



February 28, 2020

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

Re: 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 (Release No. 34-87906; File No. 4-757)

Dear Ms. Countryman:

MEMX LLC (“MEMX”) appreciates the opportunity to provide comments on the SEC’s proposed order directing the exchanges and FINRA to submit a new national market system plan (the “New Consolidated Data Plan”) to replace the existing national market system plans (the “Equity Data Plans”) that govern the public dissemination of real-time, consolidated equity market data for NMS stocks.

As a prospective new exchange,¹ and therefore participant in the Equity Data Plans, MEMX has a significant interest in how these 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.

We recognize that several improvements have been proposed and/or made to the governance of the SIPs in recent years, many changes of which have been proposed by the current SIP Operating Committee.² Nevertheless, as discussed further below, MEMX believes the time is right to reform the current SIP governance structure. As SEC Commissioner Lee stated at the

¹ In October 2019, MEMX filed an application with the SEC for approval to operate as a national securities exchange. See MEMX, LLC – Form 1 Application and Exhibits at <https://www.sec.gov/rules/other/2019/memx/memx-form-1.htm>. Pending regulatory approval by the SEC, MEMX intends to launch the exchange on July 24, 2020.

² See, e.g., SIP Operating Committee proposals relating to conflicts of interest and confidentiality. Securities Exchange Act Release Nos. 87907 (January 8, 2020) and 87908 (January 8, 2020) (“SIP Conflict of Interest Policy”) and Securities Exchange Act Release Nos. 87909 (January 8, 2020) and 87910 (January 8, 2020) (“SIP Confidentiality Policy”).

open meeting on the proposed order, “the effectiveness of any future proposals will depend upon establishing a solid governance structure.”³

We therefore support the creation of a new, single NMS plan that would include consistent policies and procedures. A consolidated plan with broader representation from a variety of market participants would better represent today’s equity markets and serve to reduce, in part, existing redundancies, inefficiencies, and inconsistencies that currently impede improvements to the market data regime and contribute to certain duplicative costs for plan participants.

Our comments will focus on issues specific to the proposed order and changes to the SIP governance model. We note that the Commission’s recent proposed rule to make significant changes to the market data infrastructure addresses many of the broader issues discussed in the proposed order regarding market data.⁴ We will reserve discussion of MEMX’s views on those issues for our comments on that proposal. In the meantime, we note that we believe that many of the issues raised by the Commission’s proposed rule on market data infrastructure are closely associated with the potential reform of the governance of the Equity Data Plans under the proposed order. We therefore recommend that the Commission examine these two important proposals together to ensure that issues around the content of the SIP and market data in general are appropriately considered.

Our specific comments on the proposed order follow.

I. Background

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.

MEMX agrees with the Commission and the numerous commenters on market data issues that there is a need to address the current governance structure as well as the provision of market data more broadly. We believe that developments since the adoption of Regulation NMS have perpetuated and even advanced some of the issues of concern surrounding the Equity Data Plans, for example, the conflicts of interest between the commercial interests of exchanges and their regulatory obligations to produce and provide core data.

³ See Statement of SEC Commissioner Allison Herren Lee on Proposed Order for the Creation of a New Consolidated Market Data Plan for Equity Market Data at <https://www.sec.gov/news/public-statement/lee-statement-proposed-order-creation-new-consolidated-market-data-plan> (January 8, 2020).

⁴ Among other things, the proposed rule would expand the content of NMS information that is required to be collected, consolidated, and disseminated as part of the national market system under Regulation NMS and proposes to amend the method by which consolidated market data for NMS stocks is collected, calculated, and disseminated by introducing a decentralized consolidation model where competing consolidators replace the exclusive securities information processors. See <https://www.sec.gov/rules/proposed/2020/34-88216.pdf>.

Addressing these conflicts is consistent with MEMX's mission and we agree that reform of the current governance structure of the Equity Data Plans can better serve the needs of investors and other market participants. As SEC Commissioner Peirce stated, "[a]s controversial as market data issues are, there is general agreement that the status quo is imperfect."⁵ MEMX wholeheartedly agrees with this statement.

II. Changes to Equity Data Plan Voting Structure

The proposal would make significant changes to the voting structure of the Equity Data Plans. As discussed further below, MEMX supports reducing the emphasis on voting based on individual exchange medallions as well as expanding the voting representation of non-SROs. We agree with the Commission that these changes, in addition to changes to the allocation of voting rights among the SROs, to the structure of votes required for amendments, and other operational changes to the plans that would further the goals of the New Consolidated Data Plan.

