Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices—and it must disapprove the filing if it does not make such a finding.[151] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as the susceptibility of an asset to loss or theft—the proposed rule change may still fail to meet the requirements under the Exchange Act.[152]

Here, even if it were true that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange provides some additional protection to investors, the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[153] As explained above, for bitcoin-based ETPs, the Commission has consistently required that the listing exchange have a comprehensive surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The listing exchange has not met that requirement here. Therefore, the Commission is unable to find that the proposed rule change is consistent with the statutory standard.

Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[154]

For the reasons discussed above, BZX has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[155] and, accordingly, the Commission must disapprove the proposal.[156]

D. Other Comments

One comment letter also addresses the general nature and uses of bitcoin.[157] Ultimately, however, additional discussion of these topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2021–052 be, and hereby is, disapproved.

By the Commission.

Eduardo A. Aleman,

Deputy Secretary.

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BILLING CODE 8011–01–P

[151] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

[152] *See* SolidX Order, 82 FR 16259; VanEck Order, 86 FR 54550–51; WisdomTree Order, 86 FR 69344; Kryptoin Order, 86 FR 74179; Valkyrie Order, 86 FR 74163; SkyBridge Order, 87 FR 3881; Wise Origin Order, 87 FR 5538.

[153] *See supra* note 132.

[154] *See* 15 U.S.C. 78s(b)(2)(C).

[155] 15 U.S.C. 78f(b)(5).

[156] In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[157] *See* letter from Sam Ahn (Aug. 31, 2021).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94394; File No. SR–MEMX–2022–01]

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

March 10, 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 28, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on March 1, 2022. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) Adopt a new NBBO Setter Tier that provides an additive rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume'') and that establish the national best bid or offer (''NBBO''); (ii) modify the Exchange's pricing for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange (such orders, ''Added Non-Displayed Volume'') by reducing the standard rebates for such executions and adopting tiered pricing under new Non-Display Add Tiers that provide enhanced rebates for such executions; (iii) modify the required criteria under Liquidity Provision Tier 3; (iv) reduce the standard rebate for executions of Added Displayed Volume; (v) reduce the standard rebate for executions of Retail Orders[4] in

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

[2] 17 CFR 240.19b–4.

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

[4] A ''Retail Order'' means an agency or riskless principal order that meets the criteria of FINRA

Continued

securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Retail Volume''); (vi) increase the standard fee for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders ''Removed Volume''); (vii) modify Liquidity Removal Tier 1 by increasing the fee for executions of Removed Volume and modifying the required criteria under such tier; (viii) eliminate the DLI Additive Rebate for DLI Tier 2; and (ix) eliminate the Targeted Step-Up Tier.

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 16.5% of the total market share of executed volume of equities trading.[5] 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 4% of the overall market share.[6] 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.

Adoption of NBBO Setter Tier

The Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the NBBO Setter Tier, in which the Exchange will provide an additive rebate for executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, ''Setter Volume'').[7] Under the proposed NBBO Setter Tier, the Exchange will provide an additive rebate of $0.0003 per share for executions of Setter Volume for a Member that qualifies for the NBBO Setter Tier by achieving an ADAV[8] with respect to orders with Fee Code ''B'' (as assigned on the execution reports provided by the Exchange[9]) that is equal to or greater than 0.10% of the TCV.[10] The $0.0003 per share additive rebate will be provided in addition to the rebate that is otherwise applicable to each of a qualifying Members' orders that constitutes Setter Volume (including a rebate provided under another pricing tier/incentive).[11] The Exchange notes that the additive rebate will not apply to executions of orders in securities priced below $1.00 per share.

