

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.³³ The Exchange believes that the proposed rule change provides a fair procedure by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Chief or Deputy Chief Hearing Officer could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness, including the requirement that any motions be joined by all parties and show good cause. Overall, the proposed rule change represents a significant step toward modernizing disciplinary process procedures in a manner that preserves in-person hearings but allows for the use of video conference technology under certain circumstances.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to create permanent rules that would allow video conference hearings if OHO determines that proceeding in person may endanger the health or safety of the participants or would be impracticable, or where both parties prefer doing so and show good cause, thereby providing greater harmonization with approved FINRA rules.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁴ and Rule 19b-4(f)(6) thereunder.³⁵ Because the proposed rule change does not: (i) significantly affect the protection of

investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)³⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-04 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-NYSECHX-2024-04. 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-NYSECHX-2024-04 and should be submitted on or before March 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Dated: February 8, 2024.

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99497; File No. SR-MEMX-2024-02]

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

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 January 31, 2024, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The

³³ 15 U.S.C. 78f(b)(7) and 78f(d).

³⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 240.19b-4(f)(6).

³⁷ 17 CFR 240.19b-4(f)(6)(iii).

³⁸ 15 U.S.C. 78s(b)(2)(B).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Members³ (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 February 1, 2024. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) increase the rebate for executions of Retail Orders⁴ in securities priced below \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Sub-Dollar Retail Volume") and make a corresponding increase in the rebate provided for executions of Added Displayed Sub-dollar Retail Volume under Retail Tier 1; and (ii) modify NBBO Setter Tier 1 by adopting a new additive rebate for executions of added displayed volume (other than Retail Orders) that meet the criteria under NBBO Setter Tier 1 and modifying the

required criteria under such tier, each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15% 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.

Increase Rebate for Added Displayed Sub-Dollar Retail Volume

Currently, the Exchange provides a rebate of 0.075% of the total dollar value of the transaction for executions of Retail Orders in securities priced below \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Sub-Dollar Retail Volume"). This rebate is applicable to all executions of Added Displayed Sub-Dollar Retail Volume and is applicable to all Members (including those that qualify for any of the Exchange's volume tiers). Now, the

Exchange proposes to increase the rebate provided to Members for all executions of Added Displayed Sub-Dollar Retail Volume to 0.15% of the total dollar value of the transaction. The Exchange also currently offers Retail Tier 1, whereby the Exchange provides an enhanced rebate of \$0.0034 per share for executions of Added Displayed Retail Volume in securities priced at or above \$1.00 and 0.075% of the total dollar value of the transaction for executions of Added Displayed Retail Volume in securities priced below \$1.00 for a Member that qualifies for Retail Tier 1 by achieving a Retail Order ADAV⁷ that is equal to or greater than 0.07% of the TCV.⁸ Given that the Exchange is now proposing to increase the rebate for all executions of Added Displayed Sub-dollar Retail Volume from 0.075% of the total dollar value of the transaction to 0.15% of the total dollar value of the transaction, it follows that the rebate provided under Retail Tier 1 for executions of Added Displayed Sub-Dollar Retail Volume should also be increased to 0.15% of the transaction. As such, the Exchange is similarly proposing to increase the rebate provided to Members that qualify for Retail Tier 1 to 0.15% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Retail Volume, which again, is the same rebate that will be applicable to such executions for all Members under this proposal.⁹

The purpose of increasing the rebate for executions of Added Displayed Sub-Dollar Retail Volume is for business and competitive reasons, as the Exchange believes that increasing such rebate would incentivize Members to submit additional Added Displayed Sub-Dollar Retail Volume to the Exchange, which the Exchange believes would promote price discovery and price formation, provide more trading opportunities and tighter spreads, and deepen liquidity that is subject to the Exchange's transparency, regulation and oversight, thereby enhancing market quality to the benefit of all Members and investors.

⁷ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

⁸ As set forth on the Fee Schedule, "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.

⁹ The pricing for the Retail Tier is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Retail Tier 1" with a Fee Code of "Br1", "Dr1" or "Jr1", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

³ See Exchange Rule 1.5(p).

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

⁵ Market share percentage calculated as of January 30, 2024. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁶ *Id.*

NBBO Setter Tier

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of \$0.0002 per share for executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (such orders, “Setter Volume”) by achieving an ADAV with respect to orders with Fee Code B¹⁰ that is equal to or greater than 0.10% of the TCV. The Exchange now proposes to modify NBBO Setter Tier 1 by adopting a new additive rebate under such tier that would apply to a qualifying Member’s executions of Added Displayed Volume (other than Retail Orders) that have a Fee Code of D or J, and modifying the required criteria under such tier.

