



February 5, 2021

*Submitted electronically*

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Notice of Order Instituting Proceedings to Determine Whether to Approve or Disapprove a National Market System Plan Regarding Consolidated Equity Market Data (Release No. 34-90885; File No. 4-757)

Dear Ms. Countryman:

MEMX LLC<sup>1</sup> (“MEMX”) appreciates the opportunity to provide comments to the Securities and Exchange Commission (“Commission”) in connection with the ongoing proceedings with respect to the national market system (“NMS”) plan (the “CT Plan”) filed by MEMX, the other national securities exchanges, and the Financial Industry Regulatory Authority, Inc. (“FINRA”, and collectively with MEMX and the other exchanges, the “SROs”).<sup>2</sup> The proposed CT Plan was filed to replace with a single NMS plan the three existing NMS plans that govern the public dissemination of real-time, consolidated equity market data for NMS stocks (collectively, the “Equity Data Plans”). The proposed CT Plan, in turn, was in direct response to the order issued by the Commission that the SROs act jointly in developing and filing with the Commission a proposed new single NMS plan to replace the Equity Data Plans (the “Governance Order”).<sup>3</sup>

As a new equity exchange and participant in the Equity Data Plans, MEMX has a significant interest in how the Equity Data Plans are governed. MEMX shares long-standing industry concerns regarding redundancies, inefficiencies, and inconsistencies between and among the current Equity Data Plans as well as other concerns relating to, for example, conflicts of interest that may exist associated with the provision of market data under the current Equity Data Plans.

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<sup>1</sup> MEMX was founded by leading market participants with the common goal of improving equity markets for investors and challenging the status quo in the exchange space for U.S. equities. Specifically, MEMX’s mission is to increase competition, reduce the fixed costs of trading, and simplify the execution of equity trading in the United States.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings set forth in the CT Plan or the Governance Order, as applicable.

<sup>3</sup> See Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020), Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data.

As it has before, MEMX again applauds the Commission's proposal<sup>4</sup> relating to the governance of the Equity Data Plans and the Commission's issuance of the Governance Order, which ultimately resulted in the SROs filing the proposed CT Plan.

### **Approval of Proposed CT Plan**

As a participant in the drafting process for and a party to the proposed CT Plan, MEMX believes that the SROs worked diligently and in good faith to comply with the SEC's Governance Order. While MEMX does not defend the proposed CT Plan as perfect, MEMX does believe that the proposed CT Plan is consistent with the Governance Order. Further, MEMX believes that, consistent with Rule 608 of Regulation NMS, the proposed CT Plan is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, and otherwise in furtherance of the purposes of the Securities Exchange Act of 1934 (the "Act").<sup>5</sup> In particular, MEMX believes the approval of the proposed CT Plan will bring critical and necessary improvements to the governance of the Equity Data Plans that are necessary in order to address existing conflicts of interest, to improve the efficiency of the operations of the Equity Data Plans, and to improve responsiveness to concerns voiced by non-SRO market participants regarding the public dissemination of real-time, consolidated equity market data for NMS stocks. Accordingly, MEMX urges the Commission to approve the proposed CT Plan subject to certain modifications that have been identified through the public comment process, as discussed below.

### **Modifications to Proposed CT Plan**

MEMX believes that several comments provided on the proposed CT Plan require serious consideration, and MEMX looks forward to the Commission's determinations on these important points. Below are views that MEMX shares with other commenters on various matters. MEMX believes the Commission should address these matters in connection with its approval of the CT Plan in the form of modifications to the proposed CT Plan or conditions to its approval. As set forth below, MEMX believes these modifications are necessary and appropriate in order to achieve the ultimate objectives of the Governance Order.

#### *Implementation Timeline*

As proposed, the CT Plan would become operational only after five specified dependencies have occurred; however, there is no timeline by which these dependencies must be completed.<sup>6</sup> MEMX understands that certain of the steps will take significant time and coordination amongst the SROs and third parties. Nonetheless, in order to ensure that the SROs do all within their

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<sup>4</sup> See Securities Exchange Act Release No. 87906 (January 8, 2020), 85 FR 2164 (January 14, 2020), Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data (the "Governance Proposal").

<sup>5</sup> See 17 CFR 242.608(b)(2).

<sup>6</sup> See Recitals, paragraph (c) of proposed CT Plan.

power to accomplish the important objectives of the Governance Order, MEMX supports the adoption of a one-year deadline for completing the necessary steps to fully transition to operating under the CT Plan, subject to extension only for good cause shown.

