to request a hearing and petition to intervene.[2] In addition, Ms. Hadden raised several concerns regarding the conduct of the NRC Staff's public meeting held in January 2023. Given the barriers to participation during the public meeting articulated by the requestor, I refer these concerns, as well as associated requests to extend the environmental scoping comment period, to the NRC Staff for its review and response, consistent with my earlier order in this matter.[3]

Pursuant to the authority delegated to me by the Commission on February 3, 2023, I extend the deadline for all persons to file a hearing request until March 1, 2023. Petitions to intervene and requests for hearing should be filed consistent with the Supplementary Information section of the Hearing Notice.[4]

It is so ordered.

For the Commission.

Dated at Rockville, Maryland, this 6th day of February 2023.

Brooke P. Clark,

Secretary of the Commission.

[FR Doc. 2023–02784 Filed 2–8–23; 8:45 am]

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[2] Email from Karen Hadden to Hearing Docket, NRC (Jan. 30, 2023).

[3] Order (Granting Requests for Extension of Time) (Jan. 30, 2023) (unpublished) (referring similar concerns to the NRC Staff).

[4] *See* Hearing Notice, 87 FR at 73,799–73,800 (Dec. 1, 2022).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96802; File No. SR–MEMX–2023–03]

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

February 3, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on February 1, 2023. 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 new pricing for executions of orders subject to the Exchange's Display-Price Sliding[4] that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed; (ii) adopt a new tier under the Liquidity Provision Tiers; and (iii) modify the required criteria under the Sub-Dollar Rebate Tier.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[6] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Orders Subject to Display-Price Sliding

The Exchange currently provides a base 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 provides a base rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Sub-Dollar Volume'').

The Exchange is now proposing to adopt new pricing for executions of orders subject to Display-Price Sliding that add liquidity to the Exchange and receive price improvement over the order's ranked price when executed (such orders ''Added Price-Improved Volume''). Specifically, the Exchange proposes to provide a base rebate of $0.0015 per share for executions of Added Price-Improved Volume in securities priced at or above $1.00 per share, and the Exchange proposes to provide free executions of Added Price-Improved Volume in securities priced below $1.00 per share.[7] Thus, the

[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(j)(1)(A).

[5] Market share percentage calculated as of January 30, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

[7] The proposed pricing for executions of Added Price-Improved Volume is referred to by the

proposed changes would reduce the base rebates provided for executions of Added Price-Improved Volume. Additionally, as proposed, such orders would be subject to the Exchange's Non-Display Add Tiers such that a Member that qualifies for a Non-Display Add Tier would receive the rebates provided under such tier that are applicable to executions of orders that add non-displayed liquidity to the Exchange with respect to its executions of Added Price-Improved Volume.[8]

Pursuant to the Exchange's Display-Price Sliding functionality, an order that would lock or cross a protected quotation is ranked on the Exchange's order book at the locking price and displayed at one minimum price variation less aggressive than the locking price.[9] For bids, this means that a price slid order is displayed at one minimum price variation less than the current national best offer, and for offers, this means that a price slid order is displayed at one minimum price variation more than the current national best bid. Additionally, Exchange Rule 11.10(a)(4)(D) allows an order subject to the Display-Price Sliding process that is not executable at its most aggressive price to be executed at one-half minimum price variation less aggressive than the price at which it is ranked. Specifically, in the event an order submitted to the Exchange on the side opposite such a price slid order is a market order or a limit order priced more aggressively than an order displayed on the Exchange's order book (*i.e.,* the incoming order is priced more aggressive than the locking price), the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order.

