Executive Chairman. Finally, OCC believes the proposed changes to its Board Committee Charters would provide OCC's Board with appropriate flexibility to more quickly adjust the administrative reporting lines for, and oversight of the performance of, OCC's Internal Audit and Compliance functions and key OCC personnel, such as the CAE, CCO, and CRO, taking into account the specific qualifications, experience, competence, character, skills, incentives, integrity or other relevant attributes of Board members and senior officers at any given time. OCC believes the proposed change would provide an appropriate level of clarity and transparency regarding the limited set of officers to which the CAE, CCO, and CRO may report to for administrative purposes and the Board's responsibility for designating such reporting lines. The proposed changes to the Board Committee Charters would not alter the responsibilities of the Board generally or of any of its individual committees or committee members. These responsibilities would continue to be specified in each of the Board Committee Charters. As a result, OCC believes the proposed rule change is reasonably designed to provide for governance arrangements that remain clear and transparent and specify clear and direct lines of responsibility in accordance with Rule 17Ad–22(e)(2)(i) and (v).[25]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act[26] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would have any impact or impose any burden on competition. The proposed rule change would provide OCC's Board with the discretion to elect either an Executive Chairman or a Non-Executive Chairman to preside over the Board and would clarify the roles and responsibilities of an Executive versus a Non-Executive Chairman. The proposed rule change would also make changes to OCC's Board and Board Committee Charters regarding the Board's oversight of the Chairman and other senior officers of OCC. The proposed rule change would not inhibit access to OCC's services or disadvantage of favor any user in relationship to another. As a result, OCC believes the proposed rule change would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–OCC–2021–007 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–OCC–2021–007. 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2021–007 and should be submitted on or before September 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17088 Filed 8–10–21; 8:45 am]

BILLING CODE 8011–01–P

[25] *Id.*

[26] 15 U.S.C. 78q–1(b)(3)(I).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92579; File No. SR–MEMX–2021–09]

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

August 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2021, 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.

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

[2] 17 CFR 240.19b–4.

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 August 2, 2021. 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 Liquidity Removal Tier applicable to the fees charged for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''); (ii) increase the standard fee for executions of Removed Volume; and (iii) allow affiliated Members to aggregate their volume for purposes of the Exchange's pricing tiers with prior notice to the Exchange.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 16% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[6]

Adoption of Liquidity Removal Tier

The Exchange is proposing to introduce a tiered pricing structure applicable to the fees charged for executions of Removed Volume, which is similar to the Exchange's existing tiered pricing structure applicable to the rebates provided for executions of displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange (''Added Displayed Volume'').[7] Specifically, the Exchange proposes to adopt a new volume-based tier, referred to by the Exchange as the Liquidity Removal Tier, in which the Exchange will charge a fee that is lower than the standard fee for executions of Removed Volume for Members that meet at least one of two specified volume thresholds on the Exchange, as described below.

Currently, the Exchange charges a standard fee of $0.00265 per share for all executions of Removed Volume, which the Exchange is proposing to increase to $0.0028, as further described below. The Exchange now proposes to adopt the Liquidity Removal Tier in which it will charge a lower fee of $0.00265 per share for executions of Removed Volume for Members that qualify for the Liquidity Removal Tier by achieving: (1) A Step-Up ADAV [8] from July 2021 that is equal to or greater than 0.05% of the TCV; [9] or (2) an ADV [10] that is equal to or greater than 0.30% of the TCV.[11] As proposed, ADV and Step-Up ADAV will be calculated on a monthly basis, and Members that qualify for the Liquidity Removal Tier by achieving at least one of the Step-Up ADAV or ADV thresholds specified above in a particular month will be charged the proposed lower fee of $0.00265 per share, instead of the proposed standard fee of $0.0028 per share, for all executions of Removed Volume in that month.

The Exchange proposes to charge Members that qualify for the Liquidity Removal Tier a fee of 0.05% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share, which is the same fee that would be applicable to such executions for Members that do not qualify for the Liquidity Removal Tier. Thus, as under the Exchange's current pricing, the same fee would be charged to all Members for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share.

