEX Rule 11.232(f); *see also* IEX Retail Approval Order, *supra* note 14, at 38167.

[33] *See, e.g.,* IEX Rule 11.232(f), Cboe BYX Rule 11.24(e), and NYSE Arca Equities Rule 7.44(j).

[34] *See* January 26, 2021 CQS Participant Input Binary Specification Version 2.6a, available at *https://www.ctaplan.com/publicdocs/ctaplan/CQS_Pillar_Input_Specification.pdf* and May 2020 UTP Data Feed Services Specification Version 1.5, available at *https://www.utpplan.com/DOC/UtpBinaryOutputSpec.pdf.*

[35] The Minimum Price Variation (''MPV'') for bids, offers, or orders in securities priced less than $1.00 per share is $0.0001. *See* Exchange Rule 11.6(g).

[36] *See* Exchange Rule 11.8(c)(6).

[37] For example, if a security's NBB is $0.505 and NBO is $0.506, the Midpoint Price would be $0.5055, which is $0.0005 more than the NBB and less than the NBO, so it would not represent at least $0.001 price improvement over the NBB or NBO, and therefore would not comprise eligible RML Interest for purposes of the Retail Liquidity Identifier.

[38] *See* IEX Rule 11.232(f); *see also* IEX Retail Approval Order, *supra* note 14, at 38167.

MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against and/or cancellations of Retail Midpoint Orders have depleted the available RML Interest such that the remaining RML Interest does not aggregate to form at least one round lot, or in situations where there is no actionable RML Interest (such as when the market is locked or crossed), in order to indicate to market participants that there is no longer RML Interest of at least one round lot available. The Exchange believes that removing the Retail Liquidity Identifier on the market data feeds and SIP when there is not sufficient eligible RML Interest available is consistent with the implementation of the other exchanges that disseminate Retail Liquidity Identifiers.

The Exchange anticipates that Retail Midpoint Orders would mostly interact with RML Orders due to the Retail Liquidity Identifier. In this regard, the Exchange generally expects RMOs to submit Retail Midpoint Orders when the Retail Liquidity Identifier is disseminated, which indicates that there is available RML Interest of at least one round lot on the MEMX Book. In turn, the Exchange generally does not expect RMOs to submit Retail Midpoint Orders when the Retail Liquidity Identifier is not disseminated or otherwise to specifically seek to interact with other orders priced more aggressively than the Midpoint Price or Eligible Midpoint Peg Orders, particularly as any such orders would be either non-displayed (and therefore not known to the RMO) or less than a round lot in size.

Priority and Order Execution

The proposed priority and order execution under the RML Program when a Retail Midpoint Order is received by the Exchange is as follows:

• First, a Retail Midpoint Order would execute against orders resting on the MEMX Book that are priced more aggressively than the Midpoint Price. More specifically, proposed Exchange Rule 11.22(c)(2) provides that if there is: (A) A Limit Order [39] of Odd Lot [40] size that is displayed by the System (''Displayed Odd Lot Order'') and that is priced more aggressively than the Midpoint Price and/or (B) an order that is not displayed by the System (''Non-Displayed Order'') and that is priced more aggressively than the Midpoint Price, resting on the MEMX Book, then an incoming Retail Midpoint Order would first execute against any such orders pursuant to the Exchange's standard price/time priority in accordance with Exchange Rule 11.9 and Exchange Rule 11.10.[41] Retail Midpoint Orders would be executed against such Displayed Odd Lot Orders and/or Non-Displayed Orders at the prices that such resting orders are ranked on the MEMX Book.

• Next, after executing against orders priced more aggressively than the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2), a Retail Midpoint Order would then execute against RML Orders resting on the MEMX Book at the Midpoint Price in time priority pursuant to proposed Exchange Rule 11.22(c)(3).

