operational risk at ICE Clear Europe. For example, a theft of ICE Clear Europe's assets could threaten its ability to operate. The Commission therefore believes that by adding new categories of non-default losses and covering losses to additional categories of assets, as discussed above, the proposed rule change would identify plausible sources of operational risk.

The Commission further believes that the proposed rule change would mitigate the impact of non-default losses by establishing appropriate procedures for categorizing, covering, and allocating such losses. For example, as discussed above, the proposed rule change would amend the existing framework for allocating non-default losses to cover Custodial Losses. The proposed rule change also would increase the amount of ICE Clear Europe's resources available to cover Non-Default Losses, Custodial Losses, and Investment Losses, and enhance ICE Clear Europe's ability to replenish those resources. Finally, as discussed above, the proposed rule change help ensure that ICE Clear Europe can enforce Clearing Members' other financial obligations, including those related to the default of a Clearing Member, despite any non-default losses.

Taken together, the Commission believes the proposed rule change would identify non-default losses as a plausible source of operational risk and mitigate the impact of such losses through the use of appropriate procedures.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(17)(i).[51]

IV. Accelerated Approval of the Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 1 amended and restated in its entirety the Form 19b–4 and Exhibit 1A in order to correct the narrative description of the proposed rule change. Amendment No. 2 modified the Exhibit 5 to clarify when certain funds are considered available to ICE Clear Europe to be applied in accordance with the Rules as proposed to be amended. By so doing, Amendment Nos. 1 and 2 provide for a more clear and comprehensive understanding of the proposed changes.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act and the applicable rules thereunder. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[53]

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and Amendment No. 2, is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(D) of the Act,[54] Section 17A(b)(3)(F) of the Act,[55] and Rule 17Ad–22(e)(17)(i) thereunder.[56]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[57] that the proposed rule change, as modified by Amendment Nos. 1 and 2 (SR–ICEEU–2023–010), be, and hereby is, approved on an accelerated basis.[58]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[59]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17210 Filed 8–10–23; 8:45 am]

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[51] 17 CFR 240.17Ad–22(e)(17)(i).

[52] 15 U.S.C. 78s(b)(2).

[53] 15 U.S.C. 78s(b)(2).

[54] 15 U.S.C. 78q–1(b)(3)(D).

[55] 15 U.S.C. 78q–1(b)(3)(F).

[56] 17 CFR 240.17Ad–22(e)(17)(i).

[57] 15 U.S.C. 78s(b)(2).

[58] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[59] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98070; File No. SR–MEMX–2023–16]

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

August 7, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) reduce the base rebate for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''); (ii) modify the Liquidity Provision Tiers by modifying the rebate for Liquidity Provision Tier 1 and the criteria for Liquidity Provision Tier 2; (iii) modify NBBO Set/Join Tier 2; (iv) modify the Displayed Liquidity Initiative Tiers by modifying the criteria for Displayed Liquidity Initiative Tier 1 and modifying the rebate for Displayed Liquidity Initiative Tier 2; (v) add a new Non-Display Add Tier 1 to the three existing Non-Display Add Tiers, which will be renamed Non-Display Add Tier 2, Non-Display Add Tier 3, and Non-

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

[2] 17 CFR 240.19b–4.

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

Display Add Tier 4, respectively; (vi) modify the required criteria under renamed Non-Display Add Tier 3 and renamed Non-Display Add Tier 4; (vii) reduce the base rebates for executions of orders in securities that add non-displayed liquidity to the Exchange (such orders, ''Added Non-Displayed Volume'') in securities priced at or above $1.00 per share; and (viii) increase the base rebates for executions of Added Non-Displayed Volume in securities priced below $1.00 per share.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[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 3% 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.