Based on this functionality, orders executed as described above will receive price improvement over the price at which such orders are ranked. Because price slid orders subject to the order handling process described above will receive price improvement, the Exchange is proposing to provide a lower rebate than the current applicable base rebate for such executions (*i.e.,* $0.0015 per share for executions of Added Price-Improved Volume in securities priced at or above $1.00 per share rather than the base rebate of $0.0020 per share that such executions receive today, and free executions of Added Price-Improved Volume in securities priced below $1.00 per share rather than the base rebate of 0.075% of the total dollar value of the transaction that such executions receive today). The proposed changes are for business and competitive reasons, as the Exchange believes that such reductions in rebates would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, and Exchange believes that the proposed lower base rebates for such executions are appropriate because such executions also receive price improvement, which offsets (at least in part) the reduction in the applicable rebate, as described above. Further, the Exchange notes that other maker-taker equity exchanges also provide lower rebates (such as free executions) for executions of orders subject to similar price sliding functionality that add liquidity and receive price improvement when executed than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[10]

The Exchange is also proposing to amend the definitions of Displayed ADAV[11] and Non-Displayed ADAV[12] on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used by the Exchange for volume tier purposes.

New Liquidity Provision Tier

As noted above, the Exchange currently provides a base 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 (*i.e.,* Added Displayed Volume). The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to adopt a new tier under the Liquidity Provision Tiers, which, as proposed, would be the new Liquidity Provision Tier 2, and the existing Liquidity Provision Tiers 2–5 would be renumbered as Liquidity Provision Tiers 3–6 (hereinafter referred to as such). The rebates and required criteria under Liquidity Provision Tiers 1, 3, 4, 5 and 6 would remain unchanged.

Under the proposed new Liquidity Provision Tier 2, the Exchange would provide an enhanced rebate of $0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.25% of the TCV;[13] and (2) a Non-Displayed ADAV that is equal to or greater than 5,000,000 shares.[14] The

Exchange on the Fee Schedule under the new description ''Added volume, order subject to Display-Price Sliding that receives price improvement when executed'' and such orders will receive a Fee Code of ''P'' assigned by the Exchange. The Exchange notes that it will append a second character, either ''A'' or ''B'' to indicate whether the execution occurred in a security priced at or above $1.00 per share or below $1.00 per share, which is consistent with the Fee Code format used by the Exchange today.

[8] Executions of Added Price-Improved Volume for Members that qualify for the Non-Display Add Tiers will receive a Fee Code of ''P1'', ''P2'' or ''P3'', as applicable, for such executions on the monthly invoices provided to Members.

[9] *See* Exchange Rule 11.6(j)(1)(A).

[10] *See* the Cboe BZX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*), which provides for free executions of any displayed order subject to price sliding that receives price improvement; the Cboe EDGX equities trading fee schedule on its public website (available at *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/*), which provides for free executions of any displayed order subject to price sliding that receives price improvement. *See also* Securities Exchange Act Release No. 65407 (September 27, 2011), 76 FR 61127 (October 3, 2011) (SR–BATS–2011–037) (notice of filing and immediate effectiveness of fee changes adopted by BATS, including the discontinuation of a liquidity rebate for any order subject to price sliding that adds liquidity and receives price improvement over its ranked price when executed).

[11] As set forth on the Fee Schedule, ''Displayed ADAV'' currently means ADAV with respect to displayed orders, and ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis. As proposed, ''Displayed ADAV'' would mean ADAV with respect to displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed).

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

[13] 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.

[14] The proposed pricing for new Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the description ''Added displayed volume, Liquidity Provision Tier 2'' with

Continued

Exchange proposes to provide Members that qualify for the proposed new Liquidity Provision Tier 2 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 is applicable to such executions under each of the existing Liquidity Provision Tiers. The proposed new Liquidity Provision Tier 2 is designed to encourage Members to maintain or increase their order flow that adds liquidity, including in the form of non-displayed orders, to the Exchange in order to qualify for the proposed enhanced rebate for executions of Added Displayed Volume, which, in turn, would encourage the submission of additional displayed orders, thereby promoting price discovery and contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