First, the Exchange proposes to adopt a new additive rebate under NBBO Setter Tier 1 of \$0.0001 per share for a qualifying Member’s executions of Added Displayed Volume with a Fee Code of D or J.¹¹ The Exchange is not proposing to modify the existing additive rebate of \$0.0002 per share for a Member’s executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (*i.e.* Fee Code B), however, the Exchange is proposing to add language within the NBBO Setter Tier 1 pricing table that clarifies which Fee Codes would receive which Additive Rebate. Specifically, the Exchange will offer an additive rebate of \$0.0002 per share for a qualifying Member’s executions of Added Displayed Volume with Fee Code B and an additive rebate of \$0.0001 per share for a qualifying Member’s executions of Added Displayed Volume with Fee Codes D and J. To summarize, under the current proposal, if a Member meets the criteria under NBBO Setter Tier 1, that Member will now receive the current additive rebate of \$0.0002 per share on all of its executions of Added Displayed Volume that establish the NBBO (*i.e.* Fee Code B), as well as a new additive rebate of \$0.0001 per share on all of its executions of Added Displayed volume

¹⁰ The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

¹¹ 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. 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. 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 Tier 1 is referred to by the Exchange on the Fee Schedule under the description “NBBO Setter Tier 1” with a Fee Code of S1 to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

that do *not* establish the NBBO (*i.e.* Fee Codes D and J).¹²

Second, the Exchange is proposing to modify the required criteria under NBBO Setter Tier 1. Currently, a Member qualifies for such tier by achieving an ADAV with respect to orders with a Fee Code B that is equal to or greater than 0.10% of the TCV. The Exchange proposes to keep this criteria intact and adopt an additional (*i.e.*, alternative) criteria that a Member may achieve in order to qualify for such tier. Specifically, the Exchange proposes to modify the required criteria such that a Member would now qualify for such tier by achieving: (i) an ADAV with respect to Fee Code B that is equal to or greater than 0.10% of the TCV; or (ii) an ADAV with respect to orders with Fee Code B that is equal to or greater than 0.05% of the TCV and a Step-Up ADAV¹³ with respect to orders with a Fee Code B that is equal to or greater than 75% of the Member’s December 2023 ADAV with respect to orders with a Fee Code B. Thus, such proposed change would add an alternative criteria that includes a lower overall Fee Code B ADAV threshold but that also requires a Member to increase its Fee Code B ADAV above its December 2023 ADAV by a specified threshold. Additionally, the Exchange is proposing that criteria (2) of NBBO Setter Tier 1 will expire no later than July 31, 2024, and the Exchange will indicate this in a note under the NBBO Setter Tier pricing table on the Fee Schedule. Again, the Exchange notes that it is not proposing to change the current additive rebate under NBBO Setter Tier 1 that is provided in addition to the otherwise applicable rebate for executions of added displayed volume (other than Retail Orders) in securities priced at or above \$1.00 per share that establish the NBBO.

The purpose of adopting a new additive rebate under the NBBO Setter Tier 1 that applies to a qualifying Member’s executions of Added Displayed Volume with Fee Codes D or J (in addition to Setter Volume) is, like the original purpose of the NBBO Setter Tier, to attract aggressively priced displayed liquidity to the Exchange, which the Exchange believes would

¹² In connection with the proposed changes to this tier, the Exchange is proposing to revise the note under the NBBO Setter Tier pricing table to reflect that the additive rebate under such tier is applicable to executions of Added Displayed Volume (other than Retail Orders) in securities priced at or above \$1.00 per share rather than being limited to the Fee Code associated with Setter Volume.

¹³ As set forth on the Fee Schedule, “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

enhance market quality by increasing execution opportunities, tightening spreads, and promoting price discovery on the Exchange. Additionally, the Exchange believes that the additive rebate for executions of Added Displayed Volume is commensurate with the corresponding required criteria under such tier and is reasonably related to such market quality benefits that such tier is designed to achieve.

The Exchange believes that the proposed alternative criteria to NBBO Setter Tier 1 provides an incremental incentive for Members to strive for higher ADAV on the Exchange with respect to orders with a Fee Code B to receive the corresponding additive rebate for executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their aggressively priced, liquidity adding orders to the Exchange. The Exchange believes that the tier, as proposed, would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange notes that, as the proposed change to the required criteria under NBBO Setter Tier 1 merely provides an alternative criteria and does not change the existing criteria, the Exchange believes that such change would make the tier easier for Members to achieve, and, in turn, while the Exchange has no way of predicting with certainty how the proposed new criteria will impact Member activity, the Exchange expects that more Members will strive to qualify for such tier than currently do, resulting in the submission of additional order flow to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ 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

