

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90076; File No. SR-MEMX-2020-10)

October 2, 2020

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt the Initial Fee Schedule and Other Fees for MEMX LLC

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 September 21, 2020, 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 adopt (i) the initial fees and rebates applicable to Members³ of the Exchange pursuant to Exchange Rule 15.1(a) and (c), and (ii) regulatory fees related to the Central Registration Depository (“CRD system”), which will be collected by the Financial Industry Regulatory Authority, Inc. (“FINRA”) as set forth in proposed Rule 15.1(e). 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

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 Exchange proposes to implement a fee schedule (the “Fee Schedule”) applicable to use of the Exchange. The Exchange will commence operations as a national securities exchange on September 21, 2020, and thus, proposes the fees to be effective as of the date of this filing.

The Exchange first notes that upon launch it will operate 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 will be only one of several equities 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 18% of total market share.⁴ 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 as it commences operations the Exchange anticipates representing a small percentage of the overall market.

Transaction Fees

Below is a description of the fees and rebates that the Exchange intends to impose under the initial proposed Fee Schedule, which will be applicable to transactions executed in all trading sessions. Under the proposed Fee Schedule, the Exchange will operate a “Maker-Taker” model

⁴ Market share percentage calculated as of September 17, 2020. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

whereby it provides rebates to Members that provide liquidity and charges fees to those that remove liquidity, as further described below. The Exchange does not initially propose to charge different fees or provide different rebates depending on the amount of orders submitted to, and/or transactions executed on or through, the Exchange. Accordingly, all fees and rebates described below are applicable to all Members, regardless of the overall volume of a Member's trading activities on the Exchange.

(A) Standard Fee for Removed Volume

The Exchange proposes to charge a standard fee of \$0.0025 per share for executions of orders that remove liquidity from the MEMX Book⁵ ("Removed Volume") in all securities traded on the Exchange priced at or above \$1.00 per share.⁶

(B) Standard Rebate for Added Displayed Volume

The Exchange proposes to provide a standard rebate of \$0.0029 per share for executions of orders that: (i) are displayed on the MEMX Book and (ii) add liquidity to the Exchange ("Added Displayed Volume"), in all securities traded on the Exchange priced at or above \$1.00 per share.⁷ The proposed standard rebate for Added Displayed Volume would apply to the

⁵ "MEMX Book" refers to the Exchange system's electronic file of orders. See Exchange Rule 1.5(q).

⁶ This pricing is referred to by the Exchange as "Removed volume from MEMX Book" on the proposed Fee Schedule with a Fee Code of "R" to be provided by the Exchange on execution reports. The Exchange's Fee Codes will assist both the Exchange and Members with financial planning, tracking, and reconciliation of invoices generated by the Exchange. The Exchange notes that it will also use a second character, either "A" or "B" to indicate whether an execution occurred: (A) in a security priced at or above \$1.00 per share or (B) below \$1.00 per share.

⁷ This pricing is referred to by the Exchange as "Added displayed volume" on the proposed Fee Schedule with a Fee Code of "B", "D" or "J" to be provided by the Exchange on execution reports.

Reserve Quantity⁸ of an order such that any replenishment amount of the Reserve Quantity of an order that is executed against would be treated as Added Displayed Volume even though such portion of the order was not displayed on the MEMX Book prior to the order being replenished in accordance with the Member's instructions and the Exchange's rules. The entire portion of the Reserve Quantity of an order would be eligible for this rebate, however, a Member would only receive such rebate for any portion(s) of the Reserve Quantity that is (are) executed against.

