

order types by proposing to reward RML Orders with execution priority over Eligible Midpoint Peg Orders when interacting with Retail Midpoint Orders. MEMX cannot resolve potential unfair discrimination in favor of RML Orders over Eligible Midpoint Peg Orders by relying on the fact that users can instead use RML Orders; doing so does not convert unfair discrimination into fair discrimination. When MEMX chooses to offer two Midpoint Peg order types but treats them differently, each order type must independently be consistent with the Act and any discriminatory treatment must also be consistent with the Act. The consistency of one order type with the requirements of the Act is independent of, and cannot be contingent on, the existence of a substitute.

3. MEMX Has Failed To Meet Its Burden

When assessing this proposed rule change, as modified by Amendment No. 1, the Commission must consider its consistency with the Act and the applicable rules and regulations issued thereunder. As stated above, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."⁴⁹ For the foregoing reasons, the Exchange has not met its burden to demonstrate that it would be consistent with the Act for the Exchange to provide a priority advantage to one type of midpoint peg (RML Orders) over another type of midpoint peg (Eligible Midpoint Peg Orders). As a result, the Commission does not have sufficient information to find that the Exchange's proposal would promote just and equitable principles of trade and protect investors and the public interest, not permit unfair discrimination between customers, issuers, brokers, or dealers, and promote the maintenance of fair and orderly markets. Accordingly, the Commission must disapprove the proposal because the Exchange has not met its burden to demonstrate that the proposal is consistent with the Act, including Section 6(b)(5) and Section 11A of the Act.⁵⁰

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to

Section 19(b)(2) of the Act, that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Act.⁵¹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵² that the proposed rule change (SR-MEMX-2021-10), as modified by Amendment No. 1, is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022-10152 Filed 5-11-22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94863; File No. SR-MEMX-2022-11]

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

May 6, 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 April 29, 2022, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to 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

May 2, 2022. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) Adopt a new volume-based pricing incentive, referred to by the Exchange as the Step-Up Additive Rebate, in which a qualifying Member will receive an additive rebate for executions of certain orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange; (ii) reduce the rebate provided under Liquidity Provision Tier 1 for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange; and (iii) reduce the rebate provided under DLI Tier 2 for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange.

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.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities

⁴⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁵⁰ In disapproving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵¹ 15 U.S.C. 78f(b)(5).

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

⁴ Market share percentage calculated as of April 27, 2022. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 4% of the overall market share.⁵ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Adoption of Step-Up Additive Rebate

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 various volume-based tiers and incentives in which a Member may receive an enhanced or additive rebate for executions of Added Displayed Volume by achieving the specified volume criteria that corresponds to a particular tier/incentive. The Exchange now proposes to adopt a new volume-based incentive, referred to by the Exchange as the Step-Up Additive Rebate, in which the Exchange will provide an additive rebate of \$0.0002 per share for executions of certain orders that constitute Added Displayed Volume for a Member that qualifies for the Step-Up Additive Rebate by achieving a Step-Up ADAV (other than Retail Orders)⁶ from April 2022 of at

⁵ *Id.*

⁶ 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 “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV. 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. As proposed, Retail Orders that add volume are not included in the calculations of ADAV and Step-Up ADAV for

least 0.07% of the TCV.⁷ As proposed, a Member that qualifies for the Step-Up Additive Rebate will receive the additive rebate of \$0.0002 per share⁸ in addition to the rebate that is otherwise applicable (including a rebate provided under another pricing tier/incentive) for each of such Member’s executions of orders that constitute Added Displayed Volume, except: (i) Orders that establish the national best bid or offer (“NBBO”) if such Member qualifies for the Exchange’s NBBO Setter Tier;⁹ and (ii) and Retail Orders.¹⁰ The Exchange notes that the Step-Up Additive Rebate will not apply to executions of orders in securities priced below \$1.00 per share.

The Exchange believes that the proposed Step-Up Additive Rebate

purposes of determining whether a Member qualifies for the Step-Up Additive Rebate.

⁷ 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.

⁸ The proposed pricing for the Step-Up Additive Rebate is referred to by the Exchange on the Fee Schedule under the new description “Step-Up Additive Rebate” with a Fee Code of “X” to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier/incentive (including the Step-Up Additive Rebate) 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/incentive on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier/incentive pricing today.