The Exchange proposes to add definitions of the terms ADV, Step-Up ADAV, and TCV, which are consistent with the definitions of those terms above, under a new ''Definitions'' section of the Fee Schedule in connection with the proposed Liquidity Removal Tier.[12] The Exchange notes that the proposed definitions of ADV, Step-Up ADAV, and TCV are substantially similar to the definitions of those terms used by other exchanges on their fee schedules in connection with similar volume-based pricing tiers.[13] Additionally, like the Exchange

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

[4] The Exchange initially filed the proposed Fee Schedule changes on July 30, 2021 (SR–MEMX–2021–08). On August 2, 2021, the Exchange withdrew that filing and submitted this proposal.

[5] Market share percentage calculated as of July 30, 2021. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

[7] The Exchange currently provides an enhanced rebate for executions of Added Displayed Volume to Members that meet a specified volume threshold under the Exchange's Liquidity Provision Tier. *See* Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR–MEMX–2021–07).

[8] As proposed, the term ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV. As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

[9] As proposed, the term ''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.

[10] As proposed, the term ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day.

[11] This proposed pricing is referred to by the Exchange on the Fee Schedule under the new description ''Removed volume, Liquidity Removal Tier'' 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 the Liquidity Removal Tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Code otherwise applicable to such transactions (*i.e.,* ''R'') on the execution reports provided to Members during the month and will only designate the Fee Code of ''R1'' on the monthly invoices, which are provided after such determination has been made.

[12] The Exchange also proposes to relocate the definition of ''ADAV'' from the ''Notes'' section to the proposed new ''Definitions'' section of the Fee Schedule for organization purposes.

[13] *See, e.g.,* 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/*); the Cboe BZX Exchange, Inc. (''Cboe BZX'') equities trading fee schedule on its public website (available at

Continued

currently does with respect to its calculation of ADAV and for purposes of determining qualification for the Exchange's Displayed Liquidity Incentive, the Exchange proposes to exclude from its calculations of ADV and TCV: (1) Any trading day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption Days''); and (2) the day that Russell Investments reconstitutes its family of indexes (the ''Russell Reconstitution Day'').[14] The Exchange also proposes to specify on the Fee Schedule that routed shares are not included in the calculation of ADAV or ADV.[15]

The Exchange believes that the proposed Liquidity Removal Tier provides an incremental incentive for Members to strive for higher ADAV on the Exchange and/or maintain or strive for higher ADV on the Exchange in order to qualify for the proposed lower fee for executions of Removed Volume. As such, the proposed Liquidity Removal Tier is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby 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 lower fee for executions of Removed Volume applicable to Members that qualify for the Liquidity Removal Tier (*i.e.,* $0.00265 per share) is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.[16]

Increased Standard Fee for Removed Volume

In connection with the proposed adoption of the Liquidity Removal Tier, the Exchange also proposes to increase the standard fee charged for executions Removed Volume. Currently, the Exchange charges a standard fee of $0.00265 per share for executions of Removed Volume. The Exchange now proposes to increase the standard fee charged for executions of Removed Volume to $0.0028 per share.[17] The Exchange notes that Members would still be able to pay a fee of $0.00265 per share for executions of Removed Volume by qualifying for the proposed Liquidity Removal Tier, as described above.

The purpose of increasing the standard fee for executions of Removed Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest increase proposed herein, the Exchange's standard fee for executions of Removed Volume remains lower than, and competitive with, the standard fee to remove liquidity in securities priced at or above $1.00 per share charged by several other exchanges.[18]

Allow Members To Aggregate Volume for Pricing Tiers

Lastly, the Exchange proposes to add a note to the Fee Schedule to allow affiliated Members to aggregate their volume for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers if such Members provide prior notice to the Exchange. Specifically, to the extent that two or more affiliated companies maintain separate memberships with the Exchange and can demonstrate their affiliation by showing they control, are controlled by, or are under common control with each other, the Exchange would permit such Members to count aggregate volume of such affiliates in calculating ADAV and ADV. As proposed, the Exchange will verify such affiliation using a Member's Form BD, which lists control affiliates. The purpose of this proposed change is to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate volume in calculating ADAV and ADV would produce the same result for purposes of the Exchange's volume-based tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. The Exchange notes that this proposed change is consistent with the practice of other exchanges with respect to the aggregation of affiliated member firms' volume for purposes of ADAV and ADV calculations with respect to pricing tiers.[19]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[21] 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,

https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/).