Reduce Base Rebate for Added Displayed Volume

Currently, the Exchange provides a base rebate of $0.0018 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share. The Exchange now proposes to reduce the base rebate for executions of Added Displayed Volume to $0.0015 per share.[7] The purpose of reducing the base rebate for executions of Added Displayed Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that despite the reduction proposed herein, the proposed base rebate for executions of Added Displayed Volume remains competitive with the base rebates provided by other exchanges for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity.[8]

Liquidity Provision Tiers

The Exchange currently provides a base rebate of $0.0018 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share, which the Exchange is proposing to reduce to $0.0015 per share, as described above. The Exchange also currently offers Liquidity Provision Tiers 1–6 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by reducing the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1, as further described below.

With respect to Liquidity Provision Tier 1,[9] the Exchange currently provides an enhanced rebate of $0.00335 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving an ADAV[10] (excluding Retail Orders[11]) that is equal to or greater than 0.45% of the TCV.[12] The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to $0.0033 per share. The Exchange is not proposing to change the criteria required to qualify for Liquidity Provision Tier 1. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below $1.00 per share under such tier.

With respect to Liquidity Provision Tier 2,[13] the Exchange currently provides an enhanced rebate of $0.00325 per share for executions of Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.25% of the TCV and (2) a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares. The Exchange now proposes to eliminate the retail exclusion under qualification (1) above for such tier. Specifically, the Exchange will offer an enhanced rebate of $0.00325 per share for executions of

[4] The Exchange initially filed the proposed Fee Schedule changes on August 1, 2023 (SR–MEMX–2023–15). On August 3, 2023, the Exchange withdrew that filing and submitted this proposal.

[5] Market share percentage calculated as of July 31, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

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

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

[9] The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B1'', ''D1'' or ''J1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

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

[11] As set forth in Exchange Rule 11.21(a), 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.

[12] 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.

[13] The pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 1'' with a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

Added Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving (1) an ADAV that is equal to or greater than 0.25% of the TCV and (2) a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares.

The purpose of reducing the rebates for executions of Added Displayed Volume under Liquidity Provision Tier 1 as proposed, which the Exchange believes in each case represents a modest reduction, is for business and competitive reasons, as the Exchange believes that such rebate reductions would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The purpose of removing the retail exclusion under Liquidity Provision Tier 2 as proposed is to allow Members to more easily reach Liquidity Provision Tier 2, which, in turn, the Exchange believes will encourage more Members to seek to qualify for such Tier.

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

NBBO Setter/Joiner Tier 2

The Exchange currently offers NBBO Setter/Joiner Tiers 1–2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, ''Setter Volume'') and executions of Added Displayed Volume (other than Retail Orders) that establish a new best bid or offer on the Exchange that matches the NBBO first established on an away market (such orders, ''Joiner Volume''). With respect to NBBO Setter/Joiner Tier 2, the Exchange currently provides an additive rebate of $0.0003 per share for executions of Setter Volume and Joiner Volume for Members that qualify for such tier by achieving an ADAV equal to or greater than 0.05% of the TCV and a Displayed ADAV with respect to orders with Fee Code B [14] or J [15] that is equal to or greater than 40% of the Member's Displayed ADAV with respect to orders with Fee Code B, D or J.[16] The Exchange proposes to reduce the rebate for NBBO Setter/Joiner Tier 2 to $0.0002 per share. The Exchange does not propose to change the criteria under NBBO Setter/Joiner Tier 2. The Exchange believes that the new additive rebate remains commensurate with the required criteria under such tier, as modified, and is reasonably related to the market quality benefits that such tier is designed to achieve.

Displayed Liquidity Incentive (''DLI'') Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (*i.e.,* through the applicable quoting requirement [17]) in a broad base of securities (*i.e.,* through the applicable securities requirement [18]), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders.[19] Now, the Exchange proposes to modify the required criteria under DLI Tier 1 and to modify the rebate under DLI Tier 2.

