Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The proposed pricing does not impose an undue burden on intra-market competition as all pricing would be uniformly assessed to similarly situated market participants. Customers would continue to receive favorable pricing as compared to other market participants because Customer liquidity enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads which may cause an additional corresponding increase in order flow from other market participants. Lead Market Makers and Market Makers add value through continuous quoting [44] and are subject to additional requirements and obligations [45] unlike other market participants. Incentivizing Lead Market Makers and Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

Non-Customer

The Exchange's proposal to relocate current note 1 of Options 7, Section 2 to Options 7, Section 1 and remove references to note 1 within Options 7, Section 2(1), as described above, as well as within Options 7, Section 2(4) does not impose an undue burden on competition. The amendments will bring greater clarity to the term Non-Customer throughout Options 7 pricing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [46] and paragraph (f) of Rule 19b–4 thereunder.[47]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2021–009 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2021–009. 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 (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2021–009 and should be submitted on or before April 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–07271 Filed 4–8–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91478; File No. SR–MEMX–2021–04]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend the Corporate Documents of the Exchange's Parent Company

April 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2021, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[44] *See* Options 2, Sections 4 and 5.

[45] *See* Options 2, Section 4.

[46] 15 U.S.C. 78s(b)(3)(A)(ii).

[47] 17 CFR 240.19b–4(f)(2).

[48] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend and restate the Fourth Amended and Restated Limited Liability Company Agreement (the ''Fourth Amended LLC Agreement'') of MEMX Holdings LLC (''Holdco'') as the Fifth Amended and Restated Limited Liability Company Agreement of Holdco (the ''Fifth Amended LLC Agreement'') to reflect certain amendments, as further described below.[3] Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the Exchange. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend and restate the Holdco LLC Agreement to reflect certain amendments that were previously approved by the Holdco Board in accordance with the Holdco LLC Agreement, including: (i) Amendments to reflect governance changes that have already occurred with respect to Holdco and the Exchange, which resulted from or were made in connection with recent combination transactions involving certain Class A Members[4] and/or their affiliates, and to make conforming changes to defined terms; (ii) amendments to the provisions relating to a quorum of the Holdco Board and to make conforming changes to defined terms; (iii) amendments to provisions relating to the rights of certain Class A Members with respect to the governance of certain subsidiaries of Holdco (other than the Exchange); (iv) amendments to streamline the email communication procedures relating to actions taken by written consent of the Holdco Members and the Holdco Board; and (v) various clarifying, conforming, and other non-substantive amendments. Each of these amendments is discussed below.

Amendments Resulting From or in Connection With Combination Transactions Involving Class A Members

In October 2020, an affiliate of Strategic Investments I, Inc. (''Morgan Stanley'')[5] completed a combination transaction with E*TRADE Financial Corporation[6] resulting in Morgan Stanley and/or one of its affiliates directly or indirectly owning all of the equity interests in E*Trade and all such entities becoming Affiliates[7] of each other (the ''Morgan Stanley-E*Trade Combination''). In that same month, The Charles Schwab Corporation (''Schwab'')[8] completed a combination transaction with an affiliate of Datek Online Management Corp. (''TD Ameritrade'')[9] resulting in Schwab directly or indirectly owning all of the equity interests in TD Ameritrade and such entities becoming Affiliates of each other (the ''Schwab–TD Ameritrade Combination''). The Exchange proposes to amend certain provisions of the Holdco LLC Agreement to reflect governance changes that have already occurred with respect to Holdco and the Exchange, which resulted from or were made in connection with the Morgan Stanley-E*Trade Combination and the Schwab–TD Ameritrade Combination. Each of these changes has already occurred by operation of the Holdco LLC Agreement and/or pursuant to authorization by the Holdco Board or action by a Class A Member, as applicable, in accordance with the Holdco LLC Agreement. Accordingly, the purpose of these proposed amendments is to update the Holdco LLC Agreement to reflect the current state of affairs with respect to the governance of Holdco and the Exchange and to make conforming changes to defined terms. Each of these proposed amendments is discussed below.

Amendment to the Definition of Exchange Director Nominating Member

The Holdco LLC Agreement currently defines the term Exchange Director Nominating Member[10] to mean each of E*Trade, TD Ameritrade, and Virtu,[11] as each of those entities had the right to nominate an Exchange Director as of the Fourth Amended LLC Agreement Effective Date. In connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination, (i) E*Trade transferred its right to nominate an Exchange Director to Morgan Stanley after such entities became Affiliates, and (ii) TD Ameritrade transferred its right to nominate an Exchange Director to Schwab after such entities became Affiliates. Accordingly, the Exchange proposes to amend the definition of Exchange Director Nominating Member to replace the references to E*Trade and TD Ameritrade with references to Morgan Stanley and Schwab, respectively, to reflect that each of Morgan Stanley and Schwab now has the right to nominate an Exchange Director (in addition to Virtu, which remains as the third Exchange Director Nominating Member). The purpose of this proposed amendment is to add

[3] References herein to the ''Holdco LLC Agreement'' refer to the Fourth Amended LLC Agreement or the Fifth Amended LLC Agreement, as appropriate in the context.

