



August 4, 2022

Via Electronic Submission

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

Re: Request for Exemptive Relief Pursuant to Rule 612(c) of Regulation NMS to Permit a Minimum Increment of \$0.005 in “Tick Constrained” NMS Stocks

Dear Ms. Countryman:

On August 30, 2021, MEMX LLC (“MEMX”) filed a request for exemptive relief with the U.S. Securities and Exchange Commission (“Commission”)¹ requesting that the Commission “exercise its exemptive authority under Rule 612(c) of Regulation NMS to permit market participants to display, rank, and accept bids or offers, orders, and indications of interest in an increment of half of one cent (\$0.005) in ‘tick constrained’ NMS stocks that trade with an average quoted spread of 1.1 cents or less.”² As discussed in that request, MEMX believes that granting such an exemption is in the public interest and consistent with the protection of investors in light

¹ See Letter from Adrian Griffiths, Head of Market Structure, MEMX to Vanessa Countryman, Secretary, Commission dated August 30, 2021 *available at* <https://memx.com/wp-content/uploads/Request-for-Exemptive-Relief.pdf>. If granted, the requested exemption would apply broadly to market participants subject to Rule 612 of Regulation NMS, including national securities exchanges, national securities associations, alternative trading systems, vendors, and broker dealers

² *Id.* As discussed in the request for exemptive relief, MEMX further requested that “as a condition of such relief” the Commission “require that any national securities exchange, national securities association, or other trading center subject to Rule 610(c) limit access fees under that rule to \$0.0015 for tick constrained NMS Stocks.” For the reasons discussed in the request, MEMX continues to believe that tick size changes must be accompanied by similar changes to the access fee cap under Regulation NMS.

of the impact that Rule 612 of Regulation NMS (the “Sub-Penny Rule”) has had on transaction costs paid by investors in tick constrained NMS Stocks, including but not limited to many low-priced actively-traded securities and exchange-traded products (“ETPs”) across all price levels.

Indeed, as explained in our request, and corroborated in a recent speech by Commission Chair Gary Gensler, tick constrained NMS stocks account for about half of all volume executed in the U.S. equity market.³ Reducing artificially wide spreads in these securities would therefore benefit a wide swath of public investors. Notably, improving the national best bid or offer (“NBBO”) through tick size reform would benefit not only investors who trade on MEMX and other exchanges but also investors, including retail investors, who trade off-exchange at prices determined in relation to the NBBO. At the same time, as the Commission understood when it adopted Regulation NMS, selecting the appropriate tick size is a balancing act. While the balance ultimately struck has not weathered the test of time, it is vital that the Commission continue to grapple with the important empirical questions raised in the adoption of that regulation as it evaluates different approaches to reforming the tick size regime that it established.

Attached to our request for exemptive relief, MEMX provided supporting data in the form of a white paper also published in August 2021.⁴ That white paper includes empirical support for reducing the minimum increment to half of one cent in tick constrained NMS Stocks, which would serve to improve publicly quoted spreads in those securities without implicating the concerns

³ See *“Market Structure and the Retail Investor:” Remarks Before the Piper Sandler Global Exchange Conference*, Gary Gensler, Chair, Commission available at <https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822>.

⁴ See *Tick Constrained Securities, 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 available at <https://memx.com/wp-content/uploads/MEMX-Market-Structure-Report-Tick-Constrained-Securities.pdf>.

raised by the Commission when it adopted the Sub-Penny Rule. For example, the data provided in that white paper shows that a half penny increment could be implemented in tick constrained NMS Stocks without: (1) unduly impacting depth at the NBBO – an important factor for institutional investors seeking liquidity for larger orders, or (2) facilitating sub-penny queue jumping.

While our request has been pending at the Commission, we have continued to review data on tick size reform and, in January 2022, we published a supplemental white paper that analyzed trading data before and after reverse splits in a number of ETPs.⁵ Among other things, that white paper found that spreads in the tick constrained ETPs studied narrowed significantly once tick constraints were eliminated or reduced, while no impact was observed in ETPs that were not tick constrained. The supplemental white paper provides further empirical support for our request for exemptive relief, which as discussed is designed to reduce spreads in tick constrained NMS Stocks, thereby reducing investor transaction costs and facilitating the public price discovery process.

Given the importance of this issue to investors of all types, and the widespread support for our recommended solution across the industry, MEMX is now resubmitting our original request for exemptive relief. Attached to our current submission is the supplemental January 2022 tick size white paper, which we incorporate by reference into our request. We believe that the evidence produced in our initial request, as well as the supplemental factual support incorporated into this request today, provide a strong basis for the Commission to act to reduce the minimum increment to half of one cent in all tick constrained NMS Stocks. Commission approval of this request would improve the quality of publicly displayed quotations in securities that account for half of all volume

⁵ See *The Tick Size Debate, Revisited*, Adrian Griffiths, Head of Market Structure, MEMX, available at https://memx.com/wp-content/uploads/MEMX_MSR_Tick-Constrained-Securities-2_03b.pdf.

traded in the U.S. equity market. And, it would do so without implicating any of the concerns that the Commission raised when it first adopted the Sub-Penny Rule in Regulation NMS.

Sincerely,

/s/ Adrian Griffiths

Adrian Griffiths
Head of Market Structure

Cc:

Chair Gary Gensler
Commissioner Hester M. Pierce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda
Commissioner Jaime Lizárraga
Director Haoxiang Zhu
Director Jessica Wachter