With respect to DLI Tier 1, currently, a Member qualifies for DLI Tier 1 by achieving (1) an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month and (2) an ADAV equal to or greater than 0.05% of the TCV. The Exchange proposes to modify the second criteria under DLI Tier 1 by increasing the ADAV requirement such that a Member would now qualify for DLI Tier 1 by achieving an ADAV equal to or greater than 0.10% of the TCV. The purpose of increasing the ADAV requirement is to encourage Members to strive for higher displayed volume on the Exchange, encouraging an overall increase in liquidity on the Exchange. The Exchange is not proposing to change the rebate for executions under such tier.[20]

With respect to DLI Tier 2, currently, the Exchange provides a rebate of $0.0028 per share under such tier. Now, the Exchange is proposing to reduce this rebate to $0.0026.[21] The Exchange is not proposing to change any of the criteria required to reach such tier. The purpose of reducing the rebate is for business and competitive reasons, as the Exchange believes the reduction of such rebates would decrease the Exchange's expenditures with respect to its

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

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

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

[17] As set forth on the Fee Schedule, the term ''quoting requirement'' means the requirement that a Member's NBBO Time be at least 25%, and the term ''NBBO Time'' means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers (''MPIDs'') has a displayed order of at least one round lot at the national best bid or the national best offer.

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

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

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

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

transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange believes that the proposed reduction by $0.0002 per share represents a modest reduction and that the proposed rebate under DLI Tier 2 remains commensurate with the required criteria under the tier. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below $1.00 per share.

Non-Display Add Tiers

The Exchange currently offers Non-Display Add Tiers 1–3 under which a Member may receive an enhanced rebate for executions of Added Non-Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Non-Display Add Tiers by adding a new Non-Display Add Tier 1 to the three existing Non-Display Add Tiers, which will be renamed Non-Display Add Tier 2, Non-Display Add Tier 3, and Non-Display Add Tier 4, respectively. The Exchange also now proposes to modify the required criteria under renamed Non-Display Add Tier 3 and renamed Non-Display Add Tier 4.

With respect to the proposed addition of a new Non-Display Add Tier 1, the Exchange currently provides three Non-Display Add tiers. Currently, under Non-Display Add Tier 1, the Exchange provides an enhanced rebate of $0.0027 per share for executions of Added Non-Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV [22] that is equal to or greater than 5,000,000 shares.[23] The Exchange also currently provides under Non-Display Add Tier 2 an enhanced rebate of $0.0024 per share for executions of Added Non-Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,500,000 shares,[24] and under Non-Display Add Tier 3 the Exchange currently provides an enhanced rebate of $0.0018 per share for executions of Added Non-Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 500,000 shares.[25] The Exchange proposes to provide an enhanced rebate of $0.0028 per share for executions of Added Non-Displayed Volume in securities priced at or above $1.00 per share for Members that qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 8,000,000 shares or the Member has an ADAV (excluding Retail Orders) equal to or greater than 0.45% of the TCV. This additional rebate tier would become the new Non-Display Add Tier 1.

With respect to the former Non-Display Add Tier 1, as a result of the addition of a new Non-Display Add Tier 1 as described above, the former Non-Display Add Tier 1 would be re-named Non-Display Add Tier 2. The Exchange does not propose any changes to the amount of the rebate ($0.0027 per share in securities priced at or above $1.00 per share) for this tier. The Exchange also does not propose any change to the criteria required to meet this tier.

With respect to the former Non-Display Add Tier 2, as a result of the addition of a new Non-Display Add Tier 1 as described above, the former Non-Display Add Tier 2 would be renamed Non-Display Add Tier 3. The Exchange does not propose any changes to the amount of the rebate ($0.0024 per share in securities priced at or above $1.00 per share) for this tier. In addition to the name change, the Exchange proposes to modify the criteria required to meet this tier. Currently, in order to qualify for the rebate of $0.0024 per share (for the current Non-Display Add Tier 2, which the Exchange proposes to rename Non-Display Add Tier 3) Members must achieve a Non-Display ADAV equal to or greater than 1,500,000 shares, as noted above. The Exchange proposes that a Member would qualify for such tier by achieving a Non-Display ADAV equal to or greater than 2,000,000 shares. In summary, the Exchange proposes that in order to qualify for the renamed Non-Display Add Tier 3, Members must achieve a Non-Display ADAV equal to or greater than 2,000,000 shares.