(C) Rebates for Added Displayed Volume that Establishes or Matches the National Best Bid or Offer ("NBBO")

The Exchange proposes to provide an identical rebate of \$0.0029 per share for executions of Added Displayed Volume orders that either: (i) establish the NBBO ("Setter Volume") or (ii) establish a new best bid or offer ("BBO") on MEMX that matches the NBBO first established on an away market ("Joiner Volume," and together with Setter Volume, "NBBO Setter/Joiner Volume"), in all securities traded on the Exchange priced at or above \$1.00 per share. Because pricing will be the same for all Added Displayed Volume, the Exchange does not propose to add separate rebates on the Fee Schedule at this time for Setter Volume or Joiner Volume or to define these categories on the Fee Schedule. However, the Exchange proposes to provide separate Fee Codes to Members for Setter Volume and Joiner Volume; thus, in addition to the standard Fee Code applicable to Added Displayed Volume, or "D", the Exchange proposes including Fee Codes of "B" for Setter Volume and "J" for Joiner Volume on the same row as "D" in the transaction fees table of the Fee Schedule.

The purpose of including three separate Fee Codes for Added Displayed Volume is to

⁸ "Reserve Quantity" refers to the portion of an order that includes a Non-Displayed instruction in which a portion of that order is also displayed on the MEMX Book. See Exchange Rule 11.6(k).

reflect the fact that the Exchange will provide distinct Fee Codes on the execution reports provided to Members. The Exchange believes this information will be useful for Members and the Exchange to track executions of Added Displayed Volume that qualifies as either Setter Volume or Joiner Volume and may also be useful for the Exchange in considering potential pricing modifications to such orders as it continues to evaluate its pricing structure on an ongoing basis after its exchange launch. In the meantime, these Fee Codes will be provided to Members on execution reports prior to the introduction of any pricing incentives for such liquidity, even though the rebates to be provided are the same as those provided as the standard rebate for Added Displayed Volume. The Exchange notes that its technical specifications make clear the different types of liquidity codes passed back to Members on execution reports.

(D) Standard Rebate for Added Non-Displayed Volume

The Exchange proposes to provide a standard rebate of \$0.0020 per share for executions of orders that: (i) are not displayed on the MEMX Book and (ii) add liquidity to the Exchange (“Added Non-Displayed Volume”), in all securities traded on the Exchange priced at or above \$1.00 per share.⁹ Similar to the proposal to add separate Fee Codes for Setter Volume and Joiner Volume, as described above, the proposed Fee Schedule reflects two different Fee Codes for Added Non-Displayed Volume, specifically “H” and “M”. The Exchange will provide Fee Code “M” for the execution of an order that adds non-displayed liquidity to the extent the order that provides liquidity includes a Midpoint Peg instruction and Fee Code “H” for the execution of an order that adds non-displayed liquidity but does not include a Midpoint Peg instruction.¹⁰ The

⁹ This pricing is referred to by the Exchange on the proposed Fee Schedule as “Added non-displayed volume.”

¹⁰ The term “Midpoint Peg” refers to a Pegged Order with an instruction to peg to the midpoint of the NBBO. See Exchange Rule 11.6(h)(2). The term “Pegged Order” refers to an order with instructions to peg to the NBB, for a buy order, or the NBO, for a sell

proposed standard rebate for Added Non-Displayed Volume would apply to each of these the same. The purpose of including both Fee Codes on the Fee Schedule is to reflect the fact that the Exchange will separately record these transactions under distinct Fee Codes on the execution reports provided to Members. The Exchange believes this information will be useful for Members and the Exchange to track executions of Added Non-Displayed Volume and may also be useful for the Exchange in considering potential pricing modifications to such orders as it continues to evaluate its pricing structure on an ongoing basis after its exchange launch. The Exchange again notes that its technical specifications make clear the different types of liquidity codes passed back to Members on execution reports.

The Exchange proposes to provide a higher rebate for executions of Added Displayed Volume than for executions of Added Non-Displayed Volume to incentivize displayed liquidity over non-displayed liquidity on the Exchange, including orders with a displayed component and a non-displayed component (*i.e.*, orders with a Reserve Quantity), in order to encourage and facilitate price discovery and price formation, which the Exchange believes benefits all Members and investors.

(E) Standard Fee for Routed Removed Volume

The Exchange proposes to charge a standard fee of \$0.0030 per share for all orders routed to another market that (i) are executed on an away market and (ii) remove liquidity from the market to which it was routed (“Routed Removed Volume”), in all securities traded on the Exchange priced at or above \$1.00 per share.¹¹ All charges by the Exchange for routing are

order. See Exchange Rule 11.6(h).