The proposed NBBO Setter Tier is designed to attract aggressively priced displayed liquidity to the Exchange by providing an additional rebate for executions of Setter Volume to Members that contribute to establishing the NBBO on the Exchange by achieving the Fee Code ''B'' volume threshold described above, thereby promoting price discovery and market quality on the Exchange. The Exchange notes that the proposed NBBO Setter Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including similar pricing incentives applicable to executions of orders that establish the NBBO.[12]

Modify Pricing for Added Non-Displayed Volume

The Exchange proposes to modify its pricing for executions of Added Non-Displayed Volume by reducing the standard rebates for such executions and adopting tiered pricing under new Non-Display Add Tiers that provide enhanced rebates for such executions. Added Non-Displayed Volume includes both: (i) Pegged Orders[13] with a Midpoint Peg[14] instruction (such orders, ''Midpoint Peg orders'') in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, ''Added Midpoint Volume'') and (ii) orders that are not Midpoint Peg orders in securities priced at or above $1.00 per share that add non-displayed liquidity to the Exchange (such orders, ''Added Non-Midpoint Hidden Volume'').

Currently, the Exchange provides standard rebates of $0.0025 per share and $0.0020 per share for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume, respectively. The Exchange now proposes to reduce each of these

Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (''RMO''), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Exchange Rule 11.21(a).

[5] Market share percentage calculated as of February 25, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

[7] An order that is entered at the most aggressive price both on the Exchange's order book and according to the then-current consolidated data from the applicable securities information processor and direct data feeds used by the Exchange will be determined to have established the NBBO for purposes of the NBBO Setter Tier without regard to whether a more aggressive order is entered prior to the original order being executed.

[8] 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.

[9] The Exchange notes that all orders (other than Retail Orders, which are assigned a Fee Code of ''Br'') in securities priced below, at or above $1.00 per share that add displayed liquidity to the Exchange and that establish the NBBO are assigned a Fee Code of ''B'' on the execution reports provided by the Exchange. The Exchange further notes that the Fee Code assigned to any such order to indicate that such order also qualifies for a pricing tier/incentive (*e.g.,* ''B1'', ''B2'', ''B3'', ''Bq1'' and ''Bq2'') is not provided on the execution reports but instead is provided on the monthly invoices after a determination of tier/incentive qualification for a particular month has been made; thus, any such order that also qualifies for a pricing tier/incentive would still be assigned a Fee Code of ''B'' (rather than the applicable tier/incentive Fee Code) on the execution reports and would therefore be counted in determining whether a Member qualifies for the NBBO Setter Tier.

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

[11] The proposed pricing for the NBBO Setter Tier is referred to by the Exchange on the Fee Schedule under the new description ''NBBO Setter Tier'' with a Fee Code of ''S'' to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions (including Fee Codes ''B'', ''B1'', ''B2'', ''B3'', ''Bq1'' and ''Bq2'').

[12] *See, e.g.,* Securities Exchange Act Release No. 73813 (December 11, 2014), 79 FR 75197 (December 17, 2014) (SR–BATS–2014–063) (notice of filing and immediate effectiveness of fee changes adopted by BATS, including the adoption of ''NBBO Setter Tiers'' that provide additive rebates for executions of orders that establish the NBBO to Members that qualify for such tiers by achieving a specified ADAV threshold with respect to orders that add displayed liquidity and that establish the NBBO).

[13] 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.

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

standard rebates to $0.0018 per share.[15] The purpose of reducing the standard rebates for executions of Added Midpoint Volume and Add Non-Midpoint Hidden Volume is for business and competitive reasons, as the Exchange believes reducing such rebates as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that the proposed standard rebate for executions of Added Midpoint Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[16] The Exchange also notes that the proposed standard rebate for executions of Added Non-Midpoint Hidden Volume remains higher than, and competitive with, the standard rebates provided by at least one other exchange for executions of similar orders.[17]

In connection with the proposed reduction of the standard rebates for executions of Added Non-Displayed Volume (*i.e.,* both Added Midpoint Volume and Added Non-Midpoint Hidden Volume) described above, the Exchange is proposing to adopt new volume-based tiers applicable to such executions, referred to by the Exchange as Non-Display Add Tiers 1 and 2, in which the Exchange would provide enhanced rebates for executions of Added Non-Displayed Volume for Members that achieve the associated volume thresholds. Specifically, under proposed Non-Display Add Tier 1, the Exchange would provide a rebate of $0.0028 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV[18] that is equal to or greater than 5,000,000 shares.[19] Additionally, under proposed Non-Display Add Tier 2, the Exchange would provide a rebate of $0.0024 per share for executions of Added Non-Displayed Volume for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares (but less than 5,000,000 shares).[20] The Exchange proposes to provide Members that qualify for Non-Display Add Tier 1 or Non-Display Add Tier 2 free executions of orders (including Midpoint Peg orders) in securities priced below $1.00 per share that add non-displayed liquidity to the Exchange, which is the same as the standard pricing that is currently applicable to such executions for all Members.