Sub-Dollar Rebate Tier

As noted above, the Exchange currently provides a base rebate of 0.075% of the total dollar value of the transaction for executions of orders in securities priced below $1.00 per share that add displayed liquidity to the Exchange (*i.e.,* Added Displayed Sub-Dollar Volume). The Exchange also currently offers the Sub-Dollar Rebate Tier under which the Exchange provides an enhanced rebate of 0.15% of the total dollar value of the transaction for executions of Added Displayed Sub-Dollar Volume for Members that qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the TCV. Now, the Exchange proposes to modify the required criteria under the Sub-Dollar Rebate Tier 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 0.15% of the TCV; or (2) a Sub-Dollar ADAV [15] that is equal to or greater than 5,000,000 shares. Thus, such proposed change would keep the existing ADAV threshold intact and also provide an alternative volume threshold that a Member may choose to achieve in order to qualify for the Sub-Dollar Rebate Tier that is based on the Member's Sub-Dollar ADAV, which is designed to encourage Members to maintain or increase their orders in securities priced below $1.00 per share that add liquidity to the Exchange. The Exchange is not proposing to modify the pricing associated with the Sub-Dollar Rebate Tier.

The Exchange believes that the Sub-Dollar Rebate Tier, as modified, would encourage the submission of orders in securities priced below $1.00 per share that add liquidity to the Exchange, as it provides an alternative threshold based on Sub-Dollar ADAV that Members may choose to achieve, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange notes that the Sub-Dollar Rebate Tier, as modified, would continue to be available to all Members and, 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 qualify, or strive to qualify, for such tier than currently do under the proposed new criteria, as it is more expansive and provides an alternative threshold that Members may choose to achieve.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[17] 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.'' [18]

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

With respect to the proposed pricing changes related to Added Price-Improved Volume, the Exchange believes that providing a lower base rebate for executions of such orders in securities priced at or above $1.00 per share and free executions for such orders in securities priced below $1.00 per share is reasonable, equitable, and not unfairly discriminatory because, as described above, the reduction in rebates would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity, the price improvement received by such executions offsets (at least in part) the change in the rebate structure for such orders, and the pricing structure will apply uniformly to all Members. Additionally, as noted above, the proposed pricing structure for executions of Added Price-Improved Volume is comparable to the pricing structures of other maker-taker equity exchanges, which also provide lower

a Fee Code of ''B2'', ''D2'' or ''J2'', 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.

[15] As proposed, the term ''Sub-Dollar ADAV'' means ADAV with respect to orders in securities priced below $1.00 per share. The Exchange proposes to add the definition of Sub-Dollar ADAV under the ''Definitions'' section of the Fee Schedule.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4) and (5).

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

rebates (such as free executions) for executions of Added Price-Improved Volume than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[19] Therefore, this aspect of the proposal does not raise any new or novel issues that have not previously been considered by the Commission. Additionally, the Exchange believes that including executions of Added Price-Improved Volume in the executions that receive enhanced rebates for Members that qualify for a Non-Display Add Tier is reasonable, equitable, and not unfairly discriminatory because such orders are executed at a price that is not displayed (*i.e.,* one-half minimum price variation less aggressive than the locking price), and therefore such orders are comparable to other non-displayed orders that receive enhanced rebates under such tiers, this pricing structure would apply uniformly to all Members, and the opportunity to qualify for the Non-Display Add Tiers is available to all Members.

The Exchange also believes the proposal to amend the definitions of Displayed ADAV and Non-Displayed ADAV on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used for volume tier purposes, is reasonable, equitable, and not unfairly discriminatory in that such calculations will be made accordingly and in a uniform manner by the Exchange with respect to all Members. In addition, the Exchange believes that the proposed approach is reasonable and equitable because orders subject to Display-Price Sliding are, in fact, displayed on the Exchange and thus contribute to price discovery and other benefits to the Exchange and the market generally, but also can be executed at prices not displayed on the Exchange, as described above.