With respect to the former Non-Display Add Tier 3, as a result of the addition of a new Non-Display Add Tier 1 as described above, the former Non-Display Add Tier 3 would be renamed Non-Display Add Tier 4. The Exchange does not propose any changes to the amount of the rebate ($0.0018 per share in securities priced at or above $1.00 per share) for this tier. In addition to the name change, the Exchange proposes to modify the criteria required to meet this tier. The Exchange currently provides an enhanced rebate of $0.0018 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 500,000 shares, as noted above. The Exchange now proposes that a Member would now qualify for such tier by achieving a Non-Displayed ADAV that is equal to or greater than 1,000,000 shares. In summary, the Exchange proposes that in order to qualify for the renamed Non-Display Add Tier 4, Members must achieve a Non-Display ADAV equal to or greater than 1,000,000 shares.[26]

As described in further detail below, the Exchange is also proposing to increase the rebate for all Added Non-Displayed Volume in securities priced below $1.00 per share. The Exchange proposed to adopt this same rebate for each of the Non-Display Add Tiers, Tiers 1 through 4, in order to maintain consistency across all executions of Added Non-Displayed Volume.

The purpose of adding a new Non-Display Add Tier 1 is for business and competitive reasons. The proposed new Non-Display Add Tier 1 is designed to encourage Members to maintain or increase their order flow to the Exchange in order to qualify for the proposed enhanced rebate for executions of Added Non-Displayed Volume. The purpose of re-naming the currently existing tiers is to present the fee schedule in a way that is easy for Members to understand, starting with the largest rebate. The purpose of raising the Non-Display ADAV required to

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

[23] The pricing for Non-Display Add Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 1'' with a Fee Code of ''H1'', ''M1'' or ''P1'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[24] The pricing for Non-Display Add Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 2'' with a Fee Code of ''H2'', ''M2'' or ''P2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

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

[26] The pricing for Non-Display Add Tier 4 would be referred to by the Exchange on the Fee Schedule under the existing description ''Added non-displayed volume, Non-Display Add Tier 4'' with a Fee Code of ''H4'', ''M4'' or ''P4'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

achieve Non-Display Add Tier 3 as proposed, which the Exchange believes represents a modest increase, is for business and competitive reasons. The purpose of raising the Non-Displayed ADAV required to achieve Non-Display Add Tier 4 as proposed, which the Exchange believes represents a modest increase, is also for business and competitive reasons. The modest increase in the Non-Displayed ADAV required to achieve Tiers 3 and 4 will encourage Members to strive for higher non-displayed added volume on the Exchange, encouraging an overall increase in liquidity on the Exchange.

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

Reduce Base Rebates for Added Non-Displayed Volume

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

Currently, the Exchange provides base rebates of $0.0010 per share for executions of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume in securities priced at or above $1.00 per share. The Exchange now proposes to reduce each of these base rebates to $0.0008 per share.[27] The purpose of uniformly reducing the standard rebates for executions of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume is for business and competitive reasons, as the Exchange believes reducing such rebates as proposed would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange notes that the proposed base rebate for executions of Added Non-Midpoint Hidden Volume remains in line and competitive with the base rebates provided by at least one other exchange for executions of similar orders.[28] Additionally, the Exchange believes it is appropriate to also provide the same base rebate for executions of Added Price-Improved Volume and Added Midpoint Volume as for Added Non-Midpoint Hidden Volume, as all of these orders similarly add liquidity to the Exchange and are executed at prices that are not displayed on the Exchange's order book, and the Exchange notes that all of these orders are also currently subject to the same base rebate and pricing structure today.

