collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 17, 2023.

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

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

Dated: November 14, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25096 Filed 11–17–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96306; File No. SR–MEMX–2022–30]

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

November 14, 2022

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Excchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) modify the Liquidity Provision Tiers by adopting a new Liquidity Provision Tier 4 and modifying the required criteria under Liquidity Provision Tier 2; (ii) increase the fee and modify the required criteria under Liquidity Removal Tier 1; (iii) increase the fee for certain executions of Pegged Orders [4] with a Midpoint Peg [5] instruction (such orders, ''Midpoint Peg Orders'') and a time-in-force (''TIF'') instruction of IOC [6] or FOK [7] that execute at the midpoint of the national best bid and offer (''NBBO''); and (iv) modify the pricing for certain executions of orders in securities priced below $1.00 per share (such orders, ''Sub-Dollar Volume''), each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[8] 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 3.5% of the overall market share.[9] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of $0.0020 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume''). The Exchange also currently offers Liquidity Provision Tiers 1–4 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each tier. The Exchange now proposes to adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 4, and the current Liquidity Provision Tier 4 would be renumbered as Liquidity Provision Tier 5 (hereinafter referred to as such). The rebate for executions of Added Displayed Volume and the required criteria under Liquidity Provision Tier 5 would remain unchanged.

Under the proposed new Liquidity Provision Tier 4, the Exchange would provide an enhanced rebate of $0.0028 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving one of the following two alternative criteria: (1)

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

[2] 17 CFR 240.19b–4.

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

[4] *See* Exchange Rule 11.6(h).

[5] *See* Exchange Rule 11.6(h)(2).

[6] *See* Exchange Rule 11.6(o)(1).

[7] *See* Exchange Rule 11.6(o)(3).

[8] Market share percentage calculated as of October 31, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[9] *Id.*

an ADAV [10] that is equal to or greater than 0.10% of the TCV; [11] or (2) a Displayed ADAV [12] (excluding Retail Orders) that is equal to or greater than 750,000 shares and a Step-Up Displayed ADAV [13] (excluding Retail Orders) from October 2022 that is equal to or greater than 30% of the Member's October 2022 Displayed ADAV (excluding Retail Orders).[14] The Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 4 a rebate of 0.075% of the total dollar volume of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange, which is the same rebate that will be applicable to such executions for all Members after giving effect to the Sub-Dollar Volume pricing changes proposed below. The proposed new Liquidity Provision Tier 4 is designed to encourage Members to maintain or increase their order flow that adds liquidity, including in the form of displayed orders, to the Exchange in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants.

Currently, under Liquidity Provision Tier 2, the Exchange provides an enhanced rebate of $0.0032 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an ADAV that is that is equal to or greater than 0.20% of the TCV. Now, the Exchange proposes to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADAV that is equal to or greater than 0.20% of the TCV; or (2) an ADAV that is equal to or greater than 15,000,000 shares and a Step-Up ADAV from October 2022 that is equal to or greater than 0.10% of the Member's October 2022 ADAV. Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that includes an overall ADAV threshold and a Step-Up ADAV threshold, which are designed to encourage the submission of additional order flow that adds liquidity to the Exchange. The Exchange notes that, as the proposed change to the required criteria under Liquidity Provision Tier 2 simply 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. The Exchange is not proposing to change the rebate provided for executions of Added Displayed Volume under Liquidity Provision Tier 2.

Liquidity Removal Tier 1

The Exchange currently charges a standard fee of $0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, "Removed Volume"). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee of $0.0029 per share for executions of Removed Volume by achieving one of the following two alternative criteria: (1) an ADV [15] that is equal to or greater than 0.45% of the TCV and an ADAV that is equal to or greater than 0.20% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.

Now, the Exchange proposes to increase the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to $0.00295 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving one of the following two alternative criteria: (1) an ADV that is equal to or greater than 0.50% of the TCV and a Remove ADAV [16] that is equal to or greater than 0.25% of the TCV; or (2) an ADV that is equal to or greater than 1.00% of the TCV.[17] Thus, the proposed change to the required criteria would increase the ADV threshold by 0.05% (*i.e.,* from 0.45% to 0.50%) of the TCV and replace the ADAV threshold with a Remove ADV threshold in the first of such alternative criteria, and it would keep the second of such alternative criteria intact without any change. The proposed changes to increase the ADV threshold and include a Remove ADV threshold in the first of such alternative criteria are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed discounted fee for executions of Removed Volume. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing alternative criteria that are based on different types of volume that Members may choose to achieve, such as the proposed new criteria which includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

The purpose of increasing the fee charged for executions of Removed Volume under such tier as proposed (*i.e.,* by $0.00005 per share), which the Exchange believes is a modest increase and remains commensurate with the proposed new required criteria, is for business and competitive reasons, as the Exchange believes that increasing such

[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.

[11] 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.

[12] As set forth on the Fee Schedule, "Displayed ADAV" means ADAV with respect to displayed orders.