[4] The term ''Class A Member'' refers to a Member of Holdco holding Class A–1 Units or Class A–2 Units of Holdco. The term ''Member'' refers to a person admitted as a member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement.

[5] Morgan Stanley is a Class A Member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement for the current definition of Morgan Stanley.

[6] E*TRADE Financial Corporation was a Class A Member of Holdco on February 19, 2020, the effective date of the Fourth Amended LLC Agreement (the ''Fourth Amended LLC Agreement Effective Date''). E*TRADE Financial Holdings, LLC (''E*Trade''), as successor-in-interest to E*TRADE Financial Corporation, was subsequently admitted as and is currently a Class A Member of Holdco.

[7] The term ''Affiliate'' refers to, with respect to any person, any other person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such person. *See* Section 1.1 of the Holdco LLC Agreement.

[8] Schwab is a Class A Member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement for the current definition of Schwab.

[9] TD Ameritrade is a Class A Member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement for the current definition of TD Ameritrade.

[10] The term ''Exchange Director Nominating Member'' refers to a Member of Holdco that has the right to nominate an Exchange Director pursuant to the Exchange Director Nomination Rotation. The term ''Exchange Director'' refers to a member of the Exchange Board nominated by an Exchange Director Nominating Member. The term ''Exchange Director Nomination Rotation'' refers to the order in which Exchange Director Nominating Members may nominate Exchange Directors as set forth in Exhibit J of the Holdco LLC Agreement. *See* Section 1.1 and Exhibit J of the Holdco LLC Agreement.

[11] The term ''Virtu'' refers to Virtu Getco Investments, LLC, which is a Class A Member of Holdco. *See* Section 1.1. of the Holdco LLC Agreement for the current definition of Virtu. The Exchange is also proposing to amend the definition of Virtu to reflect a name change of that entity, as further described below.

clarity to the Holdco LLC Agreement as it reflects governance changes with respect to the Exchange that have already occurred.

Amendment to Exhibit J Regarding the Exchange Director Nomination Rotation

Exhibit J of the Holdco LLC Agreement sets forth the order in which Exchange Director Nominating Members may nominate Exchange Directors (*i.e.,* the Exchange Director Nomination Rotation). The Exchange proposes to amend Exhibit J to replace the references to E*Trade and TD Ameritrade with references to Morgan Stanley and Schwab, respectively, to reflect that Morgan Stanley and Schwab are now Exchange Director Nominating Members, which replaced E*Trade and TD Ameritrade, respectively, in the Exchange Director Nomination Rotation, as described above. The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement as it reflects a governance change with respect to the Exchange that has already occurred.

Amendment to the Definition of Morgan Stanley

The Exchange proposes to amend the definition of Morgan Stanley in the Holdco LLC Agreement to reflect that such entity is now an Exchange Director Nominating Member, as E*Trade's right to nominate an Exchange Director was transferred to Morgan Stanley, as described above. The Holdco LLC Agreement currently defines E*Trade to include a reference that such entity is an Exchange Director Nominating Member (*i.e.,* has the right to nominate an Exchange Director), so the purpose of this proposed amendment is to reflect that Morgan Stanley now holds this right instead.[12] This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it reflects a governance change with respect to the Exchange that has already occurred.

Amendments to the Definition of Schwab

The Exchange proposes to amend the definition of Schwab in the Holdco LLC Agreement to reflect that such entity is now an Exchange Director Nominating Member, as TD Ameritrade's right to nominate an Exchange Director was transferred to Schwab, as described above. The Holdco LLC Agreement currently defines TD Ameritrade to include a reference that such entity is an Exchange Director Nominating Member (*i.e.,* has the right to nominate a Director), so the purpose of this proposed amendment is to reflect that Schwab now holds this right instead.[13] This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it reflects a governance change with respect to the Exchange that has already occurred.

The Exchange also proposes to further amend the definition of Schwab to reflect that it is no longer a Nominating Class A Member.[14] In connection with the Schwab-TD Ameritrade Combination, Schwab irrevocably waived its right to nominate a director of Holdco (''Director'').[15] Accordingly, the purpose of this proposed amendment is to reflect that Schwab is no longer a Nominating Class A Member as a result of Schwab's waiver of its right to nominate a Director. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it reflects a governance change with respect to Holdco that has already occurred pursuant to action taken by Schwab.