Increase Rebates for Sub-Dollar Non-Displayed Volume

The Exchange is also proposing to increase the rebates provided for all sub-dollar executions of Added Non-Displayed Volume. As noted above, Added Non-Displayed Volume is comprised of the three following types of orders: (i) Added Midpoint Volume; (ii) Added Non-Midpoint Hidden Volume; and (iii) Added Price-Improved Volume. Currently, the Exchange provides no rebate and charges no fees for Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume in securities priced below $1.00 per share. This pricing structure is similarly applied to all executions of Added Non-Displayed Volume by Members that qualify for enhanced rebates in securities priced at or above $1.00 per share pursuant to the Non-Display Add Tiers. The Exchange now proposes to increase the rebate for all Added Non-Displayed Volume to 0.075% of total dollar value. Specifically, the Exchange will provide a rebate of 0.075% of total dollar value for each of Added Midpoint Volume, Added Non-Midpoint Hidden Volume, and Added Price-Improved Volume in securities priced below $1.00 per share. The Exchange is similarly proposing to provide a rebate of 0.075% of total dollar value to Members that qualify for enhanced rebates pursuant to the Non-Display Add Tiers in securities priced below $1.00 per share. Thus, all Added Non-Displayed Volume will qualify for the same rebate for executions in securities priced below $1.00 per share.

The purpose of the rebate increase for sub-dollar executions in Added Non-Displayed Volume is to encourage participants to add sub-dollar liquidity on the Exchange. The increase to 0.075% of total dollar value is the same rebate provided to sub-dollar executions which provide displayed liquidity on the Exchange. The Exchange believes by offering the same rebate for sub-dollar non-displayed liquidity as for displayed liquidity, the resulting pricing structure will encourage the provision of sub-dollar liquidity on the Exchange. Additionally, the Exchange believes it is appropriate to provide the same rebate for sub-dollar executions of Added Price-Improved Volume and Added Midpoint Volume as for Added Non-Midpoint Hidden Volume, as all of these orders similarly add liquidity to the Exchange and are executed at prices that are not displayed on the Exchange's order book, and the Exchange notes that

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

[28] *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 $0.0008 per share for executions of orders in securities priced at or above $1.00 per share that add non-displayed liquidity.

all of these orders are also currently subject to the same sub-dollar rebate and pricing structure today.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[29] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[30] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [31]

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 encourage market participants to strive for higher volume on the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers, NBBO Setter/Joiner Tiers, Non-Display Add Tiers, and DLI Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount 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 proposal to reduce the base rebate for Added Displayed Volume is reasonable because, as described above, it is designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity, and the proposed new base rebate remains competitive with the base rebates provided by other exchanges in each case for executions of similar orders.[32] The Exchange also believes the proposed change to the base rebate is equitable and not unfairly discriminatory because it will apply equally to all Members and because the opportunity to qualify for enhanced rebates is open to all members on an equal basis, as described above.

The Exchange believes that the proposed changes to reduce the rebates provided pursuant to Liquidity Provision Tier 1, NBBO Setter/Joiner Tier 2, and DLI Tier 2 are reasonable, because the change in rebate for each is a modest decrease and consistent with an equitable allocation of fees. The Exchange believes the proposed change are equitable and not unfairly discriminatory because it will apply to all Members equally, in that all Members will continue to have the opportunity to achieve the required criteria under such tiers. The Exchange believes that each such rebate is commensurate with the corresponding required criteria under such tiers and are reasonably related to such market quality benefits that such tiers are designed to achieve. The Exchange believes that the proposed change to the criteria in Liquidity Provision Tier 2 is reasonable, equitable, and not unfairly discriminatory because it will apply equally to all Members and allow all Members to more easily reach Liquidity Provision Tier 2, which, in turn, the Exchange believes will encourage more Members to seek to qualify for such Tier. The Exchange believes that the proposed change is reasonably related to such market quality benefits that the tier is designed to achieve.