The Exchange believes that the proposed Non-Display Add Tiers provide an incremental incentive for Members to maintain or strive for higher Non-Displayed ADAV on the Exchange in order to qualify for the enhanced rebates for executions of Added Non-Displayed Volume, and as such, are designed to encourage Members to maintain or increase their order flow (particularly in the form of liquidity adding non-displayed orders) to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange notes that the proposed Non-Display Add Tiers are comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including pricing tiers that provide enhanced rebates for executions of Added Non-Displayed Volume.[21]

Modify Criteria Under Liquidity Provision Tier 3

The Exchange currently offers three Liquidity Provision Tiers in which the Exchange provides enhanced rebates for executions of Added Displayed Volume based on a Member achieving the corresponding volume-based threshold (*i.e.,* the required criteria) for a particular tier. Currently, a Member qualifies for Liquidity Provision Tier 3, and thus receives an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume under such tier, by achieving an ADAV that is equal to or greater than 0.05% of the TCV. Now, the Exchange proposes to modify the required criteria under Liquidity Provision Tier 3 such that a Member would now qualify for such tier by achieving any of the three following volume-based thresholds: (1) An ADAV that is equal to or greater than 0.05% of the TCV; (2) a Step-Up Displayed ADAV[22] from February 2022 that is equal to or greater than 0.02% of the TCV; or (3) a Midpoint ADAV[23] that is equal to or greater than 1,000,000 shares. Thus, such proposed changes would keep the existing ADAV threshold intact and also provide two alternative volume thresholds that a Member may choose to achieve in order to qualify for Liquidity Provision Tier 3, including one threshold based on a Member increasing its Displayed ADAV above its Displayed ADAV in February 2022, which is designed to encourage Members to increase their orders that add displayed liquidity to the Exchange,

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

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

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

[18] As proposed, the term ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including Midpoint Peg orders). The Exchange proposes to add this definition of Non-Displayed ADAV under the ''Definitions'' section of the Fee Schedule.

[19] The proposed pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the new description ''Added non-displayed volume, Non-Display Add Tier 1'' with a Fee Code of ''H1'' for qualifying Added Non-Midpoint Hidden Volume and a Fee Code of ''M1'' for qualifying Added Midpoint Volume assigned on the monthly invoices provided by the Exchange. The Exchange notes that because the determination of whether a Member qualifies for Non-Display Add Tier 1 for a particular month will not be made until after the month-end, the Exchange will provide the Fee Code otherwise applicable to such transactions (*i.e.,* ''H'' or ''M'', as applicable) on the execution reports provided to Members during the month, and it will only designate the Fee Code applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made. The Exchange also notes that this is how it applies Fee Codes for its tier-based pricing today and how it will apply Fee Codes for any other tier-based pricing described herein.

[20] The proposed pricing for Non-Display Add Tier 2 is referred to by the Exchange on the Fee Schedule under the new description ''Added non-displayed volume, Non-Display Add Tier 2'' with a Fee Code of ''H2'' for qualifying Added Non-Midpoint Hidden Volume and a Fee Code of ''M2'' for qualifying Added Midpoint Volume assigned on the monthly invoices provided by the Exchange.

[21] For example, Cboe BZX currently offers ''Non-Display Add Volume Tiers'' in which Cboe BZX provides enhanced rebates for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity for members that qualify for such tiers by achieving certain specified volume thresholds. *See* the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[22] As proposed, the term ''Step-Up Displayed ADAV'' means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV. As proposed, the term ''Displayed ADAV'' means ADAV with respect to displayed orders. The Exchange proposes to add these definitions of Step-Up Displayed ADAV and Displayed ADAV under the ''Definitions'' section of the Fee Schedule.