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

[14] The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 4" with a Fee Code of "B4", "D4" or "J4", as applicable, to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today. The Exchange also notes that the pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the description "Added displayed volume, Liquidity Provision Tier 5" with a Fee Code of "B5", "D5" or "J5", as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

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

[16] As set forth on the Fee Schedule, "Remove ADV" means ADV with respect to orders that remove liquidity.

[17] The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Removed volume from MEMX Book, Liquidity Removal Tier 1" with a Fee Code of "R1" to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally.

The Exchange notes that it is also proposing to change the fee charged under Liquidity Removal Tier 1 for executions of Removed Sub-Dollar Volume (as defined below), as further described below.

Midpoint Peg IOC/FOK Orders

As noted above, the Exchange currently charges a standard fee of $0.0030 per share for executions of Removed Volume. The Exchange also currently charges a discounted fee of $0.0026 per share for executions of Midpoint Peg Orders in securities priced at or above $1.00 per share with a TIF instruction of IOC or FOK that execute at the midpoint of the NBBO and remove liquidity from the Exchange upon entry (such orders, ''Midpoint Peg IOC/FOK Orders''). Charging a discounted fee for executions of Midpoint Peg IOC/FOK Orders is intended to incentivize the submission of such orders and, in turn, attract additional contra-side orders designed to execute at the midpoint to be posted on the Exchange, and is therefore designed to deepen liquidity and increase execution opportunities at the midpoint on the Exchange, thereby improving the Exchange's market quality to the benefit of all Members and enhancing its attractiveness as a trading venue.

Now, the Exchange proposes to increase the fee charged for executions of Midpoint Peg IOC/FOK Orders to $0.0027 per share.[18] The purpose of increasing the fee for executions of Midpoint Peg IOC/FOK Orders as proposed (*i.e.,* by $0.0001 per share), which the Exchange believes is a modest increase and remains commensurate with the market quality benefits that such discounted fee is intended to achieve, is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally.

Pricing for Certain Sub-Dollar Volume

Currently, the Exchange charges a fee of 0.25% of the total dollar value of the transaction for executions of Sub-Dollar Volume that remove liquidity from the Exchange (such orders, ''Removed Sub-Dollar Volume''). This fee is applicable to all executions of Removed Sub-Dollar Volume (except Retail Orders with a TIF of Day, GTT or RHO that remove liquidity from the Exchange upon entry [19]) 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 fee charged to all Members (including those that qualify for any of the Exchange's volume tiers) for all executions of Removed Sub-Dollar Volume (except Retail Orders with a TIF of Day, GTT or RHO that remove liquidity from the Exchange upon entry) to 0.28% of the total dollar value of the transaction. The purpose of increasing the fee for such executions of Removed Sub-Dollar Volume is for business and competitive reasons, as the Exchange believes that increasing such fee would generate additional revenue to offset some of the costs associated with the Exchange's current transaction pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally. The Exchange notes that despite the increase proposed herein, which the Exchange believes is modest, the proposed fee for such executions of Removed Sub-Dollar Volume (*i.e.,* 0.28% of the total dollar value of the transaction) remains lower than, and competitive with, the standard fee charged by other equity exchanges for executions of orders in securities priced below $1.00 per share that remove liquidity.[20]

Currently, the Exchange provides a rebate of 0.10% of the total dollar value of the transaction for executions of Sub-Dollar Volume that add displayed liquidity to the Exchange (such orders, ''Added Displayed Sub-Dollar Volume''). This fee is applicable to all executions of Added Displayed Sub-Dollar Volume and is applicable to all Members (including those that qualify for any of the Exchange's volume tiers). Now, the Exchange proposes to reduce the rebate provided to all Members (including those that qualify for any of the Exchange's volume tiers) for all executions of Added Displayed Sub-Dollar Volume to 0.075% of the total dollar value of the transaction. The purpose of reducing the rebate for executions of Added Displayed Sub-Dollar Volume is for business and competitive reasons, as the Exchange believes that reducing such rebate 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, which the Exchange believes is modest, the proposed rebate for executions of Added Displayed Sub-Dollar Volume (*i.e.,* 0.075% of the total dollar value of the transaction) remains higher than, and competitive with, the rebates offered by other equity exchanges for executions of orders in securities priced below $1.00 per share that add displayed liquidity.[21]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[22] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[23] 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

[18] The pricing for executions of Midpoint Peg IOC/FOK Orders is referred to by the Exchange on the Fee Schedule under the description ''Removed volume from MEMX Book, Midpoint Peg (IOC/FOK)'' with a Fee Code of ''Rm'' assigned by the Exchange.

[19] Such orders have different pricing that is referred to by the Exchange on the Fee Schedule under the description ''Removed volume from MEMX Book upon entry, Retail Order (Day/GTT/RHO)'' with a Fee Code of ''Rr0'' assigned by the Exchange.

[20] *See, e.g.,* the Cboe BZX Exchange, Inc. (''Cboe BZX'') equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a standard fee of 0.30% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that remove liquidity from Cboe BZX; the Cboe EDGX Exchange, Inc. (''Cboe EDGX'') equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a standard fee of 0.30% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that remove liquidity from Cboe EDGX.