Expansion of Voting Representation to Non-SROs

The proposal would provide for non-SROs to participate as full voting members of the operating committee, rather than in an advisory capacity.⁶ Currently, advisory committee representatives have no voting power in the Equity Data Plans.

MEMX strongly supports expanding voting representation to non-SROs market participants to one-third of the voting power. We believe providing voting representation to such market participants would facilitate the creation of a more efficient governance structure by allowing non-SRO industry participants to directly participate in the Equity Data Plans' decision-making process, which is significant given the role that these firms and individuals play as consumers of market data. We also believe this is an important step to improve, and ensure broader participation in, the SIP governance structure. MEMX, in turn, agrees that this will help to facilitate needed enhancements to the current market data regime.

Allocation of Voting Rights Among SROs and Exchange Groups

The proposal would allocate voting rights so that each unaffiliated SRO and exchange group has one vote on the operating committee, with a second vote provided only if the unaffiliated SRO or exchange group has maintained consolidated equity market share of at least 15 percent for at least four of the six calendar months preceding a vote of the operating committee.

⁵ See Statement of SEC Commissioner Hester M. Peirce on Notice of Proposed Order Regarding the Creation of a New Consolidated Market Data Plan for Equity Market Data at <https://www.sec.gov/news/public-statement/statement-peirce-open-meeting-2020-01-08> (January 8, 2020).

⁶ Specifically, the New Consolidated Data Plan would provide for separate voting member representatives of an institutional investor, a broker-dealer with a predominantly retail investor customer base, a broker-dealer with a predominantly institutional investor customer base, a securities market data vendor, an issuer of NMS stock, and a retail investor.

MEMX strongly supports reducing the emphasis on voting based on individual exchange medallions. We believe that this aspect of the proposed order is key to addressing the inherent conflicts of interest that exist relating to SIP governance.

Similarly, MEMX believes that a 15 percent threshold for a second vote (as well as the associated look-back period) is reasonable, thereby limiting the emphasis on individual medallions while still “rewarding” an exchange group or unaffiliated exchange with extra voting power to reflect its operation of an exchange group that generates a greater share of equity market data.⁷

Allocation of Voting Between SROs and Non-SROs

The New Consolidated Data Plan would provide the SROs in aggregate with two-thirds of the voting power on the operating committee, and non-SRO members of the operating committee in aggregate with one-third of the voting power, with proportionate fractional votes allocated to non-SRO members as necessary to preserve this ratio (*i.e.*, the aggregate number of votes provided to non-SRO members will, at all times, be one half of the aggregate number of SRO member votes).⁸

In addition, to ensure that the SROs have sufficient voting power to act jointly on behalf of the plan, all actions under the terms of the New Consolidated Data Plan, except for the selection of non-SRO members and decisions to enter into an SRO-only executive session, would be required to be authorized by an “augmented majority vote,” *i.e.*, a two-thirds majority of all votes on the operating committee, provided that this vote also includes a majority of the SRO votes.

As a prospective new exchange, MEMX appreciates the Commission recognizing that SROs have special legal obligations and regulatory responsibilities, including with regard to operating the Equity Data Plans. The proposed allocation of voting under the New Consolidated Data Plan should allow SROs to retain the voting power necessary to act jointly on behalf of the plan while at the same time providing non-SROs with a meaningful role in the operation of this critical component of the national market system.

Finally, MEMX supports requiring the submission of amendments to the New Consolidated Data Plan to be approved by an augmented majority vote rather than a unanimous vote to address concerns that arise from the Equity Data Plans’ current requirement for unanimous voting for certain actions. MEMX believes this is a reasonable solution to address concerns regarding the current situation where a single exchange can effectively have veto power over certain Equity Data Plan matters.

⁷ Consistent with the above, we agree with the Commission that to ensure that only those SROs that are contributing to the generation or collection of the core data disseminated by the New Consolidated Data Plan have a vote on plan decisions, if an exchange ceases operation as an equity trading venue, or has yet to commence operation as an equity trading venue (such as MEMX currently), that exchange should not have a vote on plan matters.

⁸ The relative value of non-SRO votes also would be adjusted as necessary to account for new exchange registrations and consolidations to ensure that the ratio remains the same.

Selection of Non-SRO Members

Under the New Consolidated Data Plan, the initial non-SRO Members would be selected by a majority vote of those current members of the Equity Data Plans' advisory committees, excluding advisory committee members who were selected by a participant to be its representative, and subsequent non-SRO members would be selected solely by the then-serving non-SRO members of the New Consolidated Data Plan operating committee.⁹

MEMX appreciates concerns expressed by the Commission regarding SROs' current involvement in the selection of the members of the advisory committees and the potential for impacting the independence of these members. While we believe that these types of conflicts have lessened in recent years, we do not object to these provisions. Similarly, MEMX agrees that a smooth transition from the current governance structure to the New Consolidated Data Plan will be important. We therefore support the Commission's proposal to maintain the current membership of the Equity Data Plans' advisory committees (excluding exchange representatives) through the transition and until the initial non-SRO members have been selected.