With respect to the proposed new Liquidity Provision Tier 2, the Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or 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 2 is reasonable, equitable and not unfairly discriminatory for these same reasons, as such tier would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, is available to all Members on an equal basis, and, as described above, is designed to encourage Members to maintain or increase their order flow, including in the form of non-displayed orders, to the Exchange in order to qualify for the corresponding enhanced rebate for executions of Added Displayed Volume, thereby promoting price discovery and contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the Sub-Dollar Rebate Tier, as modified by the proposed change to the required criteria under such tier, is reasonable, equitable and not unfairly discriminatory for the reasons described above with respect to volume-based tiers, particularly as the Exchange believes the enhanced rebate for executions of Added Displayed Sub-Dollar Volume under such tier remains commensurate with the corresponding required criteria under the applicable tier and reasonably related to the market quality benefits that such tier is designed to achieve. Additionally, the Exchange believes the proposed change to the required criteria under the Sub-Dollar Rebate Tier is reasonable because, as noted above, such change would keep the existing ADAV threshold intact and also provide an alternative criteria that a Member may choose to achieve that is based on a Sub-Dollar ADAV threshold, which would incentivize the submission of additional orders in securities priced below $1.00 per share to the Exchange, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes the proposed new criteria is equitable and not unfairly discriminatory because all Members will continue to be eligible to meet such criteria, including the Members that currently meet the existing ADAV threshold that is not changing. Further, as noted above, 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 qualify, or strive to qualify, for such tier under the proposed new criteria, which is more expansive.

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[20] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

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

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow, including in the form of non-displayed orders and orders in securities priced below $1.00 per share, to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members. 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."[21]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including in the form of non-displayed orders and orders in securities priced below $1.00 per share, 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

[19] *See supra* note 10.

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See supra* note 18.

encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes to the pricing for executions of Added Price-Improved Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the proposed based rebates for such executions would be the base rebates applicable to all Members, and the opportunity to qualify for the Non-Display Add Tiers, and thus receive an enhanced rebate for executions of Added Price-Improved Volume along with other non-displayed orders in securities priced at or above $1.00 per share that add liquidity to the Exchange, is available to all Members. The Exchange does not believe its proposal to amend the definitions of Displayed ADAV and Non-Displayed ADAV on the Fee Schedule to state that orders subject to Display-Price Sliding that receive price improvement when executed (*i.e.,* Added Price-Improved Volume) are included in both calculations, which are used for volume tier purposes, would impose any burden intramarket competition, as such calculations will be made in a uniform manner by the Exchange with respect to all Members. The opportunity to qualify for the proposed new Liquidity Provision Tier 2 and the proposed new criteria under the Sub-Dollar Rebate, and thus receive the corresponding enhanced rebates for executions of Added Displayed Volume and Added Displayed Sub-Dollar Volume, respectively, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to executions of Added Displayed Volume, Added Displayed Sub-Dollar Volume and Added Price-Improved 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 through lower base rebates for executions of Added Price-Improved Volume and encourage additional, diverse types of order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Additionally, as discussed above, the proposed pricing structure for executions of Added Price-Improved Volume is comparable to that of other maker-taker equity exchanges, which also provide lower rebates (such as free executions) for such executions than for executions of other orders that add liquidity due to the fact that the price slid orders receive price improvement.[22] Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] 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'. . . .''.[24] 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 [25] and Rule 19b–4(f)(2) [26] 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

[22] *See supra* note 10.

[23] *See supra* note 18.

[24] *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)).

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

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–2023–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2023–03. 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–2023–03 and should be submitted on or before March 2, 2023.

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

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96803; File No. SR–NYSE–2023–10]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

February 3, 2023.

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 January 30, 2023, 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 and II below, which Items have been prepared by the self-regulatory organization. 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 proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from January 31, 2023 to April 30, 2023 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID–19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in

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[27] 17 CFR 200.30–3(a)(12).

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

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

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).