MEMX notes that one of the dependencies set forth in the proposed CT Plan is the adoption of fees to be collected pursuant to the CT Plan. MEMX believes that this topic is complex and must be an immediate focus of the Operating Committee in order to transition to the new CT Plan. This is particularly true given the Commission's recent order regarding market data infrastructure,<sup>7</sup> which MEMX strongly supports but which will also further complicate timing and logistics regarding fees applicable to the CT Plan. Accordingly, immediately upon approval of the CT Plan, MEMX believes that the Operating Committee, including Non-SRO Voting Representatives, should be formed and should begin meeting to complete the remaining dependencies, including the adoption of fees.

Similarly, MEMX acknowledges that the selection of and entering into an agreement with a new, independent Administrator, assignment or replacement of contracts between such Administrator and data recipients, and such Administrator being prepared to administer distributions and collect fees is an ambitious project to be completed in a single year. Accordingly, while MEMX supports a one-year deadline for completion of the dependencies set forth in the CT Plan, MEMX also notes that this deadline will require commitment not only by the SROs but also industry participants in working with such new Administrator to ensure a smooth transition.

#### *Term Limits*

MEMX supports modification to the term limits set forth in the proposed CT Plan for Non-SRO Voting Representatives. As proposed, a Non-SRO Voting Representative would be eligible to serve on the Operating Committee for up to two, two-year terms and then would not be eligible to serve again on the Operating Committee. While the term limits proposed were intended to ensure that different individuals and firms would be represented on the Operating Committee over time, which MEMX still believes a worthwhile consideration, MEMX supports revising the length of individual terms (e.g., increasing to three years), increasing the number of consecutive terms an individual could serve (e.g., three consecutive two-year terms), and/or allowing Non-SRO Voting Representatives to be elected to serve again following an appropriate time away from the Operating Committee (e.g., the length of one term). MEMX also supports amendment of the proposed CT Plan to provide a true staggering of terms such that no more than one-half of the Non-SRO Voting Representatives are being elected in any given year. This can be accomplished by having a modified term for one-half of the Non-SRO Voting Representatives in their initial term and would ensure some continuity for the Operating Committee.

#### *Executive Sessions*

The proposed CT Plan provides that the use of Executive Sessions by SRO members (i.e., excluding Non-SRO Voting Representatives) would be appropriate and allowed for three

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<sup>7</sup> See Securities Exchange Act Release No. 90610 (December 9, 2020), Market Data Infrastructure Order.

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enumerated topics and anything else deemed appropriate for Executive Session.<sup>8</sup> Further, under the proposed CT Plan, requests to enter into an Executive Session of SRO members are required to be included on a written agenda for an Operating Committee meeting, along with a clearly stated rationale for each matter to be discussed and be approved by a majority vote of the SRO members of the Operating Committee.

MEMX continues to believe that there may be circumstances in which deliberation by the SROs alone may be appropriate, but MEMX also believes that any overuse of Executive Sessions would limit transparency of the CT Plan's governance. Accordingly, MEMX supports changes to the proposed CT Plan with regard to the ability of SRO members to hold Executive Session, either by limiting the topics that can be discussed to the three topics enumerated in the proposed CT Plan or by changing the mechanism for approval of a topic as appropriate for Executive Session.

#### *Subcommittee Chairs*

MEMX supports reconsideration of the proposed CT Plan with respect to the parties eligible to serve as chair of any subcommittees of the Operating Committee. In particular, MEMX believes it would be appropriate to remove the requirement that the chair of any subcommittee be a Member, thus allowing a Non-SRO Voting Representative to serve as chair of a subcommittee.

#### **Conclusion**

As noted above, subject to modifications or conditions on approval deemed necessary by the Commission, MEMX supports approval of the proposed CT Plan so that the critical governance reform envisioned when the Commission issued the Governance Order can be realized. MEMX offers our assistance to the Commission as it moves forward with the proceedings in connection with this matter. Please feel free to contact me at [REDACTED] or at [REDACTED] if you have any questions related to this matter.

Sincerely,



Anders Franzon  
General Counsel

cc: The Honorable Allison Herren Lee, Acting Chair  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
Christian Sabella, Acting Director, Division of Trading and Markets, SEC  
David Shillman, Associate Director, Division of Trading and Markets, SEC

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<sup>8</sup> See Section 4.4(g)(i) of proposed CT Plan.