

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105058; File No. S7-2026-10]

Notice of an Application of MEMX LLC for Temporary Exemptive Relief From Compliance with Certain Provisions of Rule 610(c) of Regulation NMS, as Amended, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 610(f) of Regulation NMS, and Request for Comment

March 20, 2026.

On February 26, 2026, the Securities and Exchange Commission (the “Commission”) received an application from MEMX LLC (“MEMX” or the “Exchange”) to obtain temporary exemptive relief¹ pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 610(f) of Regulation NMS,³ in accordance with relevant procedures set forth in Exchange Act Rule 0-12,⁴ to temporarily delay the implementation of certain amendments to Rule 610(c) of Regulation NMS that the Commission adopted in September 2024.⁵ Specifically, the temporary exemptive relief, which would apply to all trading centers

¹ See Letter from Adrian Griffiths, Head of Market Structure, MEMX LLC, dated February 26, 2026 (“Application”). The Application is attached as an Appendix to this notice. The Appendix may be found on <https://www.sec.gov/rules-regulations/exchange-act-exemptive-notices-orders>. Defined terms in this notice are the same as used in the Application, unless otherwise noted.

² 15 U.S.C. 78mm(a)(1). Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision or any rule or regulation thereunder by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

³ 17 CFR 242.610(f). Rule 610(f) of Regulation NMS states that “[t]he Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotations, orders, or fees, or any class or classes of persons, securities, quotations, orders, or fees, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

⁴ 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth procedures for filing applications for orders for exemptive relief pursuant to Section 36 of the Exchange Act.

⁵ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (“Adopting Release”).

subject to Rule 610(c), would delay implementation of the amendments to Rule 610(c) to: (a) protected quotations and other best bids and offers in those NMS stocks that would continue to be subject to a \$0.01 minimum pricing increment pursuant to Rule 612(b)(2)(i), and (b) protected quotations and other best bids and offers in NMS stocks that are priced below \$1.00. In addition, MEMX requested temporary exemptive relief to allow exchanges to charge an access fee of up to \$0.0015, by modifying the \$0.0010 amended access fee cap as adopted for those NMS stocks that would be subject to the new minimum pricing increment of \$0.005 pursuant to Rule 612(b)(2)(ii). The Commission is publishing this notice to provide interested persons with an opportunity to comment.

I. Background

On September 18, 2024, the Commission adopted Regulation NMS: Minimum Pricing Increments, Access Fees and Transparency of Better Priced Orders,⁶ which among other things: (1) amended Rule 612 of Regulation NMS to establish a minimum pricing increment of \$0.005 for bids, offers, orders and indications of interest that are priced equal to or greater than \$1.00 per share in certain NMS stocks;⁷ and (2) reduced the level of the access fee caps under Rule 610(c) of Regulation NMS to \$0.001 per share for protected quotations and other best bids and offers in NMS stocks priced at \$1.00 or more per share and 0.1 percent of the quotation price for protected quotations and other best bids and offers in NMS stocks priced less than \$1.00 per share.⁸ The Commission adopted compliance dates for the amendments, setting the dates upon

⁶ See Adopting Release, supra note 5.

⁷ 17 CFR 242.612.

⁸ 17 CFR 242.610(c).

which the rules must be implemented.⁹ On October 31, 2025, the Commission, among other things, granted temporary exemptive relief from the compliance dates for Rules 600(b)(89)(i)(F), 610(c) and 612, as amended in the Adopting Release, until the first business day of November 2026 to allow affected entities additional time to come into compliance with the amendments.¹⁰

II. Summary of the Application

In its Application,¹¹ the Exchange states that it believes that the requested relief is necessary and appropriate given other market structure rule changes currently being contemplated by the Commission that it believes would directly impact the amendments to Rule 610(c).¹² Specifically, MEMX states that its request is designed to give the Commission time to consider and discuss with market participants whether and how access fees should be regulated in light of possible changes to Rule 611 of Regulation NMS.¹³ MEMX states that it seeks to ensure that the Commission is able to consider the interplay between Rules 610 and 611 of Regulation NMS before implementing the amendments to Rule 610(c), amendments which MEMX states may need to be undone or modified should changes to Rule 611 be made.¹⁴

⁹ See Adopting Release, supra note 6 at 81679-81.

¹⁰ In connection with petitions filed in the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), a motion was filed by petitioners with the Commission to stay the effect of the amendments to Rules 610 and 612 of Regulation NMS pending resolution of their petition for review. On December 12, 2024, the Commission issued an order granting a partial stay of the effect of the amendments to Rules 600(b)(89)(i)(F), 610, and 612 pending the completion of judicial review. See Securities Exchange Act Release No. 101899 (Dec. 12, 2024) (Order Granting Partial Stay). On October 14, 2025, the D.C. Circuit issued an opinion denying the petitions for review. On October 31, 2025, the Commission issued an order granting temporary exemptive relief from, among other things, Rules 600(b)(89)(i)(F), 610(c), and 612 until the first business day of November 2026. See Securities Exchange Act Release No. 104172 (Oct. 31, 2025), 90 FR 51418 (Nov. 17, 2025).