[21] *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 that no rebate is provided (*i.e.,* a free execution) for executions of orders in securities priced below $1.00 per share that add displayed liquidity to Cboe BZX.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(4) and (5).

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.'' [24]

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, Removed Volume and Sub-Dollar 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 and/or liquidity-removing 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. While the Exchange has proposed increasing its fees for certain executions of Removed Volume and Removed Sub-Dollar Volume, and reducing its rebate for executions of Added Displayed Sub-Dollar Volume, as further discussed below, the Exchange believes that each of such changes represents a modest increase (decrease) from the current fee (rebate) applicable to such executions.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed new Liquidity Provision Tier 4, the Liquidity Provision Tier 2 as modified by the proposed change to the required criteria under such tier, and the Liquidity Removal Tier 1 as modified by the proposed changes to the fee for executions of Removed Volume and the required criteria under such tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding and/or liquidity removing orders, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed new Liquidity Provision Tier 4 and the modified Liquidity Provision Tier 2, as well as the discounted fee for executions of Removed Volume under the modified Liquidity Removal Tier 1, each remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above.

The Exchange also believes the proposed increased fee for executions of Midpoint Peg IOC/FOK Orders is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the increase (*i.e.,* $0.0001 per share) is modest and that the fee remains commensurate with the market quality benefits that such discounted fee is intended to achieve, as described above, and such fee would continue to be charged uniformly to all executions of such orders for all Members.

Regarding the proposed changes to Sub-Dollar Volume pricing, the Exchange believes the proposed changes to increase the fee for executions of Removed Sub-Dollar Volume (except Retail Orders with a TIF of Day, GTT or RHO that remove liquidity from the Exchange upon entry) and reduce the rebate for executions of Added Displayed Sub-Dollar Volume are reasonable because, as described above, the Exchange believes that each of such changes represents a modest increase (decrease) from the current fee (rebate) applicable to such executions and that such changes would decrease the Exchange's expenditures and generate additional revenue, as applicable, with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange also believes such proposed changes are reasonable, as the proposed fee for executions of Removed Sub-Dollar Volume (except Retail Orders with a TIF of Day, GTT or RHO that remove liquidity from the Exchange upon entry) and the proposed rebate for executions of Added Displayed Sub-Dollar Volume are competitive with the standard fees and rebates, as applicable, assessed for such executions on other equity exchanges.[25] Additionally, the Exchange believes that the proposed changes to these rates represent an equitable allocation of fees and are not unfairly discriminatory because such rates will continue to apply equally to all Members (including those that qualify for any of the Exchange's volume tiers) for all such executions.

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 [26] 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

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

[25] *See supra* notes 20–21.

[26] 15 U.S.C. 78f(b)(4) and (5).

intended to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and liquidity-removing 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 and decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [27]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and liquidity-removing 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, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed new Liquidity Provision Tier 4, and thus receive the proposed enhanced 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. Similarly, the opportunity to qualify for the proposed new alternative criteria under Liquidity Provision Tier 2 and the proposed modified criteria under Liquidity Removal Tier 1, and thus receive the enhanced rebate for executions of Added Displayed Volume or be charged the discounted fee for executions of Removed Volume, respectively, would continue to be available to all Members that meet the associated volume requirements in any month. Additionally, as described above, the Exchange believes that the proposed changes to the fee for executions of Midpoint Peg IOC/FOK Orders, the fee for executions of Removed Sub-Dollar Volume (except Retail Orders with a TIF of Day, GTT or RHO that remove liquidity from the Exchange upon entry) and the rebate for executions of Added Displayed Sub-Dollar Volume are modest, and such fees and rebate will continue to apply to all such executions for all Members as they do today. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added Displayed Volume, Removed Volume and Sub-Dollar 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 decrease the Exchange's expenditures and 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.'' [28] 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'. . . .''.[29] 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

[27] *See supra* note 24.

[28] *See supra* note 24.

[29] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

19(b)(3)(A)(ii) of the Act [30] and Rule 19b–4(f)(2) [31] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–30 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2022–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–30 and should be submitted on or before December 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25087 Filed 11–17–22; 8:45 am]

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[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–340, OMB Control No.3235–0375]

Proposed Collection; Comment Request; Extension: Schedule 13E–4F

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

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

Schedule 13E–4F (17 CFR 240.13e–102) may be used by an issuer that is incorporated or organized under the laws of Canada to make a cash tender or exchange offer for the issuer's own securities if less than 40 percent of the class of such issuer's securities outstanding that are the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Schedule 13E–4F and that the information is filed by approximately 3 respondents for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by January 17, 2023.

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

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

Dated: November 14, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–25105 Filed 11–17–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96321; File No. SR–NYSE–2022–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Initial and Annual Fees for Exchange Traded Products

November 15, 2022.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 7, 2022, New York Stock Exchange LLC (''NYSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.