[14] The Exchange notes that excluding such days from the calculations of ADV and TCV is also consistent with the practice of other exchanges when calculating ADV and TCV. *See id.*

[15] The Exchange currently excludes routed shares in the calculation of ADAV so this proposed change is clarifying this practice and also adopting it for the calculation of ADV. The Exchange notes that excluding routed shares from the calculations of ADAV and ADV is also consistent with the practice of other exchanges when calculating ADAV and ADV. *See, e.g.,* the Cboe BZX equities trading fee schedule on its public website (available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*).

[16] *See* the Cboe EDGX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/feeschedule/edgx/*), which reflects fees charged under ''Remove Volume Tiers''—tiers based on a member achieving certain step-up ADAV and ADV volume thresholds—ranging from $0.0027 to $0.00275 per share for removing volume from the Cboe EDGX exchange.

[17] This proposed pricing is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book'' and such orders will continue to receive a Fee Code of ''R'' assigned by the Exchange.

[18] *See, e.g.,* the Cboe BZX equities trading fee schedule on its public website (available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*), which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share; the Cboe EDGX equities trading fee schedule on its public website (available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/*), which reflects a standard fee of $0.00285 per share to remove liquidity in securities priced at or above $1.00 per share; the Nasdaq Price List—Trading Connectivity (available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard fee of $0.0030 per share to remove liquidity in securities priced at or above $1.00 per share.

[19] *See supra* note 13.

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(4) and (5).

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.'' [22]

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 their order flow to the Exchange, which the Exchange believes would enhance liquidity and market quality to the benefit of all Members and market participants.

Adoption of Liquidity Removal Tier

The Exchange believes that the proposed Liquidity Removal Tier is reasonable because it would provide Members with an additional incentive to achieve certain volume thresholds on the Exchange. Volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange,[23] and are equitable and not unfairly discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns and the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes the proposed Liquidity Removal Tier is equitable and not unfairly discriminatory for these same reasons, as it is open to all Members and is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby 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. Moreover, the Exchange believes the proposed Liquidity Removal Tier is a reasonable means to incentivize such increased activity, as it provides two different types of volume thresholds that Members may choose to achieve in order to receive the proposed lower fee for executions of Removed Volume—a Step-Up ADAV threshold, which can be met by a Member increasing their liquidity-adding volume on the Exchange (*i.e.,* ADAV) by at least the specified threshold above their July 2021 ADAV, and an ADV threshold, which can be met by a Member maintaining or increasing their overall (*i.e.,* liquidity-adding and liquidity-removing) volume executed on the Exchange to an amount equal to or greater than the specified TCV threshold. Thus, Members that do not increase their ADAV above their July 2021 ADAV by at least 0.05% of the TCV could still qualify for the Liquidity Removal Tier by maintaining or increasing their ADV at or above 0.30% of the TCV, and vice versa.

Additionally, the Exchange believes the proposed lower fee for executions of Removed Volume for qualifying Members (*i.e.,* $0.00265 per share) is reasonable, in that it represents only a modest decrease from the proposed standard fee for such executions (*i.e.,* $0.0028 per share) and is the same as the current standard fee for such executions. The Exchange believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to charge such lower fee for executions of Removed Volume to Members that qualify for the Liquidity Removal Tier in comparison with the standard fee in recognition of the benefits that such Members provide to the Exchange and market participants, as described above, particularly as the magnitude of the lower fee is not unreasonably high and is, instead, reasonably related to the enhanced market quality it is designed to achieve. Further, as noted above, competing exchanges offer tiered pricing structures similar to the proposed Liquidity Removal Tier, including schedules of rebates and fees that apply based upon Members achieving certain volume and/or growth thresholds, and the Exchange believes the proposed Liquidity Removal Tier's criteria are reasonable when compared to such tiers provided for by other exchanges. For example, Cboe EDGX charges lower fees for removing volume from the Cboe EDGX exchange under its ''Remove Volume Tiers'' ranging from $0.0027 to $0.00275 per share, as compared to its standard fee of $0.00285 per share, but requires different, but similar, criteria than the Exchange's proposed Liquidity Removal Tier, which are also based upon a member's volume and/or growth patterns.[24]

The Exchange further believes that it is reasonable, consistent with an equitable allocation of fees, and not unfairly discriminatory to charge Members that qualify for the Liquidity Removal Tier a fee of 0.05% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below $1.00 per share, as this is the same fee that would be applicable to such executions for all Members (*i.e.,* including those that do not qualify for the Liquidity Removal Tier), which is also the case under the Exchange's current pricing.