¹¹ See Appendix.

¹² See Application, p. 1.

¹³ See Application, p. 2.

¹⁴ See id.

MEMX states that a temporary implementation delay would ensure that the industry does not have to implement new regulations that the Commission may later eliminate or modify.¹⁵ At the same time, however, MEMX states that its own analysis has highlighted the need to implement the amendments to the minimum pricing increment provisions in Rule 612 of Regulation NMS, as amended, which, according to MEMX, would reduce spreads and improve investor trading outcomes in NMS stocks that currently are constrained by the existing \$0.01 minimum pricing increment.¹⁶ Further, MEMX states that because access fees and tick sizes are inextricably linked, MEMX tailored its request for exemptive relief to ensure that the changes to the minimum pricing increment can be implemented in November 2026 without further delay, while minimizing potential market disruption from changes to the access fee caps as the Commission deliberates possible future changes to Rule 611 and other related rules.¹⁷

MEMX's exemptive relief request has two aspects, which it believes are independent, and would allow the Commission to grant both, or proceed with one.¹⁸

- (1) MEMX requests that the Commission delay implementation of Rule 610(c), as amended, for: (a) protected quotations and other best bids and best offers priced \$1.00 or more in those NMS stocks that would continue to be subject to a \$0.01 minimum pricing increment pursuant to Rule 612(b)(2)(i), and (b) protected quotations and other best bids and best offers in NMS stocks that are priced below \$1.00 per share.¹⁹
- (2) MEMX requests that the Commission allow exchanges to charge an access fee of up to \$0.0015 by modifying the \$0.0010 amended access fee cap for those NMS stocks that would be subject to the new \$0.005 minimum

¹⁵ See Application, p. 13.

¹⁶ See Application, p. 2.

¹⁷ See Application, p. 3.

¹⁸ See Application, p. 4.

¹⁹ Alternatively, MEMX states that the Commission could apply an access fee cap for bids, offer, orders, or indications of interest in those NMS stocks that are priced below \$1.00 that is proportionate to the access fee that otherwise applies to those stocks when trading at above \$1.00. See Application, p. 3.

pricing increment pursuant to Rule 612(b)(2)(ii).

MEMX requests the above relief on a temporary basis, for an unspecified duration, until such time as the Commission makes a determination as to future action, if any, with respect to Rule 610(c) if or when Rule 611 is amended or repealed.²⁰

III. Request for Comment

The Commission requests and encourages any interested person to submit comments regarding the Application, including whether the request should be granted. In particular, the Commission solicits comment on the following questions:

1. What are commenters' views on the request to temporarily delay implementation of Rule 610(c)(1) of Regulation NMS, as amended, for protected quotations and other best bids and best offers priced \$1.00 or more in those NMS stocks that would continue to be subject to a \$0.01 minimum pricing increment pursuant to Rule 612(b)(2)(i)? What are commenters' views on the need for relief and the extent of the relief requested?
2. What are commenters' views on the request to temporarily delay implementation of Rule 610(c)(2) of Regulation NMS, as amended? What are commenters' views on the need for relief and the extent of the relief requested?
3. What are commenters' views on the request to temporarily delay implementation of Rule 610(c)(2) of Regulation NMS, as amended, for those NMS stocks that are assigned a minimum pricing increment of \$0.005 under Rule 612(b)(2)(ii)?

Specifically, if the requested temporary relief was granted, protected quotations and other best bids and best offers in NMS stocks that are assigned a minimum pricing

²⁰ See Application, p. 5.

increment of \$0.005 under Rule 612(b)(2)(ii) would be subject to different access fee caps depending on the price of the protected quotation or other best bid or best offer, i.e., \$0.001 or \$0.0015 per share for protected quotations and other best bids and offers priced \$1.00 or more and 0.3% of the quotation price for protected quotations and other best bids and offers priced less than \$1.00 per share.

4. As an alternative, the request states that the Commission could apply an access fee cap to protected quotations and other best bids and best offers in those NMS stocks that are priced below \$1.00 that is proportionate to the access fee that otherwise applies to those protected quotations and other best bids and best offers in those stocks that are priced at or above \$1.00. What are commenters' views on this proposed alternative?
5. The request did not specify a time-limited duration for the relief requested. What are commenters' views on the appropriate duration of time for the temporary exemptive relief requested, if granted?
6. What are commenters' views on the potential benefits, or drawbacks, of granting the requested exemption, which, if granted, may be in place for a limited period of time or an unspecified time period?
7. The Commission previously granted temporary exemptive relief from the adopted compliance dates for Rules 600(b)(89)(i)(F), 610(c), and 612 of Regulation NMS, as amended, until the first business day of November 2026 to allow affected entities additional time to come into compliance with the amendments. Although not part of the request, more broadly, what are commenters' views on whether the Commission should grant another temporary exemption from the compliance dates for these rules,

as amended? If another temporary exemption is warranted, what is an appropriate duration for any exemption and why?

