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General Counsel and
Corporate Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005

January 15, 2020

Via Email

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: MEMX, LLC Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934 (Release No. 34- 87436; File No. 10-237) (the “MEMX Form 1”)

Dear Ms. Countryman:

NYSE Group, Inc. (“NYSE Group”), on behalf of New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., NYSE American LLC, NYSE National, Inc. and NYSE Chicago Inc., appreciates the opportunity to comment on the MEMX Form 1, as amended¹ that MEMX, LLC (“MEMX”) has filed with the Securities and Exchange Commission (the “Commission”) for registration as a national securities exchange, pursuant to Section 6 of the Securities Exchange Act of 1934 (“Act”).² NYSE Group believes certain aspects of the application warrant additional specificity to satisfy the requirements of the Act.

First, as MEMX would be a member-owned exchange, NYSE Group believes that MEMX should clarify the bounds of its member-owners’ ability to access the trading and regulatory records of MEMX. Specifically, Section 13.3(a) (Inspection Rights; Regulatory Access and Supervision) of the Second Amended and Restated Limited Liability Company Agreement of MEMX LLC provides that “subject to the confidentiality provisions of Section 13.1,³ the Company Members shall have access to and the right, at its sole cost and expense, to inspect and copy the Company’s books and records and to inspect the Company’s facilities during normal business hours.”⁴ The “Company Members” include MEMX Holdings LLC, which owns 95% of MEMX, and MEMX SubCo

¹ See MEMX Form 1, dated Sept. 9, 2019, as amended, Oct. 23, 2019.

² 15 U.S.C. 78f.

³ See MEMX Form 1, Exhibit A-5, Section 13.1, *supra* note 1. Section 13.1 provides in relevant part that Section 13.1 provides that the confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by the Company and its personnel, and shall not be used by the Company for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any Exchange Member) other than “to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Company”) See *id.*

⁴ See MEMX Form 1, Exhibit A-5, Section 13.3, *supra* note 1.

LLC, which owns 5% of MEMX.⁵ Both entities are owned and controlled by MEMX's member-owners, i.e., Bank of America Merrill Lynch, Charles Schwab, Citadel Securities, E*TRADE, Fidelity Investments, Morgan Stanley, TD Ameritrade, UBS, and Virtu Financial.⁶ While MEMX's confidentiality provision limits the use of information accessed, NYSE Group believes that this apparent unfettered access to the records and facilities of MEMX by Company Members -- who directly compete with other exchange members -- could pose significant conflicts of interest. NYSE Group therefore believes that MEMX should amend its Form 1 to clarify the limits on this access.

Second, the proposed MEMX rules are unclear about whether displayed odd-lot orders at more than one price point on MEMX would be aggregated to be displayed in the consolidated quote disseminated by the Securities Information Processor ("SIP"). Specifically, proposed MEMX Rule 11.9(b) provides that the best-ranked order(s) to buy and the best-ranked order(s) to sell that are displayable in the MEMX Book and the aggregate displayed size of such orders associated with such prices will be collected and made available to the SIP.⁷ However, the proposed rule is silent regarding whether and how displayed odd lots would be aggregated and included in the MEMX quote provided to the SIP for dissemination.⁸ NYSE Group believes the Form 1 should be amended to provide this detail as it impacts other market participants' -- including NYSE Group's -- ability to calculate MEMX's protected best bid or offer in the same manner as MEMX.

In addition, the proposed MEMX rules do not specify how resting orders would be processed when locked or crossed by an away market quote. For example, proposed MEMX Rule 11.6(j), which discusses re-pricing of orders, does not address whether resting, displayed orders -- either top of book or at depth -- would stand their ground if locked or crossed by an away market.⁹ Similarly, Rule 11.9(b) does not address whether resting, displayed, depth-of-book orders that have been locked or crossed by an away

⁵ See MEMX Form 1, Exhibit A-5, Section 1.1, *supra* note 1.

⁶ Per MEMX's website, "[t]he founding members of MEMX are many of the largest U.S. retail broker-dealers, global banks, financial services firms and global market makers: Bank of America Merrill Lynch, Charles Schwab, Citadel Securities, E*TRADE, Fidelity Investments, Morgan Stanley, TD Ameritrade, UBS, and Virtu Financial." See MEMX Blog Post: "Announcement: Introducing MEMX," by Jonathan Kellner, dated Jan. 7, 2019, available here: <https://memx.com/introducing-memx/>.

⁷ See MEMX Form 1, Exhibit B-1, *supra* note 1.

⁸ See, e.g., NYSE Arca Rule 7.36E(b)(3), which provides that "[t]he best-ranked non-marketable displayed Limit Order(s) to buy and the best ranked non-marketable displayed Limit Order(s) to sell in the NYSE Arca Book and the aggregate displayed size of such orders associated with such prices will be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS under the Exchange Act. If non-marketable odd-lot sized orders at multiple price levels can be aggregated to equal at least a round lot, such odd-lot sized orders will be displayed as the best ranked displayed orders to sell (buy) at the least aggressive price at which such odd-lot sized orders can be aggregated to equal at least a round lot." See also Nasdaq Stock Market LLC ("Nasdaq") Rule 4756(c)(2).

⁹ Compare with NYSE Arca Rule 7.31-E(e)(1)(A)(iii) (providing that Non-Routable Orders stand their ground when crossed by an away market) and Nasdaq Rule 4702(b)(1)(B).

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market and then become the best-ranked orders on MEMX would be transmitted to the SIP at their original price. NYSE Group believes this additional detail is necessary to sufficiently convey the operation and effect of the proposed rule(s) to the degree required by the Act.

NYSE Group believes that the above issues, including clarifying its governing documents to address its member-owners' access to exchange records, should be addressed before the MEMX Form 1 is approved.

Respectfully submitted,



Elizabeth K. King

cc: Honorable Jay Clayton, Chairman
Honorable Robert J. Jackson, Jr. Commissioner
Honorable Hester M. Peirce, Commissioner
Honorable Elad L. Roisman, Commissioner
Honorable Allison H. Lee, Commissioner
Brett Redfearn, Director, Division of Trading and Markets