¹¹ This pricing is referred to by the Exchange as “Routed to another market, removed liquidity” on the proposed Fee Schedule with a Fee Code of “Z” to be provided by the Exchange on execution reports.

applicable only in the event that an order is executed; there is no charge for orders that are routed away from the Exchange but are not filled. The Exchange notes that the fees for routing relate to orders routed through the Exchange's affiliated broker-dealer, MEMX Execution Services LLC. Routing services offered by the Exchange and its affiliated broker-dealer are completely optional and market participants can readily select between various providers of routing services, including other exchanges and broker-dealers.

(F) Securities Priced Below \$1.00 per Share

The Exchange does not propose to charge any fee or provide any rebate for executions of orders in securities priced below \$1.00 per share, including where an execution takes place on the Exchange or at another market center if the order was routed away from the Exchange.

(G) Other Fees

Under the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions (e.g., trading ports, market data ports, and/or drop copies). In addition, because, as described below, the Exchange is proposing to include certain fees in Rule 15.1 rather than on the Fee Schedule, the Exchange proposes to state on the Fee Schedule that additional fees are set forth in Rule 15.1 of the MEMX Rulebook, and further, that such fees include Regulatory Transaction Fees collected to fund MEMX's Section 31 obligations (as set forth in MEMX Rule 15.1(b)) and fees collected through the CRD registration system for registration of associated persons of Members that are not also FINRA members (as proposed to be added as MEMX Rule 15.1(e)).

Regulatory Fees

The Exchange proposes to adopt certain regulatory fees as new paragraph (e) to

Exchange Rule 15.1 related to the CRD system, which are collected by FINRA.¹² As proposed, FINRA will collect and retain certain regulatory fees via the CRD system for the registration of persons associated with a Member that is not also a FINRA member. The CRD system fees are use-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a member of an exchange but not a FINRA member. Accordingly, the Exchange proposes to adopt the regulatory fees set forth in proposed Rule 15.1(e) to mirror those assessed by FINRA pursuant to Section 4 (Fees) of Schedule A to the FINRA By-Laws. As proposed, these fees are as follows:¹³

- 1) \$100 for each initial Form U4 filed for the registration of a representative or principal;
- 2) \$110 for the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;
- 3) \$45 annually for each of the Member's registered representatives and principals for system processing;
- 4) \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the Member, plus a pass-through of any other charge imposed by the

¹² The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

¹³ The Exchange has only adopted the CRD system fees charged by FINRA to non-FINRA members when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to Members that are not also FINRA members. Members that are also FINRA members are charged CRD system fees according to Section 4 (Fees) of Schedule A to the FINRA By-Laws.

- United States Department of Justice for processing each set of fingerprints;
- 5) \$30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format by the Member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints; and
 - 6) \$30 for processing and posting to the CRD system each set of fingerprint results and identifying information that has been processed through a self-regulatory organization other than FINRA.

2. Statutory Basis

Transaction Fees

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹⁴ of the Act in general, and furthers the objectives of Sections 6(b)(4)¹⁵ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees and rebates are consistent with the objectives of Section 6(b)(5)¹⁶ of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

Upon its launch, the Exchange will operate 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. The Exchange believes that the proposed Fee Schedule reflects a simple and competitive pricing structure designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange, which the Exchange believes would promote price discovery and price formation and deepen liquidity that is subject to the Exchange's transparency, regulation, and oversight as an exchange, thereby enhancing market quality to the benefit of all Members and investors.

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, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁷

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to charge a standard fee of \$0.0025 per share for Removed Volume from the MEMX Book because it is comparable to the transaction fee charged by other exchanges to remove liquidity.¹⁸ The

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

¹⁸ For example, the New York Stock Exchange trading fee schedule on its public website reflects fees to "take" liquidity ranging from \$0.0024 - \$0.00275 depending on the type of market participant, order and execution; see

Exchange further believes that this fee is equitably allocated and not unfairly discriminatory because it applies equally to all Members and, when coupled with higher rebates for adding displayed liquidity, as described below, is designed to facilitate increased activity on the Exchange to the benefit of all Members by providing more trading opportunities and promoting price discovery.