The Exchange believes that the proposed changes to the DLI Tier 1 criteria would continue to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange. The proposed new DLI Tier 1 criteria would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, is available to all Members on an equal basis, and, as described above, is reasonably designed to encourage Members to maintain or increase their order flow by displaying liquidity, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it will apply to all Members equally, in that all Members will continue to have the opportunity to achieve the required criteria under such tier, and this proposed increase is intended to enhance market quality in a broader range of securities on the Exchange to the benefit of all Members.

The Exchange believes that the proposed changes to add Non-Display Add Tier 1, increase the Non-Displayed ADAV requirement under Non-Display Add Tier 3 to 2,000,000 shares, and to increase the Non-Displayed ADAV requirement under Non-Display Add Tier 3 to 1,000,000 shares are reasonable, because each change is a modest increase designed to increase non-displayed liquidity on the Exchange for the benefit of all market participants. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they will apply to all Members equally, in that all Members will continue to have the opportunity to achieve the required criteria under such tier.

The Exchange believes that the proposed changes to reduce the base rebates provided for executions of Added Non-Displayed 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

[29] 15 U.S.C. 78f.

[30] 15 U.S.C. 78f(b)(4) and (5).

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

[32] *See* supra note 8.

Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and the proposed new base rebates for Added Non-Displayed Volume remain in line and competitive with the base rebates provided by other exchanges for executions of similar orders.[33] Additionally, as noted above, the Exchange believes that providing the same base rebate for executions of Added Price-Improved Volume and Added Midpoint Volume as for Added Non-Midpoint Hidden Volume is reasonable and appropriate because all of these orders similarly add liquidity to the Exchange, are executed at prices that are not displayed on the Exchange's order book, and are currently subject to the same base rebate and pricing structure today. The Exchange also believes the proposed base rebates for executions of Added Non-Displayed Volume are equitable and not unfairly discriminatory, as such base rebates will apply equally to all Members.

The Exchange believes that the proposed change to increase the sub-dollar rebate for executions of Added Non-Displayed Volume is reasonable because an increase in rebate will encourage more Members to place executions increasing Added Non-Displayed Volume on the Exchange. The Exchange believes that the proposed changes to increase the Added Non-Displayed Volume rebate are equitable and not unfairly discriminatory as these rebates will apply equally to all Members of the Exchange.

The Exchange believes that the proposed base rebate, Liquidity Provision Tiers, NBBO Setter/Joiner Tiers, Non-Display Add Tiers, DLI Tiers, and Added Non-Display Volume rebates, each as modified by the changes proposed herein, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow, including in the form of Added Displayed Volume and Added Non-Displayed Volume to the Exchange, which the Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

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[34] 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 incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[35]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would maintain a tiered pricing structure that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize members to submit additional order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers, NBBO Setter/Joiner Tiers, Non-Displayed Add Tiers and DLI Tiers, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. The Exchange does not believe that the proposed changes to reduce the base rebates for executions of Added Displayed Volume and Added Non-Displayed volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the proposed base rebates for such executions would be the base rebates applicable to all Members, and the opportunity to qualify for enhanced rebates or discounted fees, as applicable, is available to all Members. The Exchange does not believe that the proposed changes to provide a rebate for sub-dollar executions of Added Non-Displayed Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly. For the foregoing reasons, the Exchange believes the proposed changes would not impose

[33] *See* supra note 28.

[34] 15 U.S.C. 78f(b)(4) and (5).

[35] *See supra* note 31.

any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [36] 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' . . . .".[37] 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 [38] and Rule 19b–4(f)(2) [39] thereunder.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2023–16 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–MEMX–2023–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2023–16 and should be submitted on or before September 1, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Sherry R. Haywood,

Assistant Secretary.

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[36] *See supra* note 31.

[37] *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)).

[38] 15 U.S.C. 78s(b)(3)(A)(ii).

[39] 17 CFR 240.19b–4(f)(2).

[40] 17 CFR 200.30–3(a)(12).