III. Operation of the New Consolidated Data Plan

The proposed order sets forth a number of specific provisions relating to the operation of the New Consolidated Data Plan, and the associated responsibilities of the operating committee.

Independent Plan Administrator/Plan Processors

The New Consolidated Data Plan operating committee's role would include selecting, overseeing, specifying the role and responsibilities of, and evaluating the performance of, the plan administrator. The administrator would be independent, *i.e.*, it cannot be owned or controlled by a corporate entity that separately offers for sale a market data product, either directly or via another subsidiary.

MEMX supports the provision of the proposed order requiring independence of the plan administrator. We agree with the Commission that an entity that acts as the administrator while also offering its own proprietary data products faces an inherent conflict of interest. MEMX also supports the operating committee's evaluation of the independent plan administrator in an effort to reduce industry administrative costs and complexities and control access to confidential subscriber information. Additionally, a centralized administrator could serve to reduce cost redundancies and provide simplification to the extent there are competing consolidators.

⁹ To further ensure that non-SRO members reflect a diversity of perspectives, the New Consolidated Data Plan would not permit a person affiliated with an SRO or a broker-dealer to serve as the representative of an "issuer," a "retail investor," or a "market data vendor."

Similarly, the operating committee would be required to review the performance of the plan processors and ensure the public reporting of the plan processors' performance, along with the metrics used to evaluate the processor(s) and other pertinent information about the processor(s).

MEMX supports increased transparency regarding the processor's performance that, as the Commission notes, may allow market participants to provide input to the operating committee and to the Commission, and provide the operating committee with greater incentives to ensure that the processor is functioning well.

Conflicts of Interest Policy/Protecting Confidential and Proprietary Information

The New Consolidated Data Plan would include a comprehensive conflicts of interest policy designed to address the conflicts of interest of SRO members and non-SRO members. MEMX supports such a policy to address both the conflicts on the part of some exchange participants (being part of for-profit companies that also sell proprietary data products) and non-SRO representatives (being employees of businesses that utilize core data or proprietary data feeds).

MEMX also supports provisions of the New Consolidated Data Plan designed to protect confidential and proprietary information from misuse. As the Commission notes in the proposed order, in the operation of the Equity Data Plans, participants and representatives of participants have been privy to confidential and proprietary information of substantial commercial or competitive value, including, among other things, information about core data usage, the SIPs' customer lists, financial information, and subscriber audit results. MEMX believes it is important to include robust provisions to address the use (or potential misuse) of such confidential or proprietary information by the plan participants.

Revenue Allocation Formula

The role of the operating committee of the New Consolidated Data Plan would include designing and maintaining a fair and reasonable revenue allocation formula for distributing plan revenues to be applied by the independent plan administrator, and overseeing, reviewing and revising that formula as needed.

MEMX supports the review of the SIP revenue allocation formula. We recognize that there are differing views, even among exchanges, on the optimal formula for determining how market data income should be allocated to individual SRO participants. Nevertheless, MEMX believes the time is right for a healthy debate about such allocation, and that efforts should be made to ensure that the allocation formula incentivizes activities consistent with the other goals of the New Consolidated Data Plan as well as capital formation more broadly.

Given that many of the issues associated with revenue allocation are closely tied to the issues raised by the Commission's market data infrastructure proposed rule, MEMX will address issues around revenue allocation more closely in our comments on that proposal. We look forward to providing further views on this issue to the Commission.

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Executive Session Policy

The New Consolidated Data Plan would provide that the use of executive sessions by SRO members would be limited to circumstances in which it is appropriate to exclude non-SRO members.¹⁰ Requests to enter into an executive session of SRO members would be required to be included on a written agenda, 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 supports the inclusion of such an executive session policy. We appreciate the Commission's recognition that there may be circumstances in which deliberation by the SROs alone may be appropriate but we agree that any overuse of executive sessions limits transparency of the Equity Data Plans' governance.

IV. Conclusion

MEMX offers our assistance to the Commission as it examines the proposed order. 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 Jay Clayton, Chair
The Honorable Allison Herren Lee, Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
Brett Redfearn, Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Markets, SEC

¹⁰ These circumstances would include discussions regarding matters that exclusively affect the SROs with respect to the Commission's oversight of the New Consolidated Data Plan.