The Exchange believes that it is appropriate, reasonable, and consistent with the Act to provide a standard rebate of \$0.0029 per share for Added Displayed Volume in all securities traded on the Exchange priced at or above \$1.00 per share because this rebate is consistent with transaction rebates provided by other exchanges.¹⁹ The Exchange further believes that this rebate structure is equitably allocated and not unfairly discriminatory because it applies equally to all Members.

The Exchange believes that charging a fee to the liquidity remover, and providing a

<https://www.nyse.com/markets/nyse/trading-info/fees>. The Nasdaq Stock Market trading fee schedule on its public website reflects standard fees to “remove” liquidity of \$0.0030 per share for shares executed at or above \$1.00 or 0.30% of total dollar volume for shares executed below \$1.00; see <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Cboe BZX trading fee schedule on its public website reflects standard fees for “removing” liquidity of \$0.0030 for shares executed at or above \$1.00 or 0.30% of total dollar volume for shares executed below \$1.00; see https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

¹⁹ For example, the New York Stock Exchange trading fee schedule on its public website reflects a standard rebate for “adding” liquidity of \$0.0012 for shares executed at or above \$1.00, with various tiers that provide the ability of a firm to receive a rebate of \$0.0029 per share or higher; see <https://www.nyse.com/markets/nyse/trading-info/fees>. The Nasdaq Stock Market trading fee schedule on its public website reflects a standard rebate for “adding” liquidity for shares executed at or above \$1.00 of \$0.0020 in Tape A and B securities and \$0.0015 in Tape C securities, with various tiers that provide the ability of a firm to receive a rebate of \$0.0029 per share or higher; see <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Cboe BZX trading fee schedule on its public website reflects a standard rebate for “adding” liquidity of \$0.0020 for shares executed at or above \$1.00, with various tiers that provide the ability of a firm to receive a rebate of \$0.0029 per share or higher; see https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

rebate to the liquidity adder, is reasonable, equitable and not unfairly discriminatory because it incentivizes liquidity provision on the Exchange. The Exchange also notes that several other exchanges charge fees for removing liquidity and provide rebates for adding liquidity, and that this aspect of the Exchange's proposed Fee Schedule does not raise any new or novel issues that have not previously been considered by the Commission in connection with the fees and rebates of other exchanges.²⁰

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to provide a higher rebate for executions of Added Displayed Volume (including NBBO Setter/Joiner Volume) than for executions of Added Non-Displayed Volume as this rebate structure is designed to incentivize Members to send the Exchange displayable orders, thereby contributing to price discovery and price formation, consistent with the overall goal of enhancing market quality. Moreover, the Exchange notes that there are precedents for exchanges to provide rebates that distinguish between displayed and non-displayed volume to incentivize displayed orders and facilitate price discovery.²¹

The Exchange notes that under the initial proposed Fee Schedule it will pay a higher rebate for Added Displayed Volume than the fee it charges for removing such volume, and as such the Exchange will have a negative net capture (*i.e.*, will lose money) with respect to such transactions. The Exchange notes that it will only utilize a pricing structure whereby it maintains a negative net capture with respect to such transactions initially upon its launch and for a limited time thereafter in an effort to encourage market participants to join, connect to, and participate on the Exchange. As noted above, the Exchange will operate in a highly competitive market,

²⁰ See supra notes 18 and 19.