Deletion of the Definition of E*Trade

The Holdco LLC Agreement currently defines E*Trade to include references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, E*Trade's right to nominate an Exchange Director was transferred to Morgan Stanley in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being an Exchange Director Nominating Member. Additionally, E*Trade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being a Nominating Class A Member.[16] Further, the Exchange is also proposing herein to delete all references to the term ''E*Trade'' contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member[17] (as described below), and there are no other references to the term ''E*Trade'' in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term ''E*Trade'' in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. The Exchange notes that the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

Deletion of the Definition of TD Ameritrade

The Holdco LLC Agreement currently defines TD Ameritrade to include references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, TD Ameritrade's right to nominate an Exchange Director was transferred to Schwab in connection with the Schwab-TD Ameritrade Combination, resulting in TD Ameritrade no longer being an Exchange Director Nominating Member. Additionally, TD Ameritrade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Schwab- TD Ameritrade Combination, resulting in TD Ameritrade no longer being a Nominating Class A Member.[18]

[12] *See* Section 1.1 of the Holdco LLC Agreement for the current definition of E*Trade. The Exchange is also proposing to delete the definition of E*Trade, as further described below.

[13] *See* Section 1.1 of the Holdco LLC Agreement for the current definition of TD Ameritrade. The Exchange is also proposing to delete the definition of E*Trade, as further described below.

[14] The term ''Nominating Class A Member'' refers to a Class A Member of Holdco which has the right to nominate a Director to the Holdco Board. *See* Section 8.3(b) of the Holdco LLC Agreement.

[15] Section 8.11 of the Holdco LLC Agreement permits a Class A Member that is a Nominating Class A Member to waive (revocably or irrevocably) its right to nominate a Director.

[16] *See* Section 8.17 of the Holdco LLC Agreement, which provides that if a Nominating Class A Member merges, consolidates or otherwise combines with, obtains control over, or becomes Affiliated with, another Nominating Class A Member (a ''Combination''), the surviving Affiliated group shall (i) if both such Nominating Class A Members had nominated a Director that is serving on the Holdco Board at the time of the Combination, remove or cause the removal of one of such Directors effective upon the consummation of such Combination, and (ii) thereafter have the right to nominate only one Director and the number of Directors shall be reduced accordingly. In connection with the Morgan Stanley-E*Trade Combination, the surviving Affiliated group (consisting of Morgan Stanley and E*Trade) caused the removal of the Director nominated by E*Trade, resulting in Morgan Stanley retaining such Affiliated group's right to nominate a Director.

[17] The term ''Retail Broker Class A Member'' currently refers to each of E*Trade, Fidelity, Schwab, TD Ameritrade, and any other Member that is specifically designated as a Retail Broker Class A Member and which, or an Affiliate of which, is a broker-dealer registered with the Financial Industry Regulatory Authority, Inc. which provides services to retail customers, in each case, together with each of their respective Affiliates. *See* Section 1.1 of the Holdco LLC Agreement.

[18] *See* Section 8.17 of the Holdco LLC Agreement. In connection with the Schwab-TD Ameritrade Combination, the surviving Affiliated group (consisting of Schwab and TD Ameritrade) caused the removal of the Director nominated by TD

Further, the Exchange is also proposing herein to delete all references to the term ''TD Ameritrade'' contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member (as described below), and there are no other references to the term ''TD Ameritrade'' in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term ''TD Ameritrade'' in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. As noted above, the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

Amendment to the Definition of Retail Broker Class A Member

The Holdco LLC Agreement currently defines Retail Broker Class A Member to include references to E*Trade and TD Ameritrade. As the Exchange is proposing to delete ''E*Trade'' and ''TD Ameritrade'' as defined terms in the Holdco LLC Agreement, as described above, the Exchange proposes to amend the definition of Retail Broker Class A Member to delete the references to E*Trade and TD Ameritrade. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes references to terms that would be obsolete after giving effect to the proposed amendments described herein. The Exchange notes that there is no other consequence of deleting references to E*Trade and TD Ameritrade in the definition of Retail Broker Class A Member because, after giving effect to the proposed amendments described herein, the only references to Retail Broker Class A Member are in reference to a Retail Broker Class A Member's Director or right to nominate a Director, neither of which E*Trade and TD Ameritrade currently have.

Amendments to Provisions Relating to a Quorum of the Holdco Board

The Exchange proposes to amend the Holdco LLC Agreement's provisions relating to a quorum of the Holdco Board and make conforming amendments to defined terms in connection therewith. Specifically, the Exchange proposes to group a new ''Buy Side Class A Member'' category [19] together with the Retail Broker Class A Member category for purposes of the provisions relating to establishing a quorum at a meeting of the Holdco Board and to add and amend certain defined terms in connection with this proposed amendment. Each of these proposed amendments is discussed below.

Add ''Buy Side Class A Member'' as a New Defined Term

The Exchange proposes to add ''Buy Side Class A Member'' as a defined term in the Holdco LLC Agreement that includes BlackRock [20] and is otherwise consistent with the definitions of the other categories of Class A Members (*i.e.,* Bank Class A Member, Market Maker Class A Member, and Retail Broker Class A Member).[21] The purpose of this proposed amendment is to add a defined term that will be referenced in the proposed amendments to the Holdco LLC Agreement's provisions relating to a quorum of the Holdco Board, as further described below.