• Finally, after executing against orders priced more aggressively than the Midpoint Price pursuant to proposed Exchange Rule 11.22(c)(2) and RML Orders pursuant to proposed Exchange Rule 11.22(c)(3), a Retail Midpoint Order would then execute against Eligible Midpoint Peg Orders at the Midpoint Price in time priority pursuant to proposed Exchange Rule 11.22(c)(4).[42]

The purpose of permitting a Retail Midpoint Order to first execute against Displayed Odd Lot Orders and/or Non-Displayed Orders that are priced more aggressively than the Midpoint Price is to ensure that the priority of more aggressively priced orders over less aggressively priced orders is maintained on the Exchange, consistent with Exchange Rule 11.9. The Exchange believes that this aspect of the RML Program is appropriate because it would enable an RMO entering a Retail Midpoint Order to capture better prices available on the MEMX Book while seeking out midpoint liquidity through the RML Program. Passing along this additional available price improvement to retail investors is consistent with the RML Program's overall objective to provide meaningful price improvement opportunities to retail investors and the Commission's goal to encourage markets that are structured to benefit ordinary investors.

At the Midpoint Price, the Exchange believes it is appropriate to execute RML Orders, which contribute to the dissemination of the Retail Liquidity Identifier, ahead of Eligible Midpoint Peg Orders, which do not contribute to the dissemination of the Retail Liquidity Identifier and are not displayed on the MEMX Book. As previously discussed, the Retail Liquidity Identifier is likely to be the principal factor in attracting RMOs to send Retail Midpoint Orders as it signals to the market that there is available midpoint liquidity on the Exchange and thus increases the likelihood of execution for such orders on the Exchange.

Although certain market participants may not ordinarily post liquidity at the Midpoint Price on exchanges due to adverse selection risks, the Exchange believes that they may be willing to do so if they can limit their interactions to Retail Orders (*i.e.,* through the use of RML Orders), which are generally considered to be less informed, as described above. However, entering RML Orders involves some additional risk for those market participants as the Retail Liquidity Identifier will signal that there is a buyer or seller that is willing to trade with retail investors at the Midpoint Price. The proposed RML Program therefore appropriately balances the risks and incentives associated with entering RML Orders such that market participants that wish to interact with Retail Midpoint Order flow would be free to determine whether to submit RML Orders that contribute to the dissemination of the Retail Liquidity Identifier and have execution priority when trading with incoming Retail Midpoint Orders, or instead enter Eligible Midpoint Peg Orders that remain non-displayed but cede execution priority to those RML Orders. Thus, similar to the priority afforded to orders that are displayed on the MEMX Book, which receive priority over non-displayed orders because they contribute to price discovery and attract liquidity to the Exchange, the Exchange believes that RML Orders, which contribute to the dissemination of the Retail Liquidity Identifier that signals to RMOs that there is available midpoint liquidity on the Exchange, should receive priority over Eligible Midpoint Peg Orders for the same reasons.

The Exchange notes that this aspect of the proposed RML Program is partially different than the IEX Retail Program in that the IEX Retail Program does not provide priority to an IEX RLP Order

[39] *See* Exchange Rule 11.8(b).

[40] *See* Exchange Rule 11.6(q)(2).

[41] The Exchange notes that Displayed Odd Lot Orders and Non-Displayed Orders are the only types of orders that could rest on the MEMX Book at a price that is more aggressive than the Midpoint Price, as any displayed buy (sell) order that is at least one round lot in size would be eligible to form the NBB (NBO) as a Protected Quotation. The term ''Protected Quotation'' refers to a quotation that is a Protected Bid or Protected Offer. In turn, the term ''Protected Bid'' or ''Protected Offer'' refers to a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association. *See* Exchange Rule 1.5(z).

[42] Any remaining portion of a Retail Midpoint Order that is not executed pursuant to the execution process described in proposed Exchange Rule 11.22(c) would be cancelled back to the entering RMO since a Retail Midpoint Order may only be entered with a TIF of IOC and is not eligible for routing. *See* Exchange Rule 11.6(o)(1).

over other orders at the Midpoint Price, whereas the Exchange has proposed providing RML Orders with priority over Eligible Midpoint Peg Orders. However, the Exchange submits that the proposed order priority under the RML Program, as described above, is consistent with general principles of order priority on the Exchange and other U.S. equity exchanges, where orders at superior prices receive first priority and, at any particular price, orders that contribute to price discovery receive priority ahead of non-displayed orders that do not contribute to market transparency. As such, the Exchange does not believe that the proposed order priority under the RML Program raises any novel issues for the Commission to consider.

The following example, which the Exchange proposes to codify in proposed Exchange Rule 11.22(c)(5) as slightly modified to conform with the Rule's context, illustrates how the Exchange would handle orders under the proposed RML Program:

Assume the following facts:

• The NBBO for security ABC is $10.00–$10.10.