²¹ Id.

and the Exchange believes this initial pricing structure will enable it to effectively compete with other exchanges by attracting Members and order flow to the Exchange, which will help the Exchange to gain market share for executions. The Exchange expects to modify its pricing structure after it has gained sufficient participation from market participants to eliminate the negative net capture and instead be profitable with respect to such transactions. The Exchange believes the initial pricing structure, including the negative net capture for Added Displayed Volume transactions, is designed to incentivize market participants to add aggressively priced displayed liquidity and direct their order flow to the Exchange, which the Exchange believes would promote price discovery and price formation and deepen liquidity that is subject to the Exchange's transparency, regulation, and oversight as an exchange, thereby enhancing market quality to the benefit of all Members and investors. The Exchange does not believe that the negative net capture with respect to Added Displayed Volume transactions will materially impact the capitalization of the Exchange or otherwise impair the Exchange's ability to operate or regulate itself. The Exchange is well-capitalized and able to absorb losses resulting from a negative net capture, particularly given the Exchange's intention to operate in this fashion on a temporary basis. Moreover, the Exchange's parent company, MEMX Holdings LLC, has agreed to provide adequate funding for the Exchange's operations, including the regulation of the Exchange, and to reimburse the Exchange for its costs and expenses to the extent the Exchange's assets are insufficient to meet its costs and expenses.

With respect to orders routed to other markets, the Exchange also believes that it is appropriate, reasonable, and consistent with the Act to charge a standard fee of \$0.0030 for Routed Removed Volume because this fee is similar to the fees charged by other exchanges for

routed orders that remove liquidity from the destination market.²² The Exchange's initial fee for routing is intended to be a simple and transparent fee for Members that wish to use routing services provided by the Exchange. The Exchange reiterates that the routing services offered by the Exchange and its affiliated broker-dealer are completely optional and that the Exchange operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing. The Exchange believes that its flat fee structure for orders routed to all away venues is a fair and equitable approach to pricing, as it will provide certainty with respect to execution fees. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services and to make some additional profit in exchange for the services it provides. The Exchange also believes the standard fee for Routed Removed Volume is an equitable and not an unfairly discriminatory allocation of fees because it applies equally to all Members.

The Exchange also believes that not charging a fee for membership, market data products, physical connectivity and application sessions is appropriate, reasonable, and consistent with the Act because it may incentivize broker-dealers to become Members of the Exchange and to therefore direct order flow to the Exchange, and such orders will have the benefit of exchange transparency, regulation, and oversight. One of the primary objectives of

²² For example, the New York Stock Exchange trading fee schedule on its public website reflects a standard fee for routing of \$0.0035, with a tier that provides a firm the ability to pay a reduced routing fee of \$0.0030; see <https://www.nyse.com/markets/nyse/trading-info/fees>. The Nasdaq Stock Market trading fee schedule on its public website reflects a standard routing fee of \$0.0030; see <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Cboe BZX trading fee schedule on its public website reflects a standard fee for routing of \$0.0030; see https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

MEMX is to provide competition and to reduce fixed costs imposed upon the industry. As such, while MEMX does intend to adopt fees other than transaction fees and such other fees as set forth in Rule 15.1 in the future, MEMX is not doing so at this time and, when it does, it intends to do so in a fair and transparent manner. As noted above, MEMX will operate in a highly competitive environment, and not charging fees for such services and access is designed to enable it to compete effectively and to encourage market participants to connect to the Exchange.

In conclusion, the Exchange also submits that its proposed fee structure satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act for the reasons discussed above in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities, does not permit unfair discrimination between customers, issuers, brokers, or dealers, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest, particularly as the proposal neither targets nor will it have a disparate impact on any particular category of market participant. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that it is subject to significant competitive forces, and that its proposed fee and rebate structure is an appropriate effort to address such forces.

Regulatory Fees

The Exchange believes that proposed Rule 15.1(e) is consistent with the provisions of Section 6(b)²³ of the Act in general, and furthers the objectives of Section 6(b)(4)²⁴ of the Act, in particular, in that it provides for the equitable allocation of reasonable fees and other charges

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(4).

among its Members, and does not unfairly discriminate between customers, issuers, brokers and dealers. All similarly situated Members are subject to the same fee structure, and every Member firm must use the CRD system for registration and disclosure.