Add ''Buy Side Director'' as a New Defined Term

The Exchange proposes to add ''Buy Side Director'' as a defined term in the Holdco LLC Agreement that means a Director nominated by a Buy Side Class A Member. This definition is consistent with the definitions of the other categories of Directors (*i.e.,* Bank Director, Market Maker Director, and Retail Broker Director).[22] The purpose of this proposed change is to add a defined term that will be referenced in the proposed amendments to the Holdco LLC Agreement's provisions relating to a quorum of the Holdco Board, as further described below.

Amendments to the Provisions Relating to a Quorum of the Holdco Board

Section 8.6(a)(i) of the Holdco LLC Agreement currently provides that a quorum for the transaction of business of the Holdco Board at a meeting of the Holdco Board shall constitute a number of Directors which both (A) represents the majority of the votes of the Directors serving on the Holdco Board, and (B) includes (x) at least one (1) Market Maker Director (or his or her Alternate Director), (y) at least one (1) Retail Broker Director (or his or her Alternate Director), and (z) at least one (1) Bank Director (or his or her Alternate Director). As a result of the governance changes that resulted from the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination (specifically, each of E*Trade's and TD Ameritrade's right to nominate a Director being eliminated by operation of Section 8.17 of the Holdco LLC Agreement, and Schwab's waiver of its right to nominate a Director, each as described above), Fidelity [23] remains as the sole Retail Broker Class A Member with the right to nominate a Retail Broker Director. Accordingly, under the Holdco LLC Agreement's existing provision relating to a quorum of the Holdco Board, the Director nominated by Fidelity, as the sole remaining Retail Broker Director, is required to be present to establish a quorum of the Holdco Board. To avoid the result of requiring the Director nominated by a single Class A Member (*i.e.,* Fidelity) to be present to establish a quorum of the Holdco Board, which the Exchange and the Holdco Board believe may be impractical for logistical reasons, the Exchange proposes to amend Section 8.6(a)(i) to provide that a quorum for the transaction of business of the Holdco Board at a meeting of the Holdco Board shall constitute a number of Directors which both (A) represents the majority of the votes of the Directors serving on the Holdco Board, and (B) includes (x) at least one (1) Market Maker Director (or his or her Alternate Director), (y) at least one (1) Retail Broker Director (or his or her Alternate Director) *or at least one (1) Buy Side Director (or his or her Alternate Director),* and (z) at least one (1) Bank Director (or his or her Alternate Director). The effect of this proposed amendment is to group Buy Side Directors (which would currently include only the Director nominated by BlackRock) together with Retail Broker Directors (which currently includes only the Director nominated by Fidelity) for purposes of establishing a quorum of the Holdco Board such that a Director of either of those categories would be required to be present to establish a quorum of the Holdco Board. The Exchange and the Holdco Board believe this proposed amendment would

Ameritrade, resulting in Schwab retaining such Affiliated group's right to nominate a Director.

[19] The other categories of Class A Members include Bank Class A Member, Market Maker Class A Member and Retail Broker Class A Member. *See* Section 1.1 of the Holdco LLC Agreement for the definitions of these terms.

[20] The term ''BlackRock'' refers to BLK SMI, LLC, which is a Class A Member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement.

[21] *See* Section 1.1 of the Holdco LLC Agreement for the current definitions of these terms.

[22] *Id.*

[23] The term ''Fidelity'' currently refers to Devonshire Investors (Delaware) LLC, which is a Class A Member of Holdco. *See* Section 1.1 of the Holdco LLC Agreement. The Exchange is also proposing to amend this definition to reference an updated entity name, as further described below.

improve the governance of Holdco by no longer requiring the Director nominated by a single Class A Member to be present to establish a quorum of the Holdco Board at a meeting of the Holdco Board.

The Exchange also proposes to amend Section 8.6(a)(ii)(A) of the Holdco LLC Agreement, which provides alternative quorum requirements if a Director and his or her Alternate Director (where applicable) fail to attend two consecutively scheduled meetings of the Holdco Board, to include references to Buy Side Director and Buy Side Class A Member (grouped together with Retail Broker Director and Retail Broker Class A Member) to conform this provision to the proposed amended quorum requirements in Section 8.6(a)(i) described above.

Amendments to the Definition of Bank Class A Member

The definition of Bank Class A Member currently provides that no Bank Class A Member shall be deemed a Market Maker Class A Member or a Retail Broker Class A Member, and no Market Maker Class A Member and no Retail Broker Class A Member shall be deemed a Bank Class A Member for the purposes of the Holdco LLC Agreement. The Exchange proposes to amend this part of the definition of Bank Class A Member to also reflect that no Bank Class A Member shall be deemed a Buy Side Class A Member, and no Buy Side Class A Member shall be deemed a Bank Class A Member, for the purposes of the Holdco LLC Agreement. The purpose of this proposed amendment is to reflect the proposed addition of ''Buy Side Class A Member'' as a defined term and category of Class A Member, as described above.