[23] As proposed, the term ''Midpoint ADAV'' means ADAV with respect to Midpoint Peg orders. The Exchange proposes to add this definition of Midpoint ADAV under the ''Definitions'' section of the Fee Schedule.

and one threshold based on a Member maintaining or increasing its Midpoint ADAV above the specified amount, which is designed to encourage Members to maintain or increase their Midpoint Peg orders that add liquidity to the Exchange. The Exchange is not proposing to modify the pricing associated with Liquidity Provision Tier 3.

The Exchange believes that Liquidity Provision Tier 3, as modified, would encourage the submission of more diverse types of order flow to the Exchange, as it provides two additional alternative thresholds based on different types of volume that Members may choose to achieve, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange notes that Liquidity Provision Tier 3, as modified, would continue to be available to all Members and, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will qualify for such tier than currently do under the proposed new criteria, as it is more expansive and provides two additional alternative thresholds that Members may choose to achieve.

Reduce Standard Rebate for Added Displayed Volume

Currently, the Exchange provides a standard rebate of $0.0022 per share for executions of Added Displayed Volume. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Volume to $0.0020 per share.[24] The purpose of reducing the standard rebate for executions of Added Displayed Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed standard rebate for executions of Added Displayed Volume remains in line with, or higher than, the standard rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[25]

Reduce Standard Rebate for Added Displayed Retail Volume

Currently, the Exchange provides a standard rebate of $0.0037 per share for executions of Added Displayed Retail Volume. The Exchange now proposes to reduce the standard rebate for executions of Added Displayed Retail Volume to $0.0035 per share.[26] The purpose of reducing the standard rebate for executions of Added Displayed Retail Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed standard rebate for executions of Added Displayed Retail Volume remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity.[27]

Increase Standard Fee for Removed Volume

Currently, the Exchange charges a standard fee of $0.0029 per share for executions of Removed Volume. The Exchange now proposes to increase the standard fee for executions of Removed Volume to $0.0030 per share.[28] The purpose of increasing the standard fee for executions of Removed Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the increase proposed herein, the proposed standard fee for executions of Removed Volume remains in line with the standard fees charged by other exchanges for executions of orders in securities priced at or above $1.00 per share that remove liquidity.[29]

Modify Liquidity Removal Tier 1

The Exchange currently offers Liquidity Removal Tier 1 in which qualifying Members are charged a discounted fee of $0.0028 per share for executions of Removed Volume by achieving either: (1) An ADAV of at least 0.50% of the TCV; or (2) an ADV of at least 0.70% of the TCV. Now, the Exchange proposes to modify Liquidity Removal Tier 1 by increasing the fee for executions of Removed Volume and modifying the required criteria under such tier. Specifically, the Exchange proposes to charge a fee of $0.00285 per share for executions of Removed Volume for Members that qualify for Liquidity Removal Tier 1 by achieving either: (1) An ADAV of at least 0.30% of the TCV; or (2) an ADV of at least 0.60% of the TCV.[30]

[24] The proposed standard 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.

[25] *See, e.g.,* the NYSE Arca, Inc. equities trading fee schedule on its public website (available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*), which reflects a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity; the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a standard rebate of $0.0016 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity; the Nasdaq Stock Market LLC (''Nasdaq'') Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard rebate of $0.0020 per share for executions of orders in Tape A and Tape B securities priced at or above $1.00 per share that add displayed liquidity and a standard rebate of $0.0015 per share for executions of orders in Tape C securities priced at or above $1.00 per share that add displayed liquidity.

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

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

[28] The proposed standard fee for executions of Removed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book'' with a Fee Code of ''R'' on execution reports.

[29] *See, e.g.,* the Cboe EDGX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity; the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity.

[30] The proposed pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee

The Exchange believes that the proposed fee for executions of Removed Volume under Liquidity Removal Tier 1 represents only a modest increase from the current fee charged for such executions under such tier. The purpose of increasing such fee as proposed is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that the proposed changes to the required criteria under Liquidity Removal Tier 1 would lower both the ADAV threshold and the ADV threshold such that each threshold would be easier for Members to achieve and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange. The Exchange also notes that Liquidity Removal Tier 1, as modified, would continue to be available to all Members.