Comments should be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov>);

or

- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-2026-10 on the subject line.

Paper Comments:

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

All submissions should refer to File Number S7-2026-10. 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 (<https://www.sec.gov/rules/exorders.shtml>). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

For further information, you may contact Kelly Riley, Senior Special Counsel, Office of Market Supervision, Division of Trading and Markets, at (202) 551-5500, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

By the Commission.

Vanessa A. Countryman,

Secretary.

Appendix: MEMX's Application



February 26, 2026

Via Electronic Submission

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

Re: Request for Exemptive Relief Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 610(f) of Regulation NMS

Dear Ms. Countryman:

MEMX LLC (“MEMX”) respectfully requests that the U.S. Securities and Exchange Commission (“Commission”) exercise its exemptive authority pursuant to Section 36(a)(1) of the Securities Exchange Act (“Exchange Act”)¹ of 1934 and Rule 610(f) of Regulation NMS² to temporarily delay the implementation of its September 2024 amendments to Rule 610(c) (the “access fee cap”).³ As discussed herein, MEMX believes that the requested relief is necessary and appropriate given other market structure rule changes currently being contemplated that would directly impact these amendments. Notably, this request is

¹ 15 U.S. Code § 78mm(a)(1).

² 17 CFR § 242.610(f).

³ 17 CFR § 242.610(c). See also Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (“Adopting Release”).

designed to give the Commission time to consider and discuss with market participants whether and how access fees should be regulated in light of anticipated changes to Rule 611 (the “Order Protection Rule”).⁴ Our request is not intended to effectuate a particular result with respect to those discussions. While MEMX certainly has views on that underlying topic,⁵ our concern at this time is simply to ensure that the Commission is able to consider the interplay of these rules before implementing significant changes that may need to be undone or modified shortly thereafter. At the same time, MEMX is cognizant of the benefits of the Commission’s simultaneous amendments to the minimum increment provisions of Rule 612(b),⁶ which provide for a narrower minimum increment in tick constrained stocks that are consistently quoted at the current minimum increment, i.e., one penny. As the Commission explained in the Adopting Release, “too large a tick size can increase transaction costs for investors by artificially widening the ‘bid-ask spread.’”⁷ And MEMX’s own data analysis has highlighted the need to advance these critical reforms, which would reduce spreads and improve investor trading outcomes in national market system (“NMS”) stocks that today account for upwards of half of all U.S. equities volume.⁸ However, as the

⁴ 17 CFR § 242.611.

⁵ See Letter from Adrian Griffiths, Head of Market Structure, MEMX to Vanessa Countryman, Secretary, Commission dated September 18, 2025 *available at* <https://www.sec.gov/comments/4-862/4862-660167-1970114.pdf>.

⁶ 17 CFR § 242.612(b).

⁷ Adopting Release, *supra* note 3, at 81622.

⁸ See *Why GE’s Basis Point Spread was Four Times Higher Before its Reverse Split and What We Should Do About It*, Adrian Griffiths, Head of Market Structure, MEMX (August 2021) *available at* <https://memx.com/insights/market-structure-report-examining-the-tick-constrained-securities-issue>; *The Tick Size Debate, Revisited*,

Commission acknowledged when it adopted these changes to the minimum increment, access fees and tick sizes are inextricably linked as “an access fee that is too high when compared to the tick size can create pricing distortions.”⁹ We have therefore tailored our request so that changes to the minimum increment can be implemented as planned this November, while minimizing potential market disruption from access fee changes as the Commission weighs the future of the Order Protection Rule and other related rules.

Request for Exemptive Relief

Our request for exemptive relief has two parts:

First, MEMX requests that the Commission delay implementation of access fee cap changes in NMS stocks that would continue to be subject to a full penny (\$0.01) minimum increment pursuant to Rule 612(b)(2)(i)¹⁰ as well as sub-dollar stocks that would continue to trade with a minimum increment of \$0.0001 pursuant to Rule 612(b)(3).¹¹ Changing the access fee cap in these stocks is not needed to support the Commission’s tick size changes, and delaying the implementation of a lower access fee in such stocks would allow the

Adrian Griffiths, Head of Market Structure, MEMX (January 2022) available at <https://memx.com/insights/market-structure-report-the-tick-size-debate-revisited-2>.

⁹ Adopting Release, *supra* note 3, at 81623.

¹⁰ 17 CFR § 242.612(b)(2)(i).