The Exchange also proposes to further amend the definition of Bank Class A Member to delete an inadvertent duplicative reference to Class A Member. The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by correcting an inadvertent drafting error.

Amendment to the Definition of Market Maker Class A Member

The definition of Market Maker Class A Member currently provides that no Market Maker Class A Member shall be deemed a Bank Class A Member or a Retail Broker Class A Member, and no Bank Class A Member and no Retail Broker Class A Member shall be deemed a Market Maker Class A Member for the purposes of the Holdco LLC Agreement. The Exchange proposes to amend this part of the definition of Market Maker Class A Member to also reflect that no Market Maker Class A Member shall be deemed a Buy Side Class A Member, and no Buy Side Class A Member shall be deemed a Market Maker Class A Member, for the purposes of the Holdco LLC Agreement. The purpose of this proposed amendment is to reflect the proposed addition of ''Buy Side Class A Member'' as a defined term and category of Class A Member, as described above.

Amendment to the Definition of Retail Broker Class A Member

The definition of Retail Broker Class A Member currently provides that no Retail Broker Class A Member shall be deemed a Bank Class A Member or a Market Maker Class A Member, and no Bank Class A Member and no Market Maker Class A Member shall be deemed a Retail Broker Class A Member for the purposes of the Holdco LLC Agreement. The Exchange proposes to amend this part of the definition of Retail Broker Class A Member to also reflect that no Retail Broker Class A Member shall be deemed a Buy Side Class A Member, and no Buy Side Class A Member shall be deemed a Retail Broker Class A Member, for the purposes of the Holdco LLC Agreement. The purpose of this proposed amendment is to reflect the proposed addition of ''Buy Side Class A Member'' as a defined term and category of Class A Member, as described above.

Amendments Related to the Rights of Certain Class A Members With Respect to the Governance of Certain Holdco Subsidiaries

Section 8.18(i) of the Holdco LLC Agreement sets forth certain rights and requirements relating to the governance of certain subsidiaries of Holdco (''Holdco Subsidiaries''), including that, generally, each Market Maker Class A Member which is a Nominating Class A Member, each Retail Broker Class A Member which is a Nominating Class A Member, and each Bank Class A Member which is a Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary.[24] As of the Fourth Amended LLC Agreement Effective Date, all of the Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members were Nominating Class A Members. Additionally, all such Class A Members as a group comprised all of the Nominating Class A Members of Holdco. Therefore, the references in Section 8.18(i) to each of the three categories of Class A Members (*i.e.,* Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) were unnecessary, as the same effect would have been achieved by simply referencing ''each Nominating Class A Member'' without references to the three categories of Class A Members. It was in fact the intended effect for each Class A Member that was a Nominating Class A Member to have this right, which, as of the Fourth Amended LLC Agreement Effective Date, included each of the Class A Members in the three categories of Class A Members, although the references to the specific categories was not problematic.

Following the Fourth Amended LLC Agreement Effective Date, BlackRock was admitted as a Nominating Class A Member of Holdco. The Exchange now proposes to amend Section 8.18(i) to delete the references to the three specific categories of Class A Members (*i.e.,* Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) so that Section 8.18(i) would provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary. The effect of this proposed amendment is for each of the Class A Members that currently has this right (*i.e.,* each of the Nominating Class A Members as of the Fourth Amended LLC Agreement Effective Date) to retain this right (and the unnecessary references to the three categories of Class A Members be deleted), and for BlackRock, as a Nominating Class A Member that was admitted as such after the Fourth Amended LLC Agreement Effective Date, to also have this right. The purpose of this proposed amendment is to delete unnecessary references to the three categories of Class A Members (since all such Class A Members are Nominating Class A Members) and to also include BlackRock in the group that has this right, which is consistent with the original intent for Section 8.18(i) that each Nominating Class A Member has this right. As noted above, this aspect of Section 8.18(i) does not apply to the governance of the Exchange and, therefore, this proposed amendment does not in any way affect the governance of the Exchange.

The Exchange also proposes to further amend Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have the right to nominate

[24] Section 8.18(i) contains an exception to this general requirement for the governance of the Exchange, which provides that the Exchange shall be governed by the Exchange Board (which shall be constituted as set forth in the limited liability company agreement of the Exchange). Accordingly, the proposed amendment to Section 8.18(i) does not in any way affect the governance of the Exchange.

one member to the board of directors or an equivalent governing body of each Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote.[25] This is already true under the existing Supermajority Board Vote provisions in the Holdco LLC Agreement,[26] so the purpose of this proposed amendment is to simply add clarity in Section 8.18(i) regarding the Holdco Board's ability to approve a different governance structure of a Holdco Subsidiary pursuant to a Supermajority Board Vote of the Holdco Board.

Amendments To Streamline Email Communications Procedures for Actions Taken by Written Consent of the Holdco Members

Section 4.7(e) of the Holdco LLC Agreement provides that any action to be taken at a meeting of the Members of Holdco may be taken without a meeting if the action is taken in writing (which may be via email communication) by consent of such number of Members as would otherwise be required to approve such action. Section 4.7(e) also provides specific procedures for an action to be deemed to have been taken in writing via email communication for this purpose. The Exchange proposes to amend Section 4.7(e) to streamline these procedures, as described below.