• User 1 enters an RML Order to buy ABC for 500 shares. The order is posted to the MEMX Book as an RML Order to buy ABC at $10.05. The Exchange publishes through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP a Retail Liquidity Identifier indicating the presence of RML Interest of at least one round lot to buy ABC.

• User 2 then enters a Pegged Order with a Midpoint Peg instruction to buy ABC for 500 shares that includes an instruction that such order is eligible to execute against Retail Midpoint Orders (*i.e.,* an Eligible Midpoint Peg Order). The order is posted to the MEMX Book as an Eligible Midpoint Peg Order to buy ABC at $10.05.

• User 3 then enters a Limit Order with a Displayed instruction [43] to buy 50 shares of ABC at $10.06, which is posted to the MEMX Book.

• User 4 then enters a Pegged Order with a Midpoint Peg instruction to buy ABC for 500 shares that is not an RML Order and does not include an instruction that such order is eligible to execute against Retail Midpoint Orders (*i.e.,* a Midpoint Peg Order that is not an Eligible Midpoint Peg Order). The order is posted to the MEMX Book as a Pegged Order to buy ABC at $10.05.

• User 5 then enters a Limit Order with a Non-Displayed instruction to buy ABC at $10.07 for 100 shares, which is posted to the MEMX Book.

• There are no other orders resting on the MEMX Book.

Example: Retail Member Organization enters a Retail Midpoint Order to sell 1,200 shares of ABC. The Retail Midpoint Order will execute in the following order:

• First, against the full size of User 5's buy Limit Order for 100 shares at $10.07 (because it is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order and it is also the most aggressively priced order);

• second, against the full size of User 3's buy Limit Order for 50 shares at $10.06 (because it is priced more aggressively than the Midpoint Price, and thus, it is eligible to execute against a Retail Midpoint Order and it is the next most aggressively priced order);

• third, against the full size of User 1's buy RML Order for 500 shares at $10.05; and

• fourth, against the full size of User 2's buy Pegged Order for 500 shares at $10.05 (because it is an Eligible Midpoint Peg Order).

The Retail Midpoint Order does not execute against User 4's buy Pegged Order because User 4's buy Pegged Order is not an RML Order or an Eligible Midpoint Peg Order. The Retail Midpoint Order is filled for 1,150 shares and the balance of 50 shares is cancelled back to the Retail Member Organization. The Exchange removes the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP as there is no longer RML Interest of at least one round lot to buy ABC.

Implementation

The Exchange proposes that all securities traded on the Exchange would be eligible for inclusion in the RML Program. If the Commission approves this proposed rule change, the Exchange will implement it within 90 days of approval and will provide notice to Members and market participants of the implementation timeline.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [44] in general, and furthers the objectives of Section 6(b)(5) of the Act [45] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with these principles because it is designed to increase competition among execution venues and offer the potential for meaningful price improvement to orders of retail investors, including through encouraging market participants to provide additional liquidity to execute against the orders of retail investors at the Midpoint Price.

As discussed in the Purpose section, the Exchange's proposed RML Program is a simple, transparent approach designed to provide retail investors with meaningful price improvement opportunities, through RMOs' use of the proposed new Retail Midpoint Order, by incentivizing Users who wish to interact with such retail liquidity to send additional non-displayed resting interest designed to execute at the Midpoint Price, through such Users' use of the proposed new RML Order.

As described above, the proposed RML Program is comparable in purpose and effect to the IEX Retail Program, and the Commission recently approved several changes to the IEX Retail Program that make certain of its features substantially similar or substantively identical to proposed features of the RML Program.[46] Accordingly, the Exchange's proposal generally encourages competition between exchange venues. In this connection, the Exchange believes that the proposed distinctions between the Exchange's proposal and the approved IEX Retail Program will both enhance competition amongst market participants and encourage competition amongst exchange venues.

Section 6(b)(5) of the Act prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. While the RML Program would differentiate among its Users, in that Retail Midpoint Orders may only be submitted by an RMO, as is the case with other Retail Orders on the Exchange today, the Exchange believes that such differentiation is not unfairly discriminatory but rather is designed to promote a competitive process for retail executions while providing retail investors with the potential to receive meaningful price improvement. In addition to the

[43] A Displayed instruction is an instruction a User may attach to an order stating that the order is to be displayed by the System on the MEMX Book. *See* Exchange Rule 11.6(c)(1).