¹¹ 17 CFR § 242.612(b)(3). We note that the Commission could apply an access fee cap for sub-dollar stocks that is proportionate to the access fee that otherwise applies to those stocks when trading above \$1. MEMX’s request is designed to limit complexity that would result from having multiple access fee tiers for sub-dollar stocks that are not necessary to effectuate the Commission’s tick size changes. Nevertheless, we do not object to the alternative described above if supported by industry feedback.

Commission to evaluate whether further changes are necessary or appropriate to account for potential amendments to the Order Protection Rule. As discussed, this course of action is needed to mitigate market disruption that would be caused by the Commission lowering the access fee cap later this year and then potentially undoing or making significant modifications to such rules as the agency considers changes to the Order Protection Rule.

Second, MEMX requests that the Commission grant targeted access fee relief for NMS stocks that would trade in a half penny (\$0.005) minimum increment pursuant to the recently adopted Rule 612(b)(2)(ii).¹² As the Commission explains in the Adopting Release, a minimum increment of \$0.005 requires a reduction in the current access fee cap (\$0.0030) as access fees would otherwise be set at a level that will be greater than half the spread in any stocks quoted at the minimum increment, resulting in a situation where the best displayed price may be different from the best price net of transaction fees or rebates. However, rather than reduce the access fee cap to \$0.0010 in such stocks, MEMX requests that the Commission allow exchanges to charge an access fee of up to \$0.0015, which would preserve the existing relationship between access fees and the minimum increment by ensuring that each is reduced by a commensurate amount (50%) in tick constrained stocks.

¹² 17 CFR § 242.612(b)(2)(ii). For the avoidance of doubt, MEMX considers these two requests to be independent, and the Commission may evaluate whether to grant relief in tick constrained stocks separately from its decision of whether to grant the relief requested in stocks that would continue to trade in a full penny increment.

MEMX notes that the exemptive relief requested above would set access fees at a level consistent with MEMX's prior recommendations to the Commission.¹³ Based on our discussions with market participants, and our review of comment letters submitted to the Commission during the rulemaking process, we also understand that this reflects industry consensus for the regulation of access fees under existing market structure. However, we are not at this time recommending that the Commission adopt such changes on a permanent basis. As explained in this letter, MEMX believes that access fee changes are inextricably linked to order protection requirements, and the Commission should evaluate the future of these rules in connection with those broader market structure changes.

MEMX therefore requests that the relief requested above be granted for a period sufficient for the Commission for the Commission to make a decision about what to do with the access fee cap if or when the Order Protection Rule is amended or repealed. At this time, MEMX does not know when the Commission may choose to propose and adopt amendments to the Order Protection Rule. So rather than request relief for a specific defined period of time, we request that the Commission grant relief from these rules pending any decision of the Commission with respect to the future of the access fee cap.¹⁴ Once the Commission has made its decision that decision should be implemented through the

¹³ See Letter from Adrian Griffiths, Head of Market Structure, MEMX to Vanessa Countryman, Secretary, Commission dated March 31, 2023 *available at* <https://www.sec.gov/comments/s7-30-22/s73022-20163328-333796.pdf>.

¹⁴ Alternatively, the Commission could grant the requested relief for a set period and then extend such period in the event the agency needs additional time to determine whether and how the access fee cap should apply in the future.

agency's normal process, which would consider the breadth of the change being made when determining how much time to give market participants to comply with such rules.

Discussion

Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Commission, by rule, regulation, or order, to exempt, conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Exchange Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.¹⁵ Rule 610(f) of Regulation NMS similarly provides that "[t]he Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotations, orders, or fees, or any class or classes of persons, securities, quotations, orders, or fees, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."¹⁶ For the reasons discussed below, a temporary delay of the recent access fee cap amendments meets the requirements for an exemption under these provisions. Not only is our request consistent with the public interest and protection of investors, it would facilitate effective regulation by

¹⁵ 15 U.S. Code § 78mm(a)(1).

¹⁶ 17 CFR § 242.610(f).

ensuring the Commission can assess the interplay between recently adopted rules and fundamental U.S. equity market structure changes currently being considered by the agency.

Regardless of the Commission’s views on the underlying subject matter, MEMX believes that the U.S. equity market would be best served by a more thoughtful and robust process that allows market participants to provide feedback based on new regulatory developments that were not part of the Commission’s plan when the rules were initially proposed and adopted. As the Commission is aware, the D.C. Circuit recently denied challenges to its September 2024 amendments to the minimum increment and access fee provisions of Regulation NMS.¹⁷ Following the court’s decision, on October 31, 2025, the Commission issued an order setting a November 2026 compliance date for those changes to be implemented.¹⁸ However, in the interim, the Commission has continued to consider broader market structure changes. Most notably, the Commission is now considering changes to the Order Protection Rule — a rule that is frequently cited as the “centerpiece”¹⁹ of the Commission’s market structure regime. While the Commission has yet to formally propose changes to that rule, it has held multiple public roundtables and is engaging with market participants to understand the impact of changes to the order protection framework and whether such changes would necessitate further changes to related Commission rules.