The Exchange also believes the proposed Liquidity Removal Tier is fair, equitable, and not unfairly discriminatory because it is available to all Members. Further, the proposed Liquidity Removal Tier would provide a way for Members to continue to pay the same fee they currently do for executions of Removed Volume (*i.e.,* $0.00265 per share) even though the Exchange is proposing to increase the standard fee to $0.0028 per share. Additionally, as noted above, such fee is comparable to the fees charged for executions of liquidity-removing orders charged by Cboe EDGX under similar volume-based tiers.[25]

The Exchange believes that adding the proposed definitions for the terms ADV, Step-Up ADAV, and TCV, as well as relocating the definition of ADAV, under a new ''Definitions'' section of the Fee Schedule is reasonable, equitable, and non-discriminatory because such definitions are substantially similar to the definitions of such terms used by other exchanges in connection with similar volume-based pricing tiers, as described above,[26] and their placement on the Fee Schedule is designed to ensure that the Fee Schedule is as clear and understandable as possible with respect to applicable pricing. Similarly, the Exchange believes that adding notes on the Fee Schedule specifying that routed shares are not included in the calculation of ADAV or ADV and that Exchange System Disruption Days and the Russell Reconstitution Day are excluded from the calculations of ADV and TCV is reasonable, equitable, and

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

[23] *See supra* note 7.

[24] *See* the Cboe EDGX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*).

[25] *Id.*

[26] *See supra* note 13.

non-discriminatory as such notes are intended to clarify the Exchange's calculation practices with respect to its volume-based pricing tiers, and such practices are consistent with the practices of other exchanges in this regard.[27]

Increased Standard Fee for Removed Volume

The Exchange believes that the proposed change to increase the standard fee for executions of Removed Volume is reasonable, equitable, and consistent with the Act because such change is designed to generate additional revenue and decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the various rebates provided by the Exchange for liquidity-adding orders and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, as described above. The Exchange also believes the proposed increased standard fee for executions of Removed Volume is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains lower than, and competitive with, the standard fee charged by several other exchanges to remove liquidity in securities priced at or above $1.00 per share.[28] The Exchange further believes that the proposed increased standard fee for executions of Removed Volume is equitably allocated and not unfairly discriminatory because it will apply equally to all Members.

Allow Members To Aggregate Volume for Pricing Tiers

As noted above, the proposed language permitting aggregation of volume amongst affiliated Members for purposes of the ADAV and ADV calculations is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, as allowing affiliated Member firms to count their aggregate volume in calculating ADAV and ADV would produce the same result for purposes of the Exchange's volume-based tier pricing as if such affiliated Member firms were instead organized as a single corporate entity. By way of example, subject to appropriate information barriers, many firms that are Members of the Exchange operate both a market making desk and a public customer business within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange. Absent the proposed policy, such corporate affiliates would not receive the same treatment as firms operating similar business lines within a single entity that is a Member of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory. In addition to ensuring fair and equal treatment of its Members, the Exchange does not want to create incentives for its Members to restructure their business operations or compliance functions simply due to the Exchange's pricing structure. Moreover, as noted above, this proposed policy is consistent with the practice of other exchanges with respect to the aggregation of affiliated Members' volume for purposes of determining ADAV and ADV with respect to pricing tiers.[29]

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 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 encourage Members to maintain or increase their order flow on the Exchange, thereby 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. 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.'' [30]

Intramarket Competition

The Exchange believes that the proposal would incentivize Members to maintain or increase their order flow on the Exchange, thereby 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, 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 Liquidity Removal Tier, and thus receive the proposed lower fee for executions of Removed Volume, would be available to all Members that meet the associated volume requirement in any month. The Exchange believes that meeting the volume requirement of the Liquidity Removal Tier is attainable for several market participants, as Members must meet only one of two different types of volume thresholds, as described above, and the Exchange believes such thresholds are relatively low and reasonably related to the enhanced liquidity and market quality that the Liquidity Removal Tier is designed to promote. Similarly, the proposed increased standard fee for executions of Removed Volume and the ability for Members to aggregate volume amongst affiliated Member firms for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers would apply equally to all Members. As such, 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

[27] *See supra* notes 14–15.