Eliminate DLI Additive Rebate for DLI Tier 2

The Exchange proposes to eliminate the DLI Additive Rebate for DLI Tier 2. Currently, the Exchange offers DLI Tiers 1 and 2 in which qualifying Members are provided a corresponding enhanced rebate for executions of Added Displayed Volume by quoting at the NBBO for a significant portion of each day in a specified number of securities, including a specified number of DLI Target Securities, with DLI Tier 1 providing a higher rebate than DLI Tier 2 commensurate with NBBO quoting requirements in a larger number of securities. Additionally, the Exchange currently offers a DLI Additive Rebate incentive that is applicable to DLI Tiers 1 and 2, which provides an additive rebate of $0.0001 per share for executions of Added Displayed Volume where: (1) For a Member that qualifies for DLI Tier 1, such Member has an ADAV that is equal to or greater than 0.30% of the TCV; and (2) for a Member that qualifies for DLI Tier 2, such Member has an ADAV that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to eliminate the DLI Additive Rebate for DLI Tier 2, but keep the DLI Additive Rebate for DLI Tier 1. The reason for eliminating the DLI Additive Rebate for DLI Tier 2 is that the incentive is not achieving the level of participation that the Exchange expected, and thus, is not accomplishing the goal that the Exchange had when initially adopting this incentive. Due to the lower-than-expected level of participation, the Exchange does not believe the proposed elimination of Targeted Step-Up Tier [sic] will have a significant impact on any Member's trading behavior on the Exchange. The Exchange therefore no longer wishes to, nor is it required to, maintain such tier. More specifically, the proposed change removes such incentive, as the Exchange would rather redirect future resources and funding into other incentives and tiers intended to incentivize increased order flow. The Exchange notes that several Members currently qualify for the DLI Additive Rebate for DLI Tier 1, which is why the Exchange is not proposing to eliminate that incentive since it has achieved the expected level of participation.

Eliminate Targeted Step-Up Tier

Finally, the Exchange proposes to eliminate the Targeted Step-Up Tier. The Exchange currently offers the Targeted Step-Up Tier in which it provides an additive rebate of $0.0002 per share to executions of orders (other than displayed Retail Orders) in securities priced at or above $1.00 per share that add liquidity to the Exchange (such orders, ''Added Volume'') for Members that qualify for such tier by achieving: (1) A Step-Up ADAV [31] from October 2021 that is equal to or greater than 0.05% of the TCV in the Targeted Step-Up Securities; [32] or (2) an ADAV that is equal to or greater than 0.08% of the TCV in the Targeted Step-Up Securities. The Exchange adopted the Targeted Step-Up Tier in November 2021 for the purpose of encouraging Members to increase their volume on the Exchange in the Targeted Step-Up Securities, thereby improving its market quality with respect to such securities and contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.[33] The Exchange now proposes to eliminate the Targeted Step-Up Tier, as the incentive is not achieving the level of participation that the Exchange expected, and thus, is not accomplishing the goal that the Exchange had when initially adopting this incentive. Due to the lower-than-expected level of participation, the Exchange does not believe the proposed elimination of Targeted Step-Up Tier will have a significant impact on any Member's trading behavior on the Exchange. The Exchange therefore no longer wishes to, nor is it required to, maintain such tier. More specifically, the proposed rule change removes such tier, as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

In connection with the elimination of the Targeted Step-Up Tier, the Exchange also proposes to delete the definition of the term ''Targeted Step-Up Securities'' from the ''Definitions'' section of the Fee Schedule, as such term would no longer be used on the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[34] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[35] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in

Schedule under the existing description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R1'' assigned on the monthly invoices provided by the Exchange. The Exchange is not proposing to change the fee charged under Liquidity Removal Tier 1 for executions of securities priced below $1.00 per share.

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

[32] As set forth on the Fee Schedule, ''Targeted Step-Up Securities'' means a list of securities designated as such, the universe of which will be determined by the Exchange and published on the Exchange's website.

[33] *See* Securities Exchange Act Release No. 93554 (November 10, 2021), 86 FR 64248 (November 17, 2021) (SR–MEMX–2021–16) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of the Targeted Step-Up Tier).

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(4) and (5).