¹⁷ See *Cboe Global Markets, Inc., et al v. SEC*, No. 24-1350 (D.C. Cir. Oct. 14, 2025).

¹⁸ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief).

¹⁹ See *supra* note 5.

At the Commission’s public roundtables, and in comments to the Commission, MEMX and other market participants have highlighted the relationship between the Order Protection Rule and the Commission’s broader regulatory regime.²⁰ And, while the Order Protection Rule is strongly related to many other Commission rules,²¹ perhaps no relationship is stronger than the relationship between the Order Protection Rule and the access fee cap. As the Commission explained when it adopted Regulation NMS two decades ago, the access fee cap was “most importantly”²² designed to ensure that outlier exchanges were not able to charge excessive fees for access to displayed quotations that brokers are required to access under the Order Protection Rule.²³ What’s more, the Commission explicitly tied these rules together in application, choosing to cap fees “for the execution of an order against a *protected quotation*.”²⁴ (Emphasis added) Thus, by its own terms, the access fee cap would no longer apply in the absence of order protection requirements. As a practical matter, this means that some change to the access fee cap *will* have to be made if the Commission decides to eliminate the Order Protection Rule following its review.²⁵

And while only the Commission knows exactly what changes it will or will not entertain, there is reason to believe the Commission could in fact choose to scrap the rule

²⁰ Id.

²¹ Id.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37503 (June 29, 2005) (“Regulation NMS Adopting Release”).

²³ Id.

²⁴ 17 CFR § 242.610(c).

²⁵ See supra note 5.

in its entirety. Consider the joint dissent of Commissioner Paul Atkins, now Chairman of the Commission, and his fellow Commissioner Cynthia Glassman, which highlighted the fact that the access fee cap was only needed due to order protection requirements:

“To have its trade-through rule, the majority has been compelled to engage in rulemaking that otherwise would have been unnecessary... One of the consequences of limiting investor choice to the sole criterion of price is that the Commission must ensure that markets have comparable access to these prices. This has required the Commission to adopt a cap on access fees so that market participants are not held hostage by outlier markets displaying the best price, but charging excessive access fees.”²⁶

To be sure, market participants have varying views on whether and how to amend the access fee cap to account for the potential repeal of the Order Protection Rule, and one stray quote from twenty years ago does not obligate the Commission to take any particular regulatory action now. Nevertheless, while there will undoubtedly be much debate on what the Commission should do to resolve this matter there is no debate that, to quote Chairman Atkins remarks at the second order protection roundtable, the Commission “must take a careful, deliberative approach to any changes.”²⁷ And the Commission itself seems to have

²⁶ See Regulation NMS Adopting Release, *supra* note 22, at 37642.

²⁷ See Chairman Atkins, Remarks at the Roundtable on Rule 611 of Regulation NMS, dated December 16, 2025 *available at* <https://www.sec.gov/newsroom/speeches-statements/atkins-121625-remarks-roundtable-rule-611-regulation-nms> (discussing feedback the Commission has received on access fee caps and other rules that “intersect” with the Order Protection Rule).

understood the importance of the access fee question, having explicitly teed it up for discussion at this roundtable. The Commission should not front run its own deliberations by rushing to implement a rule designed for a market structure that may no longer exist.

Under the leadership of Chairman Atkins, the Commission has sought to engage with market participants on market structure changes. Short circuiting those discussions by implementing changes ahead of the Commission's own review of Regulation NMS is unlikely to meet the standard this administration has sought to hold itself to on public engagement. Given the importance of these changes to the U.S. equity ecosystem, the Commission should continue to engage with market participants before making decisions that would have a material impact on the market structure the Commission now seeks to create.

Whatever view the Commission may ultimately take on access fee caps, that view should be informed by informed public comment on the front end and robust economic analysis on the back end. Although the Commission received significant input on access fees when evaluating its recent amendments to Regulation NMS, those comments were predicated on a market structure where brokers have a regulatory obligation to access protected quotations pursuant to the Order Protection Rule. Given the fact that the Commission adopted the access fee cap as a response to order protection requirements included in Regulation NMS, it's likely the Commission would have received substantially different comments had public commenters been aware that the Commission would subsequently consider the elimination of that rule. In fact, while a handful of panelists at the Commission's order protection roundtables argued that the access fee cap should live on in

some form without order protection,²⁸ many others suggested that continued government intervention in market pricing would no longer be necessary to address the problem the access fee cap was designed to solve. The Commission has not yet had an opportunity to consider and address such comments as part of a formal rulemaking process.