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁶

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, including with respect to Added Displayed Volume and Sub-Dollar Retail Volume, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, liquidity-adding, NBBO Setting and/or Retail orders, to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the proposed change to increase the rebate provided for all executions of Added Displayed Sub-Dollar Retail Volume, including those that meet the criteria under Retail Tier 1, is reasonable because it is designed to incentivize Members to submit additional displayed liquidity-adding Retail Orders to the Exchange, which would enhance liquidity on the Exchange and promote price discovery and price formation. The Exchange further believes the proposed increased rebate is reasonable and appropriate because it is comparable to and competitive with the rebates provided by other exchanges for executions of added displayed volume in Retail Orders in securities priced

below \$1.00 per share.¹⁷ The Exchange further believes the proposed rebate for executions of Added Displayed Sub-Dollar Retail Volume is equitable and not unfairly discriminatory, as such rebate will apply equally to all Members submitting Retail Orders to the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that NBBO Setter Tier 1 as modified by the changes proposed herein is reasonable, equitable and not unfairly discriminatory for these same reasons, as such tier 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 designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding NBBO setting orders, to the Exchange in order to qualify for an additive rebate for executions of Added Displayed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tier reflects a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the additive rebate for executions of Added Displayed Volume under the proposed NBBO Setter Tier 1 remains commensurate with the corresponding required criteria under such tier and is reasonably related to the market quality benefits that such tier is designed to achieve, as described above.

For the reasons discussed above, the Exchange submits that the proposal

¹⁷ See, e.g., the MIAX Pearl LLC equities trading fee schedule on its public website (available at: <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees/>) which reflects a standard rebate of 0.15% of the total dollar value of executions that add liquidity in displayed Retail Orders; and the NYSE Arca equities trading fee schedule (at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) which reflects a standard rebate of 0.05% of the total dollar value of executions in Retail Orders that add liquidity.

satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹⁸ 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, including displayed, liquidity-adding, NBBO setting and Retail orders, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants, as well as to generate additional revenue in a manner that is still consistent with the Exchange’s overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission’s goal in adopting Regulation NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding, aggressively priced displayed orders that establish the NBBO Setting, and/or Retail orders to the Exchange, 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,

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

¹⁹ See *supra* note 16.

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 change to increase the rebate for all executions of Added Displayed Sub-Dollar Retail Volume, including those that meet the criteria under Retail Tier 1, would impose any burden on intramarket competition because such change will apply to all Members uniformly, in that the proposed rebate for such executions would be the rebate applicable to all Members. The opportunity to qualify for the proposed NBBO Setter Tier 1, and thus receive the proposed additive rebate for executions of Added Displayed Volume under such tier, would be available to all Members that meet the associated volume requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market.

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added Displayed Sub-Dollar Retail

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 changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁰ 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' . . .".²¹ 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,²² the Exchange believes that the proposed rule change will not 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 Act²³ and Rule 19b-4(f)(2)²⁴ 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-2024-02 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-MEMX-2024-02. 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

²⁰ See *supra* note 16.

²¹ *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)).

²² 15 U.S.C. 78f(b)(8).

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–02 and should be submitted on or before March 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Dated: February 8, 2024.

Sherry R. Haywood,
Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for Second Quarter Fiscal Year 2024

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loans interest rate for loans approved on or after January 29, 2024.

DATES: Issued on February 6, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Blocker, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 619–0477.

SUPPLEMENTARY INFORMATION: The Small Business Administration publishes an interest rate for Military Reservist Economic Injury Disaster Loans (13 CFR 123.512) on a quarterly basis. The

interest rate will be 4.000 for loans approved on or after January 29, 2024.

Robert Blocker,
Chief, Disaster Loan Policy Division, Office of Financial Assistance.

[FR Doc. 2024–02981 Filed 2–13–24; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20187; OREGON Disaster Number OR–20000 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Oregon

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon dated 02/08/2024.

Incident: Winter Ice Storm.

Incident Period: 01/12/2024 through 01/20/2024.

DATES: Issued on 02/08/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 11/08/2024.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator’s EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clackamas, Clatsop, Lane, Lincoln, Multnomah, Washington.

Contiguous Counties:

Oregon: Benton, Columbia, Deschutes, Douglas, Hood River, Klamath, Linn, Marion, Polk, Tillamook, Wasco, Yamhill.

Washington: Clark, Pacific, Skamania, Wahkiakum.

The Interest Rates are:

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for economic injury is 201870.

The States which received an EIDL Declaration are Oregon, Washington.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024–03016 Filed 2–13–24; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2023–0021]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Office of Personnel Management (OPM). Under this matching program, OPM will provide SSA with civil service benefit and payment data. This disclosure will provide SSA with information necessary to verify an individual’s self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency’s Medicare outreach efforts.

DATES: The deadline to submit comments on the proposed matching program is March 15, 2024.

The matching program will be applicable on March 14, 2024, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2023–0021 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only

²⁵ 17 CFR 200.30–3(a)(12).