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.'' [36]

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 aggressively priced liquidity and more diverse types of order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality on the Exchange to the benefit of all Members, as well as to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity.

The Exchange believes that the proposed NBBO Setter Tier is a reasonable means to encourage Members to not only increase their order flow to the Exchange but also to contribute to price discovery and market quality on the Exchange by submitting aggressively priced displayed liquidity. As noted above, the proposed NBBO Setter Tier is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange) and are 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 the proposed NBBO Setter Tier is equitable and not unfairly discriminatory for these same reasons, as it is available to all Members and is designed to incentivize the entry of aggressively priced displayed liquidity that will create tighter spreads, thereby promoting price discovery and market quality on the Exchange to the benefit of all Members and public investors. As such, the Exchange believes the additive rebate for executions of Setter Volume provided under the NBBO Setter Tier for qualifying Members is reasonably related to the market quality benefits that such tier is designed to promote. Additionally, as noted above, at least one other U.S. equity exchange has adopted a similar pricing incentive applicable to executions of orders that establish the NBBO.[37]

The Exchange believes that the proposed changes to reduce the standard rebates provided for executions of Added Non-Displayed Volume (*i.e.,* both Added Midpoint Volume and Added Non-Midpoint Hidden Volume) are reasonable because, as described above, such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity, and the proposed new standard rebates for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume remain higher than, and competitive with, the standard rebates provided by other exchanges for executions of similar orders.[38] The Exchange also believes the proposed standard rebates for executions of Added Midpoint Volume and Added Non-Midpoint Hidden Volume are equitable and not unfairly discriminatory, as such standard rebates will apply equally to all Members.

The Exchange believes that the proposed Non-Display Add Tiers 1 and 2 are reasonable because such tiers would provide Members with an additional incentive to achieve certain volume thresholds on the Exchange and, in return, receive enhanced rebates for Added Non-Displayed Volume commensurate with the benefits of increased activity. The Exchange also believes that the proposed Non-Display Add Tiers 1 and 2 are reasonable, equitable, and not unfairly discriminatory for the same reasons applicable to other volume-based incentives and discounts described above, in that such tiers would be available to all Members and are designed to encourage Members to maintain or increase their order flow (particularly in the form of liquidity adding non-displayed orders) to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants. Further, the proposed new Non-Display Add Tiers 1 and 2 are reasonable as such tiers would provide Members with opportunities to qualify for enhanced rebates for executions of Added Non-Displayed Volume in a manner that provides increasingly higher benefits for satisfying increasingly more stringent criteria.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to provide Members that qualify for Non-Display Add Tier 1 or Non-Display Add Tier 2 free executions of orders (including Midpoint Peg orders) in securities priced below $1.00 per share that add non-displayed liquidity to the Exchange, as this is the same as the standard pricing that is currently applicable to such executions for all Members.

The Exchange believes that the proposed change to modify the required criteria under Liquidity Provision Tier 3 is reasonable because, as noted above, such change would keep the existing ADAV threshold intact and also provide two additional alternative volume thresholds that a Member may choose to achieve that are based on different types of volume, which would incentivize the submission of different types of order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange also believes the proposed new criteria are equitable and not unfairly discriminatory because all Members will continue to be eligible to meet such criteria, including the Members that currently meet the existing ADAV threshold that is not changing. Further, as noted above, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will be able to qualify for such tier under the proposed new criteria, which is more expansive.

The Exchange believes that the proposed reduced standard rebate provided for executions of Added Displayed Volume (*i.e.,* $0.0020 per share) is reasonable because the Exchange believes it represents only a modest decrease (*i.e.,* $0.0002 per share) from the current standard rebate provided for executions of Added Displayed Volume (*i.e.,* $0.0022 per share) and, as noted above, it remains in line with, or higher than, the standard rebates provided by other exchanges for

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

[37] *See supra* note 12.