• *Current language in Section 4.7(e) relating to email communication procedures:* For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by the CEO [27] to all Members entitled to vote on the matter at issue clearly specifying the action to be taken and clearly stating that an email response to such email shall be deemed to be an email communication for purposes of this Section 4.7(e), (ii) the number of Members required to approve the matter at issue respond to the CEO's email with an unambiguous approval of such matter, and (iii) the CEO's email and all such responses are filed with the minutes of the meetings of Members.

• *Proposed amended language in Section 4.7(e) relating to email communication procedures:* For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by an Officer [28] to all Members entitled to vote on the matter at issue clearly specifying the action to be taken, (ii) the number of Members required to approve the matter at issue respond to the Officer's email with an unambiguous approval of such matter, and (iii) the Officer's email and all such responses are filed with the minutes of the meetings of Members.

The effect of the proposed amendments to Section 4.7(e) is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) Permit an email communication to be sent by any Officer (rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 4.7(e). The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Members' written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 4.7(e) and that expressly stating this in such email communications is unnecessary. Accordingly, these proposed amendments are intended to simplify and streamline the procedures for actions taken by the Members of Holdco without a meeting by broadening the group of Officers that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 4.7(e) is particularly helpful to Holdco and the Members of Holdco in light of the COVID–19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Members of Holdco in writing via email communication.

Amendments To Streamline Email Communications Procedures for Actions Taken by Written Consent of the Holdco Board

Section 8.7 of the Holdco LLC Agreement provides that any action of the Holdco Board may be taken without a meeting if a written consent (including via email communication) of all of the Directors then constituting the Holdco Board approves such action. Section 8.7 also provides specific procedures for an action to be deemed to have been taken in writing via email communication for this purpose. The Exchange proposes to amend Section 8.7 to streamline these procedures, as described below.

• *Current language in Section 8.7 relating to email communication procedures:* For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by the CEO or Chairman of the Board to all Directors entitled to vote on the matter at issue clearly specifying the action to be taken and clearly stating that an email response to such email shall be deemed to be an email communication for purposes of this Section 8.7, (ii) the number of Directors required to approve the matter at issue respond to the CEO's or the Chairman of the Board's email with an unambiguous approval of such matter, and (iii) the CEO's or Chairman of the Board's email and all such responses are filed with the minutes of the meetings of Directors.

• *Proposed amended language in Section 8.7 relating to email communication procedures:* For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by an Officer or the Chairman of the Board to all Directors entitled to vote on the matter at issue clearly specifying the action to be taken, (ii) the number of Directors required to approve the matter at issue respond to the Officer's or the Chairman of the Board's email with an unambiguous approval of such matter, and (iii) the Officer's or Chairman of the Board's email and all such responses are filed with the minutes of the meetings of Directors.

The effect of the proposed amendments to Section 8.7 is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) Permit an email communication to be sent by any Officer

[25] The term ''Supermajority Board Vote'' means the affirmative vote of at least seventy-seven percent (77%) of the votes of all Directors of Holdco then entitled to vote on the matter under consideration and who have not recused themselves, whether or not present at the applicable meeting of the Holdco Board; provided that if such affirmative vote threshold results in the necessity of the affirmative vote of all such Directors of Holdco with respect to such matter, an affirmative vote of all but one of such Directors of Holdco shall be required instead with respect to such matter. *See* Section 1.1 of the Holdco LLC Agreement.

[26] Exhibit C of the Holdco LLC Agreement sets forth certain matters that may be accomplished by a Supermajority Board Vote, which include materially amending the governing documents of a committee of the Holdco Board, or of the board of directors or a similar governing body of any Holdco Subsidiary. *See* Exhibit C (#25) of the Holdco LLC Agreement.

[27] The term ''CEO'' refers to the individual serving as the chief executive officer of Holdco. *See* Section 8.3(c) of the Holdco LLC Agreement.

[28] The term ''Officer'' refers to an individual appointed by the Board as an officer of Holdco. *See* Section 8.14(a) of the Holdco LLC Agreement.

(rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 8.7. The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Board's written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 8.7 and that expressly stating this in such email communications is unnecessary. Accordingly, these proposed amendments are intended to simplify and streamline the procedures for actions taken by the Holdco Board without a meeting by broadening the group of Officers that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 8.7 is particularly helpful to Holdco and the Holdco Board in light of the COVID–19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Holdco Board in writing via email communication.

Clarifying, Conforming, and Other Non-Substantive Amendments

Finally, the Exchange proposes to make various clarifying, conforming, and other non-substantive amendments to the Holdco LLC Agreement, each of which is discussed below.