[28] *See supra* note 18.

[29] *See supra* note 13.

[30] *See supra* note 22.

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 Removed 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 Liquidity Removal Tier and the proposed increased standard fee for executions of Removed Volume are competitive proposals through which the Exchange is seeking to encourage additional order flow to be sent to the Exchange and generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure and its operations generally, and such proposed rates applicable to executions of Removed Volume are comparable to, and competitive with, rates charged by other exchanges.[31] As noted above, the proposed rate applicable to executions of orders in securities priced at or above $1.00 per share for Members that qualify for the Liquidity Removal Tier would be the same rate applicable to such executions for all Members, as is the case under the Exchange's current pricing. Additionally, the proposed change to allow affiliated Members to aggregate their volume for purposes of the Exchange's determination of ADAV and ADV with respect to pricing tiers is designed to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity, which is consistent with the practice of other exchanges, as discussed above.[32] 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 volume-based incentives and pricing with respect to executions of Removed Volume and volume aggregation amongst affiliates with respect to pricing tiers.

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.'' [33] 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'. . . .''.[34] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [35] and Rule 19b–4(f)(2) [36] 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–2021–09 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–2021–09. 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

[31] *See supra* notes 18 and 24.

[32] *See supra* note 13.

[33] *See supra* note 22.

[34] *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)).

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 240.19b–4(f)(2).

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–2021–09 and should be submitted on or before September 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17085 Filed 8–10–21; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92583; File No. SR–NYSEArca–2021–52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

August 5, 2021.

I. Introduction

On June 14, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEArca–2021–52) to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 6, 2021.[5] The Commission received no comment letters regarding the proposed rule change. Pursuant to Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (1) Temporarily suspending File No. SR–NYSEArca–2021–52; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEArca–2021–52.

II. Description of the Proposed Rule Change

The Exchange proposes to establish a new category of Retail Order executions for purposes of the Fee Schedule. Specifically, the Exchange proposes that no fees or credits would apply for Retail Order executions that are denoted ''internalized'' executions under certain circumstances.[7] The Exchange proposes that no fees will be charged nor credits paid for Retail Orders where (i) each side of the executed order shares the same MPID, (ii) each side of the executed order is a Retail Order with a time-in-force of Day, and (iii) the above executed orders have an Average Daily Volume (''ADV'') of at least 150,000 shares.

Prior to the proposed rule change, Retail Orders that were internalized [8] on the Exchange were not identified in the Fee Schedule and were treated the like other Retail Orders, regardless of whether they were internalized executions, and regardless of ADV. Specifically, the Exchange provides a credit ranging from $0.0035 to $0.0038, depending on the step-up tier, to Retail Orders that provide liquidity, and charges no fee for Retail Orders that remove liquidity. Therefore, the proposal carves out a particular group of Retail Orders—internalized orders when such orders have an ADV of at least 150,000 shares—and eliminates the credits for those Retail Orders that provide liquidity. ETP Holders with an ADV under 150,000 of internalized Retail Orders would continue to receive the relevant credit for Retail Orders that provide liquidity.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[9] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[10] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[11] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [12]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [13] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [14] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[15]

In justifying its proposal, the Exchange stated in its filing that its proposal is reasonable because it ''is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.'' [16] The Exchange also states that the proposal is an equitable allocation of fees and credits because ''all ETP Holder that participate on the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92291 (June 29, 2021), 86 FR 35551 (July 6, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] 15 U.S.C. 78s(b)(3)(C).

[7] The Exchange defines internalized executions as an execution where two orders presented to the Exchange from the same ETP Holder (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. *See* Notice, *supra* note 3, at 35552 note 13.

[8] *See id.*

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 15 U.S.C. 78s(b)(1).

[11] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[12] *See id.*

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] *See* Notice, *supra* note 3, at 35552.