[44] 15 U.S.C. 78f(b).

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

[46] *See* IEX Retail Approval Order, *supra* note 14.

Exchange's existing rules relating to Retail Orders,[47] there is ample precedent for differentiation of retail order flow in the existing approved programs of other national securities exchanges,[48] including the IEX Retail Program, as described in the Purpose section. As the Commission has recognized, retail order segmentation was designed to create additional competition for retail order flow, leading additional retail order flow to the exchange environment and ensuring that retail investors benefit from the better price that liquidity providers are willing to give their orders.[49]

The Commission consistently highlights the need to ensure that the U.S. capital markets are structured with the interests of retail investors in mind, and highlighted its focus on the ''long-term interests of Main Street investors'' as its number one strategic goal for fiscal years 2018 to 2022 in the Commission Strategic Plan.[50] The Exchange believes its proposed RML Program would serve the retail investing public by providing them with the opportunity for meaningful price improvement on eligible trades.

The Exchange notes that several other national securities exchanges, including IEX as described herein, have for several years operated retail liquidity programs that include market segmentation whereby retail orders are permitted to interact with specified price-improving liquidity or receive execution priority.[51] The Exchange understands that these programs were designed to promote competition for retail order flow among execution venues, most of which continues to be executed in the OTC markets rather than on exchanges. Similarly, the Exchange's proposed RML Program is designed to provide an additional competitive alternative for retail orders to receive price improvement. The Exchange believes that it is appropriate to provide incentives to bring more retail order flow to a public exchange. As described in the Purpose section, these incentives include the opportunity for Retail Orders to receive meaningful price improvement at the Midpoint Price (or better if there is resting liquidity priced more aggressively than the Midpoint Price) through RMOs' use of the proposed Retail Midpoint Order by providing all Users with the opportunity to provide price-improving liquidity to such orders through Users' use of the proposed RML Order.

Definitions

The Exchange believes that it is consistent with the Act for a Retail Midpoint Order to be a Retail Order that is a Midpoint Peg Order with a TIF instruction of IOC, as this is designed to ensure that such orders are entered on behalf of retail investors[52] and will receive price improvement at the Midpoint Price when executing against resting RML Orders and Eligible Midpoint Peg Orders. Similarly, the Exchange believes that it is consistent with the Act for an RML Order to be a Midpoint Peg Order with a TIF instruction of Day, RHO, or GTT, as this is designed to ensure that such orders are able to post to the MEMX Book and will provide price improvement at the Midpoint Price to retail investors when executing against incoming Retail Midpoint Orders. The Exchange also believes that it is appropriate and consistent with the Act for Retail Midpoint Orders and RML Orders to not be eligible for routing because, as noted above, such orders are designed to execute on the Exchange against each other and, as Pegged Orders, are not eligible for routing under the Exchange's current rules relating to Pegged Orders.

The Exchange further believes that it is consistent with the Act to structure its RML Program to provide a mechanism whereby liquidity-providing Users can provide price-improving liquidity at the Midpoint Price specifically to retail investors (*i.e.,* through the use of RML Orders), and liquidity-removing RMOs submitting orders on behalf of retail investors can interact with such price-improving liquidity. This structure would thus facilitate the interaction of such liquidity-providing Users with the orders of retail investors, which the Exchange believes is desirable for certain Users, as described above, while avoiding the possibility of such liquidity-providing Users unintentionally interacting with another type of market participant. Accordingly, the Exchange believes that it is consistent with the Act for RML Orders to only execute against Retail Midpoint Orders so as to incentivize the entry of RML Orders and thereby provide meaningful price improvement to retail investors. Further, as noted above, the concept of an order type that is only eligible to interact with a specific contra-side order type has previously been approved by the Commission in the context of liquidity-providing orders for retail programs.[53]

The Exchange notes that use of the RML Order and Retail Midpoint Order types is completely voluntary and reiterates that Users (including RMOs) may continue to submit their orders (including Retail Orders) to the Exchange to execute against the various other order types offered by the Exchange, at prices different than the Midpoint Price, outside of the RML Program as they can today.