Clarifying Amendments to Section 8.3(b) Regarding the Elimination or Waiver of a Nominating Class A Member's Right To Nominate a Director

Section 8.3(b) of the Holdco LLC Agreement currently provides, in part, that the right of a Nominating Class A Member to nominate a Director may be eliminated or waived, as applicable, as set forth in Section 8.10 (which relates to the loss of the right to nominate a Director if a Nominating Class A Member ceases to own a specified amount of Class A Units) and Section 8.11 (which relates to a Nominating Class A Member's ability to waive its right to nominate a Director). The Exchange proposes to amend Section 8.3(b) to also include a reference that the right of a Nominating Class A Member to nominate a Director may be eliminated as set forth in Section 8.17 of the Holdco LLC Agreement. Section 8.17 sets forth the procedures with respect to Combinations of Nominating Class A Members, including that, if both such Nominating Class A Members that involved in a Combination had nominated a Director that is serving on the Holdco Board at the time of the Combination, the surviving Affiliated group shall remove or cause the removal of one of such Directors effective upon the consummation of such Combination and thereafter have the right to nominate only one Director and the number of Directors shall be reduced accordingly. Thus, Section 8.17 already provides that the right to nominate a Director held by one Nominating Class A Member involved in such a Combination will be eliminated as a result of such Combination (since the surviving Affiliated group may retain only one of the Nominating Class A Members' rights to nominate a Director), however, Section 8.17 is not currently referenced in Section 8.3(b) as a section pursuant to which such right may be eliminated or waived. Accordingly, the proposed amendment to include a reference to Section 8.17 in Section 8.3(b) is intended to clarify that the right of a Nominating Class A Member to nominate a Director may be eliminated pursuant to Section 8.17 in connection with a Combination involving Nominating Class A Members.

The Exchange also proposes to further amend Section 8.3(b) to provide that, for the avoidance of doubt, a Class A Member shall not be a Nominating Class A Member for so long as such Class A Member's right to nominate a Director is eliminated or waived pursuant to Section 8.10, Section 8.11, and Section 8.17. This is already true under the Holdco LLC Agreement pursuant to the operation of these sections, so the purpose of this proposed amendment is to simply add clarity to the Holdco LLC Agreement in this regard.

Amendment to Section 8.19(a) To Correct an Inadvertent Drafting Error

Section 8.19 of the Holdco LLC Agreement contains provisions relating to the creation and functioning of an advisory board with industry representation (the ''Holdco Industry Advisory Board''). Section 8.19(a) sets forth the compositional requirements of the Holdco Industry Advisory Board. The Exchange proposes to amend Section 8.19(a) of the Holdco LLC Agreement to replace a reference in that provision to ''Members'' (which refers to a person admitted as a limited liability company member of Holdco) with a reference to ''members'' (which, in the context, refers to members of the national securities exchange operated by the Exchange), as this was the original intent of the parties to the Holdco LLC Agreement. Thus, the purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by correcting an inadvertent drafting error.

Amendment to Section 8.3(e) Regarding the Maintenance of the Director and Observers Schedule

Section 8.3(e) of the Holdco LLC Agreement currently provides that a copy of the Directors and Observers Schedule [29] as of the execution of this Agreement (referring to the Holdco LLC Agreement) is attached thereto as Exhibit B. The Exchange proposes to amend Section 8.3(e) to delete the phrase ''as of the execution of this Agreement'' so that the Directors and Observers Schedule may be maintained on an ongoing basis rather than remaining static as of a specific date. The Exchange and the Holdco Board believe that the proposed change would benefit the Members of Holdco and the public by providing up-to-date information with respect to Director, Alternate Director and Board Observer changes as they occur, as the Exchange maintains a copy of the Holdco LLC Agreement on its public website and would update the Director and Observers Schedule as such changes occur. The Exchange believes this is a non-substantive amendment to the Holdco LLC Agreement as it relates solely to the administration and maintenance of the corporate documents of Holdco.

Deletion of Section 13.1(d) To Remove an Obsolete Provision Relating to Events of Dissolution of Holdco

The Exchange proposes to delete Section 13.1(d) of the Holdco LLC Agreement in its entirety, as that provision is now outdated and obsolete, and it would therefore not be appropriate to leave in the Fifth Amended LLC Agreement. Specifically, Section 13.1(d) provides that Holdco shall be dissolved and its affairs wound up upon the occurrence of either of two events, each of which could only have occurred prior to the Commission's approval of the Exchange Application.[30] On May 4, 2020, the Commission

[29] The term ''Directors and Observers Schedule'' refers to a schedule of all Directors, Alternate Directors and Board Observers maintained by the Holdco Board. *See* Sections 8.3(e) of the Holdco LLC Agreement. The term ''Alternate Director'' refers to an alternate for a Director nominated by a Class A Member. *See* Section 8.12(a) of the Holdco LLC Agreement. The term ''Board Observer'' refers to an observer to the Board appointed by a Member. *See* Section 8.13(c) of the Holdco LLC Agreement.