⁹ The Exchange notes that a Member that qualifies for the Exchange’s NBBO Setter Tier currently receives an additive rebate of \$0.0003 per share for executions of Added Displayed Volume (other than Retail Orders) that establish the NBBO (“Setter Volume”). See the Exchange’s Fee Schedule. Because executions of Setter Volume already receive this relatively high additive rebate under the NBBO Setter Tier, the Exchange proposes that the Step-Up Additive Rebate would not apply to such transactions. Thus, as proposed, a Member that qualifies for the NBBO Setter Tier would continue to receive the additive rebate of \$0.0003 per share for executions of Setter Volume under the NBBO Setter Tier but would not also receive the additive rebate of \$0.0002 per share under the Step-Up Additive Rebate even if the Member qualifies for the Step-Up Additive Rebate.

¹⁰ The Exchange notes that it currently provides a rebate of \$0.0035 per share for executions of Retail Orders that constitute Added Displayed Volume, which is the highest base rebate (*i.e.*, excluding any enhanced and/or additive rebates resulting from pricing tiers/incentives) that the Exchange currently provides with respect to any type of transaction effected on the Exchange. Because the base rebate for this type of transaction is already high relative to other types of transactions, the Exchange proposes that the Step-Up Additive Rebate would not apply to such transactions. This is consistent with the Exchange’s application of the \$0.0003 per share additive rebate provided under NBBO Setter Tier, which also does not apply to executions of Retail Orders. See the Exchange’s Fee Schedule.

provides an incremental incentive for Members to strive for higher ADAV on the Exchange (above their ADAV in the month immediately preceding the effectiveness of this proposal—*i.e.*, April 2022) to receive the proposed additive rebate for qualifying executions of Added Displayed Volume. As such, the proposed Step-Up Additive Rebate is designed to incentivize Members that provide liquidity on the Exchange to increase their orders that add liquidity to the Exchange in order to qualify for the \$0.0002 per share additive rebate for qualifying executions of Added Displayed Volume, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed Step-Up Tier Additive Rebate is comparable to other volume-based incentives and discounts, which have been widely adopted by exchanges (including the Exchange), including pricing incentives that provide an enhanced rebate for firms that achieve a specified Step-Up ADAV threshold.¹¹

Reduced Rebate Under Liquidity Provision Tier 1

The Exchange also proposes to reduce the rebate provided under Liquidity Provision Tier 1 for executions of Added Displayed Volume from \$0.00325 per share to \$0.0032 per share.¹² The Exchange believes that the proposed rebate represents only a modest decrease from the current rebate provided under Liquidity Provision Tier 1 for executions of Added Displayed Volume. The purpose of reducing the enhanced rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 is for business and competitive reasons, as the

¹¹ See, *e.g.*, the Exchange’s Fee Schedule, which reflects enhanced rebates for executions of Added Displayed Volume for Members that qualify for the Liquidity Provision Tiers by achieving certain specified volume thresholds, including thresholds based on Step-Up ADAV; see also the Cboe BZX Exchange, Inc. equities trading fee schedule on its public website (available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/), which reflects enhanced rebates for executions of added displayed volume for firms that qualify for the “Step-Up Tiers” by achieving certain specified volume thresholds, including thresholds based on Step-Up ADAV.

¹² The proposed 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.

Exchange believes the reduction of 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 does not propose to change the required criteria for a Member to qualify for Liquidity Provision Tier 1 or the rebate provided under Liquidity Provision Tier 1 for executions of orders in securities priced below \$1.00 per share.

Reduced Rebate Under DLI Tier 2

Lastly, the Exchange proposes to reduce the rebate provided under DLI Tier 2 for executions of Added Displayed Volume from \$0.0031 per share to \$0.0030 per share.¹³ The Exchange believes that the proposed rebate represents only a modest decrease from the current rebate provided under DLI Tier 2 for executions of Added Displayed Volume. The Exchange does not propose to change the required criteria for a Member to qualify for DLI Tier 2 or the rebate provided under DLI Tier 2 for executions of orders in securities priced below \$1.00 per share.

The DLI Tiers are designed to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, generally, and in a targeted group of securities (*i.e.*, the DLI Target Securities), in particular, 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, including the DLI Target Securities specifically, and committing capital to support the execution of orders.¹⁴ The purpose of reducing the enhanced rebate for executions of Added Displayed Volume under DLI Tier 2 is for business and competitive reasons, as the Exchange believes the reduction of 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 and promoting the price discovery and market quality objectives of the DLI Tiers described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ 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."¹⁷

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to

direct additional orders that add liquidity to the Exchange, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants, as well as to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity.