The Exchange also believes that it is consistent with the Act to enable a User submitting a non-RML Midpoint Peg Order to include an instruction that such order is eligible to execute against Retail Midpoint Orders through the execution process described in proposed Exchange Rule 11.22(c) (*i.e.,* to designate such order as an Eligible Midpoint Peg Order) so that incoming Retail Midpoint Orders submitted on behalf of retail investors have a larger potential pool of midpoint liquidity to interact with, and thus, a greater chance of being filled. Additionally, the Exchange believes that allowing Users to choose whether they would like their non-RML Midpoint Peg Orders to execute against Retail Midpoint Orders in the RML Program where such orders may be subject to a different fee structure, as described above, would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system, as such optionality would enable these Users to more effectively control their economics in a manner that is consistent with order instructions available on other U.S. equity exchanges today.[54] The Exchange reiterates that regardless of whether the User chooses to designate a non-RML Midpoint Peg Order as an Eligible Midpoint Peg Order, such order would remain available on the MEMX Book where it is accessible to all market participants outside of the RML Program as it is today.

For the foregoing reasons, the Exchange believes that the proposed definitions of Retail Midpoint Order, RML Order, and Eligible Midpoint Peg Order, as well as the proposed structure of the RML Program, which is designed

[47] *See* Exchange Rule 11.21.

[48] *See infra* note 51.

[49] *See* Securities Exchange Act Release No. 85160 (February 15, 2019), 84 FR 5754 (February 22, 2019) (SR–NYSE–2018–28) (order approving NYSE's Retail Liquidity Program on a permanent basis).

[50] *See* Commission Strategic Plan, *supra* note 12.

[51] *See* IEX Rule 11.232. *See also* NYSE Rule 107C, NYSE Arca Equities Rule 7.44, Cboe EDGX Rule 11.9(a)(2)(A) and (B), Cboe BYX Rule 11.24, and Nasdaq BX Rule 4780.

[52] An RMO must exercise due diligence and monitor orders that it enters as Retail Orders to ensure that such orders originate from natural persons (*i.e.,* retail investors). *See* Exchange Rule 11.21(b)(6).

[53] *See supra* note 23 and accompanying text (describing the IEX RLP Order).

[54] *See supra* note 26 and accompanying text.

to facilitate executions of Retail Midpoint Orders and RML Orders against each other at the Midpoint Price (and also permits Retail Midpoint Orders to execute against other orders priced more aggressively than the Midpoint Price and against Eligible Midpoint Peg Orders at the Midpoint Price), are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and further the investor protection and public interest objectives of Section 6(b) of the Act, by establishing a simple, transparent structure that is designed to facilitate the provision of meaningful price improvement for orders of retail investors.

Retail Liquidity Identifier

The Exchange believes that it is consistent with the Act to disseminate a Retail Liquidity Identifier in connection with its RML Program, as described in the Purpose section. The purpose of the Retail Liquidity Identifier is to provide relevant market information to RMOs that there is available RML Interest on the Exchange. The dissemination is thus designed to augment the total mix of information available to RMOs that may benefit the Retail Orders they represent by encouraging RMOs to send such retail liquidity as Retail Midpoint Orders designed to receive price improvement by executing at the Midpoint Price against available RML Interest. As noted above, the proposed Retail Liquidity Identifier is substantively identical to the Retail Liquidity Identifier disseminated by IEX, which was recently approved by the Commission, and is consistent with the SIP Plans' requirements. As such, the Exchange believes that adopting this same implementation for its Retail Liquidity Identifier is consistent with the Act, as it would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system, and does not raise any novel issues for the Commission to consider.

The Exchange also believes that removing the Retail Liquidity Identifier previously disseminated through the MEMOIR Depth and MEMOIR Top data products and through the appropriate SIP after executions against Retail Midpoint Orders have depleted the available RML Interest such that the remaining RML Interest does not aggregate to form at least one round lot is consistent with the Act, as it would increase transparency in the market by indicating to RMOs that there is no longer RML Interest of at least one round lot available, which the Exchange believes would reduce the amount of Retail Midpoint Orders sent to the Exchange that are cancelled back to the User when there is no actionable RML Interest to execute against. In this regard, the Exchange believes that its proposed implementation of the Retail Liquidity Identifier would foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted above, the Exchange also believes this implementation is consistent with the implementation of the other exchanges that disseminate Retail Liquidity Identifiers.