And, because the Commission itself had not contemplated changes to the Order Protection Rule when it adopted the access fee cap amendments, the agency's own economic analysis did not consider such changes as a part of the economic baseline used to determine the costs and benefits of those amendments. Thus, comments notwithstanding, it's not even clear that the Commission would have made the same decision had it considered changes to the Order Protection Rule as part of the economic analysis required by the Administrative Procedure Act ("APA"). This defect can only be cured by engaging in a new rulemaking process that considers the interplay between the access fee cap and the Order Protection Rule in much the same way that the Commission *did* consider the interplay between its proposed access fee changes and related tick size requirements. While the Commission is certainly not required to reassess every rule on its books every time a new rule is considered, these rules are so intertwined that it is impossible

²⁸ Several panelists that argued that there should be an access fee cap nevertheless suggested that the Commission should reconsider its recent amendments, with some suggesting that the access fee cap should be reduced commensurately with the minimum increment in tick constrained stocks. Although MEMX believes a different approach may ultimately be necessary to account for order protection changes, those comments are consistent with the approach outlined in our request.

for the Commission to evaluate the impact of changes to the access fee cap without first determining whether brokers are required to access protected quotations in the first place.

Moreover, while the overwhelming majority of alternative trading systems (“ATSS”) registered with the Commission currently operate as fully non-displayed venues, volume has been growing on ATSS that publicly display quotations with the largest ATS by volume falling into this category. Relevant to today’s discussion, that ATS operates several order books, including one with a standard exchange-like maker/taker fee structure and \$0.0030 access fee.²⁹ In a future without order protection requirements, quotations displayed by an ATS may compete more directly with quotations displayed by national securities exchanges like MEMX. This complicates the Commission’s choices as the agency will have to determine not only whether the access fee cap should continue to live on in some form but also which venues it should apply to — i.e., should ATSS be able to replicate existing exchange fee structures when exchanges would be prohibited from doing so under the recent access fee cap amendments. From a competitive standpoint, MEMX believes that without order protection, exchanges and ATSS should be subject to equal regulation. Thus, if exchange transaction fees remain subject to an access fee cap, the same fee cap should also be applied to ATSS to avoid liquidity shifting to off-exchange venues purely to take advantage of better economics not available on exchange due to government-imposed price controls.³⁰

²⁹ See <https://www.imperativex.com/platforms#aspen>.

³⁰ MEMX notes that arguments we’ve heard for the continued need for an access fee cap would apply equally to access fees charged by both exchanges and ATSS. For example, best execution obligations could require that market participants access both exchange and ATS displayed quotations in the absence of order protection.

However, ATS fees are not currently subject to substantive review and expanding the access fee cap may pose unique issues that the Commission has not previously considered. Rather than resolve these difficult questions now, MEMX recommends that the Commission seek additional market participant feedback as it advances its order protection proposal.

In sum, the access fee cap is very much intertwined with the Order Protection Rule as the Commission itself acknowledged when it adopted Regulation NMS. Given the relationship between these rules, MEMX believes that the market would be best served by a temporary implementation delay, as described in this letter requesting exemptive relief. Granting our request would ensure that the industry does not have to implement significant new regulations that the Commission may later eliminate or modify substantially. At the same time, and as discussed above, our request is tailored to ensure that the Commission can continue with the implementation of needed changes to the minimum increment.

Commission Authority

The Commission has ample authority to grant our request pursuant to Section 36(a)(1) of the Exchange Act³¹ and Rule 610(f) of Regulation NMS.³² Section 36(a)(1) provides the Commission with broad statutory authority to grant exemptions from any provision of the Exchange Act and the rules and regulations adopted thereunder. And when the Commission adopted the access fee cap pursuant to Rule 610 it mirrored its general authority in an

³¹ 15 U.S. Code § 78mm(a)(1).

³² 17 CFR § 242.610(f).

explicit carve out that grants it similarly broad authority to deviate from such rules to the extent it finds that such action is consistent with the public interest protection of investors.

Indeed, the authorities cited above were precisely the authorities the Commission itself cited when it determined to set the current November 2026 compliance date for these rules following the D.C. Circuit's decision to deny the associated petitions for review. While the Commission's decision in that instance was based on concerns about the ability of market participants to comply with the new rules by the previously announced November 2025 compliance date that fact is not relevant to the Commission's authority. Like the delay the Commission itself granted last October, our request to delay the compliance date for access fee changes in stocks not subject to a narrower minimum increment pursuant to the amended Rule 612 is squarely within the Commission's authority to protect investors.

The second portion of our request, which asks that the Commission permit an access fee of \$0.0015 in NMS stocks trading in a half penny increment, is similarly consistent with the broad authorities discussed above. While this request goes beyond a simple delay, it would enable the implementation of planned changes to the minimum increment while minimizing market disruption that may be caused by implementing an access fee that is lower than necessary to support such changes. Nothing in Section 36(a)(1) or Rule 610(f) prevents the Commission from making substantive changes to a rule in light of considerations that were not apparent when the Commission initially adopted such rules.