The proposed fees are reasonable because they are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of associated persons of FINRA members.²⁵ As FINRA noted in its filing adopting its existing fees, it believes the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made to the CRD system since the last fee increase, including: (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; (4) increases in the number and types of reports available through the CRD system; and (5) significant changes to BrokerCheck, including making BrokerCheck easier to use and expanding the amount of information made available through the system.²⁶ These increased costs are similarly borne by FINRA when a Member that is not a member of FINRA uses the CRD system, so the fees collected for such use should mirror the fees assessed on FINRA members, as is proposed by the Exchange. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.²⁷

²⁵ See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-30).

²⁶ See id. at 77 FR 38866, 38868.

²⁷ See id.

The Exchange also believes that the proposed fees, like FINRA's fees, are consistent with an equitable allocation of fees because the fees will apply equally to all individuals and Members required to report information to the CRD system. Thus, those members that register more individuals or submit more filings through the CRD system will generally pay more in fees than those members that use the CRD system to a lesser extent. In addition, the proposed fees, like FINRA's fees, are equitable and not unfairly discriminatory because they will result in the same regulatory fees being charged to all Members required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such Member is a FINRA member.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed change 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."²⁸

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the

²⁸ See supra note 17, at 70 FR 37496, 37499.

Act. To the contrary, the Exchange believes that the proposed pricing structure will increase competition and is intended to draw volume to the Exchange as it commences operations. 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. As a new exchange, the Exchange expects to face intense competition from existing exchanges and other non-exchange venues that provide markets for equities trading. With respect to the Exchange's initial pricing whereby it will operate with a negative net capture with respect to transactions involving Added Displayed Volume, the Exchange is proposing this pricing initially upon its launch and for a limited time thereafter in an effort to encourage market participants to join, connect to, and participate on the Exchange. The Exchange expects to modify its pricing structure after it has gained sufficient participation from market participants to eliminate the negative net capture and instead be profitable with respect to such transactions. Although this pricing incentive is intended to attract liquidity to the Exchange, most other exchanges in operation today already offer multiple incentives to their participants, including tiered pricing that provides higher rebates or discounted executions, and other exchanges will be able to modify such incentives in order to compete with the Exchange. With respect to the specific pricing resulting in the negative net capture, the Exchange also notes that the proposed fee for Removed Volume is neither the lowest fee in the market today²⁹ nor is the proposed rebate provided to Added Displayed Volume the highest

²⁹ For example, the Investors Exchange fee schedule on its public website reflects standard

rebate in the market today.³⁰ Accordingly, with respect to a participant deciding to either submit an order to add liquidity or seeking to remove liquidity, there are multiple exchanges that will continue to be competitively priced for such orders when compared to the Exchange's pricing. Further, while pricing incentives do cause shifts of liquidity between trading centers, market participants make determinations on where to provide liquidity or route orders to take liquidity based on factors other than pricing, including technology, functionality, and other considerations. Consequently, the Exchange believes that the degree to which its fees and rebates could impose any burden on competition is extremely limited, and does not believe that such fees would burden competition of Members or competing venues in a manner that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees and rebates apply equally to all Members. The proposed pricing structure is intended to encourage market participants to add displayed and non-displayed liquidity to the Exchange by providing rebates that are comparable to those offered by other exchanges as well as to provide a competitive rate charged for removing liquidity, which the Exchange believes will help to encourage Members to send orders to the Exchange to the benefit of all Exchange participants. As the proposed rates are equally applicable to all market participants, the Exchange does not believe there is any burden on intramarket competition.

fees for matched liquidity of \$0.0009 for shares executed at or above \$1.00, which would apply to all orders removing liquidity; see <https://iextrading.com/trading/fees/>. Other markets offering "taker/maker" pricing provide rebates to provide liquidity; see, e.g., Nasdaq BX fee schedule, at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing; Cboe BYX fee schedule at https://markets.cboe.com/us/equities/membership/fee_schedule/byx/.

³⁰ See supra note 19.

Regulatory Fees

The Exchange does not believe that proposed Rule 15.1(e) will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed fees in this Rule will result in the same regulatory fees being charged to all Members required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such Members are FINRA members.

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 Act³¹ and Rule 19b-4(f)(2)³² 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 should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2020-10 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-2020-10. This file number should be included on the subject line if e-mail 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-2020-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).