As noted above, volume-based incentives and discounts have been widely adopted by exchanges (including the Exchange),¹⁸ 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 Step-Up Additive Rebate is comparable to other incentives currently offered by other exchanges, as well as the Exchange,¹⁹ and is reasonable, equitable and not unfairly discriminatory for these same reasons, as it provides Members with an additional incentive to achieve a certain volume threshold on the Exchange, is available to all Members and, as noted above, is designed to encourage Members to increase their orders that add liquidity on the Exchange in order to qualify for an additive rebate for qualifying executions of Added Displayed Volume, which, in turn, the Exchange believes would encourage the submission of additional Added Displayed Volume to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market to the benefit of all market participants. As such, the Exchange believes the proposed additive rebate for qualifying executions of Added Displayed Volume provided under the Step-Up Additive Rebate for qualifying Members is reasonably related to the market quality benefits that such incentive is designed to promote.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory for the \$0.0002 additive rebate provided under the Step-Up Additive Rebate to not apply to executions of Setter Volume or Retail Orders that constitute Added Displayed Volume, as such orders already receive

¹³ The proposed 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, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁴ See the Exchange's Fee Schedule for additional details regarding the Exchange's DLI Tiers and DLI Target Securities. 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).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁸ See *supra* note 11.

¹⁹ *Id.*

a relatively high additive rebate and base rebate, respectively.²⁰ However, the Exchange notes that the proposed Step-Up Additive Rebate will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other pricing tiers/incentives; should a Member not meet the required criteria, the Member will merely not receive the corresponding additive rebate.

The Exchange also believes that the proposed reduced rebates for executions of Added Displayed Volume provided under Liquidity Provision Tier 1 and DLI Tier 2 are reasonable and consistent with an equitable allocation of fees and rebates, in that the Exchange believes that each such reduced rebate represents only a modest decrease from the current rebate provided under the respective tier for executions of Added Displayed Volume (*i.e.*, from \$0.00325 per share to \$0.0032 per share under Liquidity Provision Tier 1 and from \$0.0031 per share to \$0.0030 per share under DLI Tier 2), and such changes are designed to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. The Exchange further believes that such proposed reduced rebates are equitably allocated and not unfairly discriminatory because they will continue to apply equally to all Members, in that all Members will continue to have the opportunity to achieve the required criteria under such tiers, which the Exchange is not proposing to modify with this proposal, and, in turn, qualify for an enhanced rebate for executions of Added Displayed Volume, and the more stringent criteria under the Liquidity Provision Tiers and the DLI Tiers would continue to correlate to, and remain commensurate with, the corresponding tier's higher rebate.

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 Act²¹ 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 orders that add liquidity to the Exchange, thereby deepening liquidity and promoting market quality on the Exchange to the benefit of all market participants, as well as to decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added displayed liquidity. 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."²²

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market 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. As described above, the opportunity to qualify for the proposed new Step-Up Additive Rebate, and thus receive the proposed additive rebate for qualifying executions of Added Displayed Volume, would be available to all Members that meet the associated volume requirement, and the Exchange

believes the proposed additive rebate provided under such incentive is reasonably related to the enhanced market quality that it is designed to promote. Additionally, as noted above, the proposed reduced rebates for executions of Added Displayed Volume under Liquidity Provision Tier 1 and DLI Tier 2 would continue to apply equally to all Members in the same manner that the rebates provided under such tiers currently do today, and the Exchange believes that each such reduced rebate represents only a modest decrease from the current rebate provided under the respective tier for executions of Added Displayed Volume. 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 executions of Added Displayed 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 with respect to its transaction pricing

²⁰ See *supra* notes 9 and 10.

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² See *supra* note 17.

and to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to volume-based incentives adopted by other exchanges and the Exchange.²³ 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 that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁴ 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’”²⁵ 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 Act²⁶ and Rule 19b-4(f)(2)²⁷ 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-2022-11 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-2022-11. 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-2022-11 and should be submitted on or before June 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-10148 Filed 5-11-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94862; File No. SR-CboeBYX-2022-016]

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

May 6, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2022, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX” or “BYX Equities”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its Fee Schedule. The text of

²³ See *supra* note 11.

²⁴ See *supra* note 17.

²⁵ *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)).

²⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷ 17 CFR 240.19b-4(f)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.