Priority and Order Execution

The Exchange further believes that its priority and order execution approach for the RML Program is consistent with the Act. As discussed above, the RML Program is designed to incentivize RMOs to submit Retail Midpoint Orders to the Exchange to receive meaningful price improvement while simultaneously incentivizing Users and their clients to enter additional non-displayed interest in the form of RML Orders that will only trade with, and offer meaningful price improvement to, Retail Midpoint Orders. Thus, the proposed RML Program is designed to facilitate the provision of meaningful price improvement for orders of retail investors.

The Exchange believes that it is appropriate and consistent with the Act to structure its RML Program such that Retail Midpoint Orders and RML Orders are only eligible to execute against each other at the Midpoint Price, so that Retail Midpoint Orders, which are entered on behalf of retail investors, receive price improvement that is meaningful by definition, as they are guaranteed, if executed against an RML Order, to execute at the Midpoint Price (or better if there is more aggressively priced liquidity resting on the MEMX Book that it executes against first). The Exchange believes that introducing a program that provides and encourages additional liquidity and price improvement to Retail Orders, in the form of Retail Midpoint Orders designed to execute at the Midpoint Price, is appropriate because retail investors are typically less sophisticated than professional market participants and therefore would not have the type of technology to enable them to compete with such market participants. Therefore, the Exchange believes that it is consistent with the public interest and the protection of investors to provide retail investors with these enhanced execution opportunities.

Additionally, as discussed above, the Exchange believes that the opportunity to obtain meaningful price improvement should operate as a powerful incentive for RMOs to send Retail Orders to the Exchange in the form of Retail Midpoint Orders, thereby contributing to the Exchange's midpoint activity to the benefit of all Users. While the Exchange currently permits Users to post non-displayed liquidity priced to execute at the Midpoint Price, a key aspect of the proposed RML Program is to further incentivize Users and their clients that do not typically post orders at the Midpoint Price on the Exchange to enter additional non-displayed interest that will trade with incoming Retail Orders and offer meaningful price improvement at the Midpoint Price.

In addition, the proposal to execute Retail Midpoint Orders against RML Orders at the Midpoint Price is also designed to facilitate RMOs' compliance with their best execution obligations when acting as agent on behalf of a Retail Order.[55] Specifically, as noted in FINRA Regulatory Notice 15–46 (Guidance on Best Execution Obligations in Equity, Options and Fixed Income Markets), when conducting its review of execution quality in any security, a firm should consider, among other things, whether it could obtain mid-point price improvement on one venue versus less price improvement on another venue.[56] For these reasons, the Exchange believes that this aspect of the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that first executing a Retail Midpoint Order against any resting Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price ahead of RML Orders is consistent with the Act because doing

[55] All Users that handle customer orders as agent are required to be FINRA members, and therefore are subject to FINRA guidance. *See* 17 CFR 240.15b9–1(a).

[56] *See* FINRA Regulatory Notice 15–46, endnote 25, available at *https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.*

so ensures that the priority of more aggressively priced orders is maintained on the Exchange, as described above. Maintaining price priority in this regard, consistent with its current rules and general principles of order execution on other U.S. equity exchanges, as described above, reflects the Exchange's overall goal of incentivizing Users to submit aggressively priced orders to the Exchange, which contribute to the overall market quality and attract liquidity on the Exchange, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange further believes that it is appropriate and consistent with the Act to execute a Retail Midpoint Order against resting Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the prices at which such orders are ranked on the MEMX Book as doing so would maintain price priority on the Exchange, as described above, in a manner that would enable an RMO entering a Retail Midpoint Order to capture better prices available on the MEMX Book while seeking out midpoint liquidity through the RML Program, and then pass along this additional price improvement to retail investors. In this regard, the Exchange believes that providing retail investors with these enhanced execution opportunities is consistent with the public interest and the protection of investors as well as the Commission's goal to encourage markets that are structured to benefit ordinary investors. In addition, the proposal to execute Retail Midpoint Orders against Displayed Odd Lot Orders and/or Non-Displayed Orders priced more aggressively than the Midpoint Price at the prices at which such orders are ranked on the MEMX Book would also facilitate RMOs' compliance with their best execution obligations when acting as agent on behalf of a Retail Order for the same reasons described above with respect to execution against RML Orders at the Midpoint Price, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that executing Retail Midpoint Orders against RML Orders, which contribute to the dissemination of the Retail Liquidity Identifier, ahead of Eligible Midpoint Peg Orders, which do not contribute to the dissemination of the Retail Liquidity Identifier, is consistent with the Act, because, as noted above, the Exchange believes that dissemination of the Retail Liquidity Identifier is likely to be the principal factor in attracting RMOs to send Retail Midpoint Orders, as it signals to the market that there is available midpoint liquidity on the Exchange and thus increases the likelihood of execution for such orders. As noted above, while certain market participants may not ordinarily post liquidity at the Midpoint Price on exchanges due to adverse selection risks, the Exchange believes that they may be willing to do so if they can limit their interactions to Retail Orders (*i.e.,* through the use of RML Orders). However, the Exchange recognizes that entering RML Orders involves some additional risk for those market participants as the Retail Liquidity Identifier will signal that there is a buyer or seller that is willing to trade with retail investors at the Midpoint Price. Thus, the RML Program seeks to balance the risks and incentives associated with entering RML Orders, which contribute to the dissemination of the Retail Liquidity Identifier but only interact with Retail Midpoint Orders, and Eligible Midpoint Peg Orders, which do not contribute to the dissemination of the Retail Liquidity Identifier but can interact with various market participants, through the relative execution priority of such orders.