[38] *See supra* notes 16–17.

executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[39]

Similarly, Exchange believes that the proposed reduced standard rebate provided for executions of Added Displayed Retail Volume (*i.e.,* $0.0035 per share) is reasonable because the Exchange believes it represents only a modest decrease (*i.e.,* $0.0002 per share) from the current standard rebate provided for executions of Added Displayed Retail Volume (*i.e.,* $0.0037 per share) and, as noted above, it remains higher than, and competitive with, the standard rebates provided by other exchanges for executions of attested retail orders in securities priced at or above $1.00 per share that add displayed liquidity.[40]

The Exchange also believes that the proposed increased standard fee charged for executions of Removed Volume (*i.e.,* $0.0030 per share) is reasonable because the Exchange believes it represents only a modest increase (*i.e.,* $0.0001 per share) from the current standard fee charged for executions of Removed Volume (*i.e.,* $0.0029 per share) and, as noted above, it remains in line with the standard fees charged by other exchanges for executions of orders in securities priced at or above $1.00 per share that remove liquidity.[41]

The Exchange believes the proposed changes to reduce the standard rebate for executions of Added Displayed Volume, reduce the standard rebate for executions of Added Displayed Retail Volume, and increase the standard fee for executions of Removed Volume are reasonable because, as noted above, the Exchange believes such changes would act together to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange also believes that the proposed changes to these standard rates represents an equitable allocation of fees and are not unfairly discriminatory because such standard rates will continue to apply equally to all Members.

The Exchange believes that the proposed increased fee charged for executions of Removed Volume under Liquidity Removal Tier 1 (*i.e.,* $0.00285 per share) is reasonable because the Exchange believes it represents only a modest increase (*i.e.,* $0.00005 per share) from the current fee charged for executions of Removed Volume under Liquidity Removal Tier 1 (*i.e.,* $0.0028 per share), and the Exchange is also proposing to lower both of the volume thresholds under such tier such that each threshold would be easier to achieve. Thus, while the Exchange is modestly increasing the fee under such tier, as noted above, it expects that more Members will strive to qualify for such tier due to the proposed lower criteria and, in turn, receive the corresponding discounted fee for executions of Removed Volume. The Exchange also believes this proposed change is reasonable, as it believes the proposed increased fee continues to be commensurate with the proposed lower criteria. The Exchange also believes the proposed increased fee and new criteria are equitable and not unfairly discriminatory because all Members will continue to be eligible to meet such criteria and qualify for Liquidity Removal Tier 1, and therefore, have the opportunity to pay a discounted fee for executions of Removed Volume.

The Exchange believes the proposed rule changes to eliminate the DLI Additive Rebate for DLI Tier 2 and the Targeted Step-Up Tier are reasonable because the Exchange is not required to maintain such incentives or provide Members any opportunities to receive additive rebates. The Exchange believes the proposal to eliminate such incentives is also equitable and not unfairly discriminatory because it applies equally to all Members (*i.e.,* the incentives will not be available for any Member). As noted above, neither of these incentives has achieved the level of participation the Exchange expected, and thus, such incentives are not accomplishing the goals that the Exchange had when initially adopting them. As the additional rebates offered under these incentives are not affecting Members' behavior in the manner originally conceived by the Exchange in that there are lower-than-expected levels of participation, the Exchange does not believe the proposed elimination of such incentives will have a significant impact on any Member's trading behavior on the Exchange. Furthermore, the proposed rule change to eliminate both the DLI Additive Rebate for DLI Tier 2 and the Targeted Step-Up Tier enables the Exchange to redirect resources and funding into other pricing incentives and tiers intended to incentivize increased order flow and enhance market quality for all Members.

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[42] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing, as well as to incentivize market participants to direct additional aggressively priced liquidity and more diverse types of order flow to the Exchange, thereby deepening liquidity and promoting market quality on the Exchange to the benefit of all market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''[43]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional aggressively priced displayed liquidity (including liquidity that establishes the NBBO) to the Exchange, and to maintain or increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market

[39] *See supra* note 25.

[40] *See supra* note 27.

[41] *See supra* note 29.

[42] 15 U.S.C. 78f(b)(4) and (5).