In fact, not only is the Commission's authority not so limited under the plain meaning of these provisions, the Commission's discussion of similar provisions in Regulation NMS

makes clear that the agency’s concern was primarily its ability to respond substantively to unforeseen circumstances and not merely its ability to extend compliance deadlines. Consider Rule 612(d), which provides analogous authority for the Commission to grant exemptions from the minimum increment. In discussing the need for this provision, the Commission explained that the balance of costs and benefits that animated Rule 612 “could shift”³³ as “the markets continue to evolve.”³⁴ While the Commission could have instead chosen to require a formal rulemaking in response to such market evolution, it clearly thought it was necessary to provide a faster path to provide relief for market participants if such rules were no longer appropriate in all circumstances, mirroring Congress’s broad grant of statutory authority in Section 36(a)(1). And the Commission has, in fact, previously used the authority granted by that section to permit substantive deviations from Rule 612.³⁵

To be sure, this particular situation is somewhat unique in that our request comes on the heels of a formal rulemaking on this very topic. However, that fact is simply a reflection of the unusual procedural posture of these rules, which were adopted by a prior administration in 2024 before the Commission began considering changes to its longstanding order protection framework. Given the clear relationship between these two sets of regulatory obligations, an agency would normally consider changes to these rules simultaneously so that it could evaluate the extent to which changes to one would

³³ See Regulation NMS Adopting Release, *supra* note 22, at 37553.

³⁴ Id.

³⁵ See e.g. Securities Exchange Act Release No. 104625 (January 16, 2026), 91 FR 2813 (January 22, 2026) (Order Granting Limited Exemption Pursuant to Rule 612(d) of Regulation NMS to Cboe BYX Exchange, Inc. from Rule 612 of Regulation NMS).

necessitate downstream changes to the other. And that is in fact what the Commission appears to be doing now, particularly with its second order protection roundtable, which discussed at length the potential impact that order protection changes would have on ancillary rules like the access fee cap. However, when the prior administration adopted its recent amendments the agency itself had not contemplated order protection changes, leading to a situation where the Commission’s careful evaluation of these interrelated rules may be thwarted by the imposition of new regulatory requirements before the Commission can complete its own analysis. While exemptive authority is most commonly used to address unanticipated market evolution, the fact that the evolution at issue here is that of the Commission’s own ruleset should not impact the agency’s ability to grant needed relief to market participants as it considers whether and how to apply these rules in the future.

This case is therefore different from the situation that the Fifth Circuit confronted in *Nat’l Ass’n of Manufacturers v. SEC* where the court found the agency’s decision to rescind proxy advisor rules adopted by the previous administration arbitrary and capricious.³⁶ In that case, the agency’s change was based on unsubstantiated factual findings that “contradicted”³⁷ prior factual findings that “underlay”³⁸ the prior rules. As the court found, when the Commission “abandon[s]”³⁹ its own prior factual findings it must offer “a more

³⁶ *Nat’l Ass’n of Manufacturers v. SEC*, No. 22-51069 (5th Cir. 2024)

³⁷ Id.

³⁸ Id.

³⁹ Id.

detailed explanation”⁴⁰ for this choice. However, here the Commission need not “abandon”⁴¹ any prior factual finding. Our request is based on a real change — i.e., the Commission’s subsequent decision to consider amendments to the Order Protection Rule. Rather than contradict any prior Commission finding, our request is actually consistent with prior agency statements that make clear that the access fee cap was adopted primarily in response to risks that may no longer be relevant in the absence of order protection requirements.

Moreover, our request is temporary. If granted, it will not result in the permanent rescission of the Commission’s duly adopted rules, as was the case with respect to the Commission’s rescission of the proxy advisor rules. Rather, our request would allow more modest changes to be made while the agency *proceeds* with formal rulemaking. MEMX understands that the Commission intends to propose changes to the Order Protection Rule in short order, with the Commission’s unified agenda suggesting that such a proposal could be published for comment as early as this April.⁴² As such, our request is not meant to *avoid* a formal rulemaking process. To the contrary, our request is to let that process play out with the benefit of public input not only on the question of whether access fees should be changed to account for tick size changes and other prior market developments but also whether further changes are necessary to account for anticipated changes to the Order

⁴⁰ Id.

⁴¹ Id.

⁴² See Trade-Through Rule, RIN 3235-AN50 (Spring 2025), *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=3235-AN50>.

Protection Rule. Far from being “arbitrary and capricious”⁴³ under the APA, taking the necessary time to consider the interplay between previously adopted rules and upcoming rule amendments is exactly the kind of reasoned decision-making the APA requires.