Further, as described above, the proposed execution priority of RML Orders over Eligible Midpoint Peg Orders is similar to the priority afforded to orders that are displayed on the MEMX Book, which receive priority over non-displayed orders because they contribute to price discovery and attract additional liquidity to the Exchange. Therefore, the Exchange believes that it removes impediments to and perfects the mechanism of a free and open market and national market system to provide execution priority to RML Orders over Eligible Midpoint Orders to incentivize the submission of RML Orders, which contribute to market transparency and attract the submission of Retail Midpoint Orders. Additionally, the Exchange believes that providing such execution priority to RML Orders is not unfairly discriminatory since Users that wish to interact with Retail Midpoint Order flow would be free to determine whether to submit RML Orders that contribute to the dissemination of the Retail Liquidity Identifier and have execution priority when trading with incoming Retail Midpoint Orders, or instead enter Eligible Midpoint Peg Orders that remain non-displayed but cede execution priority to those RML Orders.

For the reasons set forth above, the Exchange believes that the proposed order priority under the RML Program is consistent with general principles of order priority on the Exchange and other U.S. equity exchanges, where orders at superior prices receive first priority and, at any particular price, orders that contribute to price discovery receive priority ahead of non-displayed orders that do not contribute to market transparency. As such, the Exchange believes that the proposed order priority under the RML Program is consistent with the Act and does not raise any novel issues for the Commission to consider.

In sum, the Exchange submits that the proposed RML Program is a simple, transparent approach designed to provide an opportunity for retail customers' orders to receive meaningful price improvement in a manner generally consistent with the approved retail programs of other exchanges as well as general principles of order priority on the Exchange and other U.S. equity exchanges. Thus, the Exchange believes that the proposed RML Program is consistent with the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed RML Program would enhance competition and execution quality for retail investors and would enhance competition for Users and their clients seeking to interact with retail liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, a Retail Midpoint Order may only be submitted by firms approved to send Retail Orders on the Exchange (*i.e.,* RMOs), which is comparable to an IEX Retail Order offered under the IEX Retail Program and retail programs on other exchanges where specific rules have been approved allowing only certain participants to send Retail Orders.[57] All Users would be eligible to enter an RML Order or an Eligible Midpoint Peg Order that would be eligible to execute against an incoming Retail Midpoint Order. Moreover, the proposed rule change would provide potential benefits to all Users to the extent it is successful in attracting additional midpoint liquidity.

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. Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1

Section 19(b)(2) of the Act[58] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Initial Proposal was published for comment in the **Federal Register** on September 8, 2021.[59] The 180th day after publication of the Initial Proposal is March 7, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1, and the comments that have been submitted in connection therewith, including the comments received after the Commission instituted proceedings. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[60] designates May 6, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 1 (File Number SR–MEMX–2021–10).

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 1, 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–2021–10 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–2021–10. 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–2021–10 and should be submitted on or before March 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

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[57] *See supra* note 51.

[58] 15 U.S.C. 78s(b)(2).

[59] *See supra* note 3.

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12) and (57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94185; File No. SR–C2–2022–004]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

February 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.