[43] *See supra* note 25.

participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new NBBO Setter Tier and Non-Display Add Volume Tiers, and thus receive the proposed additive rebate for executions of Setter Volume or the proposed enhanced rebates for executions of Added Non-Displayed Volume, respectively, would be available to all Members that meet the associated volume requirements in any month. Similarly, as described above, Liquidity Provision Tier 3 and Liquidity Removal Tier 1 continue to be available to all Members that meet the associated volume criteria and, as noted above, the proposed new volume criteria under Liquidity Provision Tier 3 and Liquidity Removal Tier 1 include more expansive or lower volume thresholds, respectively, which the Exchange believes would enable more Members to possibly qualify for such tiers without impacting the ability of Members that currently qualify to continue to do so, and the Exchange believes the respective enhanced rebate and discounted fee provided under such tiers are reasonably related to the enhanced market quality that such tiers are designed to promote. Additionally, as noted above, the proposed reduced standard rebates for executions of Added Displayed Volume and Added Displayed Retail Volume, as well as the proposed increased standard fees for executions of Added Midpoint Volume, Add Non-Midpoint Hidden Volume and Removed Volume, would continue to apply equally to all Members in the same manner that such standard rates currently do today. Lastly, the Exchange does not believe the proposed changes to eliminate the DLI Additive Rebate for DLI Tier 2 and the Targeted Step-Up Tier will impose any burden on intramarket competition because such changes will apply to all Members uniformly, as in, such incentives will no longer be available to any Member, and, as described above, the Exchange does not believe the proposed elimination of such incentives will have a significant impact on any Member's trading behavior on the Exchange. 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 16.5% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, Added Displayed Retail Volume, Added Midpoint Volume, Added Non-Midpoint Hidden Volume, Removed Volume, and Setter 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 change is a competitive proposal through which the Exchange is seeking to decrease the Exchange's expenditures and generate additional revenue with respect to its transaction pricing and to encourage additional order flow to the Exchange through volume-based incentives and discounts, which have been widely adopted by exchanges, and standard pricing that is comparable to, and/or competitive with, pricing for similar executions in place at other exchanges.[44] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar standard pricing for executions of Added Displayed Volume, Added Displayed Retail Volume, Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Removed Volume, as well as similar pricing incentives and discounts to market participants that achieve certain volume criteria and thresholds.

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.'' [45] 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'. . . .''.[46] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [47] and Rule 19b–4(f)(2) [48] 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

[44] *See supra* notes 12, 16, 17, 21, 25, 27 and 29.

[45] *See supra* note 36.

[46] *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)).

[47] 15 U.S.C. 78s(b)(3)(A)(ii).

[48] 17 CFR 240.19b–4(f)(2).

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

IV. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–01 and should be submitted on or before April≤ 6, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Eduardo Aleman,

Assistant Secretary.

[FR Doc. 2022–05483 Filed 3–15–22; 8:45 am]

BILLING CODE 8011–01–P

[49] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–774, OMB Control No. 3235–0727]

Proposed Collection; Comment Request

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

Extension:

Rules 400–404 of Regulation Crowdfunding (Intermediaries)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The collections of information required under Rules 400 through 404 is mandatory for all funding portals. Form Funding Portal helps ensure that the Commission can make information about funding portals transparent and easily accessible to the investing public, including issuers and obligated persons who engage funding portals; investors who may purchase securities through offerings on funding portals; and other regulators. Further, the information provided on Form Funding Portal expands the amount of publicly available information about funding portals, including disciplinary history. Consequently, the rules and forms allows issuers and the investing public, as well as others, to become more fully informed about funding portals in a more efficient manner.

Rule 400 requires each person applying for registration with the Commission as a funding portal to file electronically with the Commission Form Funding Portal. Rule 400(a) requires a funding portal to become a member of a national securities association registered under Section 15A of the Exchange Act. Rule 400(b) requires a funding portal to file an amendment to Form Funding Portal if any information previously submitted on Form Funding Portal becomes inaccurate for any reason. Rule 400(c) provides that a funding portal can succeed to the business of a predecessor funding portal upon the successor filing a registration on Form Funding Portal and the predecessor filing a withdrawal on Form Funding Portal.

Rule 400(d) requires a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal. Rule 400(e) states that duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member. Rule 400(f) requires a nonresident funding portal to: (1) Obtain a written consent and power of attorney appointing an agent for service of process in the United States; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, and will provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member.[1]

[1] Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other

Continued