In this way, our request is more closely related to *Nat’l Ass’n of Priv. Fund Managers v. SEC* where the Fifth Circuit held that the Commission erred by not considering the “cumulative economic impact”⁴⁴ of “highly interrelated”⁴⁵ rules. Whatever the boundaries of the Commission’s authority under Section 36(a)(1) and Rule 610(f) may be, the agency should not interpret its authorities so narrowly that it is not authorized to do here what is plainly *required* to do in other closely analogous circumstances.⁴⁶ The access fee cap and Order Protection Rule are by all accounts “highly interrelated,”⁴⁷ and the Commission should use its authorities constructively to address this fact. Our request would give the Commission the opportunity to do exactly that, ensuring investor protection at a time that the Commission is considering wide ranging changes to its core market structure regulations.

⁴³ 5 U.S.C. § 706(2).

⁴⁴ *Nat’l Ass’n of Priv. Fund Managers v. SEC*, No. 23-60626 (5th Cir. 2025).

⁴⁵ *Id.*

⁴⁶ To be clear, this case differs somewhat from *Nat’l Ass’n of Priv. Fund Managers v. SEC* in that the rules at issue here were not adopted near-simultaneously. Nevertheless, that difference is only pertinent to the question of whether the Commission erred in adopting the amendments in the first place, not the procedurally distinct question teed up here, which is whether the Commission is *authorized* to consider the interplay between these rules in responding to our request.

⁴⁷ See *supra* note 44.

Request for Public Comment

MEMX requests that the Commission publish our request for public comment. If granted, this request for exemptive relief would impact trading conducted by market participants across a number of trading centers beyond MEMX's own registered national securities exchange. We therefore believe that publishing this request for public comment would allow the Commission to hear and consider diverse perspectives that may be relevant to its decision-making process, including commenters' views on the need for relief, the extent of the relief requested, and the Commission's legal authority to grant our request.

In addition, MEMX has heard from members that it would be helpful for the Commission to phase in the associated tick size changes so that stocks that are the most tick constrained are allowed to transition to a new minimum increment first. For example, the Commission could set a minimum quoted size requirement for the first tranche of symbols to be traded in a half penny increment this November, which would help isolate the stocks that are the most constrained by the existing tick size regime.⁴⁸ While our request focuses on the new access fee provisions, the Commission could simultaneously consider public feedback on whether to phase in the implementation of tick size requirements, starting with stocks that are the most in need of reform. This would allow the Commission to

⁴⁸ MEMX's research shows that tick constrained stocks generally trade with more liquidity at the national best bid or offer ("NBBO") as liquidity that would otherwise be traded within the spread is pushed to the nearest permitted increment.

gather key data that can be used to evaluate the effectiveness of the rule and potentially make adjustments as necessary while these changes are rolled out for the industry.

Timing of Relief

Our request is designed to allow the Commission's tick size amendments to be implemented as planned this coming November and therefore would not have any impact on the timing of that implementation, or the work that goes into preparing for it. Nevertheless, we understand that market participants may ask the Commission to consider a delay to those tick size amendments as well — either in full, or as part of a phased implementation. Given that implementation work is already underway on that project, the timing of any tick size relief is crucial, and we ask that the Commission consider such questions expeditiously so that it can provide appropriate guidance to the market ahead of the upcoming November compliance date. While the access fee relief requested in this letter does not involve the same kind of significant technology changes, we similarly request that the Commission provide certainty to market participants on this question as soon as reasonably practicable. National securities exchanges, market participants, and market infrastructure providers are already facing an unprecedented number of regulatory implementations in 2026. Providing certainty to the market sooner rather than later would help to ensure that firms can focus finite resources on the projects that are most impactful for our respective businesses and that position American capital markets for the future.

* * *

MEMX thanks the Commission for considering our request for exemptive relief. Changes to the access fee cap are significant to both exchanges and market participants, and the industry needs confidence that the Commissions short- and long-term plans are in synch before executing one of the most significant regulatory implementations of the past two decades. When the prior administration adopted access fee cap changes, those changes were fundamentally designed for a market that includes order protection obligations that required the adoption of such a fee cap in the first place. As the new administration forges its own path forward on market structure, it must take the time to reassess these changes and how they fit in with the agency's new free market vision. Additional industry feedback would allow the Commission to determine how best to proceed as it charts the path forward. As the Commission has repeatedly acknowledged, regulation works best when regulators are able to engage with market participants and consider how its regulations impact the broader marketplace. We appreciate the Commission's recent efforts to increase industry engagement as it considers significant changes to U.S. equity market structure. The Commission should reaffirm its commitment to this principle by delaying the implementation of access fee changes as discussed in this request. MEMX looks forward to continuing engagement with the Commission on this topic as the agency evaluates our request and considers the future of U.S. equity market structure.

Regards,

/s/ Adrian Griffiths

Adrian Griffiths
Head of Market Structure