[30] As currently defined in Section 13.1(d) of the Holdco LLC Agreement, the term ''Exchange Application'' refers to the application of the Exchange as a national securities exchange.

approved [31] the Exchange Application and, therefore, the occurrence of either of these events of dissolution is no longer possible. Accordingly, the purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by deleting a provision that is now obsolete.

Amendment to Section 8.3(c) To Delete Obsolete Language Regarding the Current CEO's Election to the Holdco Board

The Exchange proposes to amend Section 8.3(c) of the Holdco LLC Agreement to delete an outdated statement that Holdco's CEO as of the Fourth Amended LLC Agreement Effective Date shall be deemed to be elected as a Director to the Holdco Board as of such date. The CEO as of the Fourth Amended LLC Agreement Effective Date (*i.e.,* the current CEO) has already been elected as a Director to the Holdco as of such date and, therefore, this language is obsolete and it would therefore not be appropriate to leave in the Fifth Amended LLC Agreement. As amended, Section 8.3(c) would continue to provide that the individual serving as the CEO shall be deemed elected to the Holdco Board as a Director at the time of his or her appointment as the CEO by the Holdco Board. The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by deleting language that is now obsolete.

Amendment to Section 3.2 To Delete Obsolete Language Regarding the Prior Reclassification of Class A Units

The Exchange proposes to amend Section 3.2 of the Holdco LLC Agreement to delete an outdated reference that all Units classified as Class A Units immediately prior to the Fourth Amended LLC Agreement Effective Date are reclassified as Class A–1 Units as of such date. This reclassification of Class A Units already happened pursuant to the Fourth Amended LLC Agreement as of the Fourth Amended LLC Agreement Effective Date and, therefore, it would not be appropriate to leave this language in the Fifth Amended LLC Agreement. The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by deleting language that is now obsolete.

Amendment to Section 3.3(b) To Reflect Updated Amount of Class B Units Available for Issuance

The Exchange proposes to amend Section 3.3(b) of the Holdco LLC Agreement to reflect that the maximum number of Class B Units available for issuance pursuant to the Amended and Restated MEMX Holdings LLC 2018 Profits Interests Plan (the ''Incentive Plan'') has increased (from 12,352,941 to 16,754,087) as a result of action taken by the Holdco Board in accordance with the Holdco LLC Agreement and the Incentive Plan following the Fourth Amended LLC Agreement Effective Date. Thus, the purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by updating the amount of Class B Units referenced in Section 3.3(b) to reflect this increased amount.

Amendments To Reflect Updated Class A Member Entity Names

The Exchange proposes to amend the Holdco LLC Agreement to reflect the updated entity names of certain Class A Members and add signature pages for entities that became Class A Members after the Fourth Amended LLC Agreement Effective Date. The purpose of these amendments is to add clarity to the Holdco LLC Agreement by updating references to outdated entity names and including signature pages for entities that are now Class A Members and will be signatories to the Fifth Amended LLC Agreement. Each amendment is discussed below.

- *Definition and signature page of Fidelity:* The Exchange proposes to amend the definition of ''Fidelity'' to replace all references to Devonshire Investors (Delaware) LLC with references to FMR LLC, as the Class A Units held by Devonshire Investors (Delaware) LLC were transferred to its Affiliate, FMR LLC, and FMR LLC was admitted as a Class A Member of Holdco following the Fourth Amended LLC Agreement Effective Date. The Exchange also proposes to amend Fidelity's signature page to reflect this change.
- *Definition and signature page of Virtu:* The Exchange proposes to amend the definition of ''Virtu'' to replace all references to Virtu Getco Investments, LLC with references to Virtu Investments, LLC to reflect that such entity underwent a name change following the Fourth Amended LLC Agreement Effective Date. The Exchange also proposes to amend Virtu's signature page to reflect this change.
- *Definition and signature page of E*Trade:* The Exchange proposes to amend E*Trade's signature page to reference E*TRADE Financial Holdings, LLC, as this entity is the successor-in-interest to E*TRADE Financial Corporation and was admitted as a Class A Member of Holdco following the Fourth Amended LLC Agreement Effective Date, as described above.[32]
- *Signature Pages of New Class A Members:* The Exchange proposes to add signature pages for the following entities, as such entities became admitted as Class A Members of Holdco following the Fourth Amended LLC Agreement Effective Date and will be signatories to the Fifth Amended LLC Agreement: Wells Fargo Central Pacific Holdings, Inc.; Flow Traders U.S. Holding LLC; BLK SMI, LLC; Manikay Global Opportunities 2, LP; and Citicorp North America, Inc.

Add ''Fourth Amended LLC Agreement'' and ''Fourth Amended LLC Agreement Effective Date'' as New Defined Terms and Make Conforming Changes

As the Exchange is proposing to amend and restate the Holdco LLC Agreement, the Exchange proposes to add ''Fourth Amended LLC Agreement'' as a defined term to reference the Fourth Amended LLC Agreement. The Exchange also proposes to add ''Fourth Amended LLC Agreement Effective Date'' to reference the Fourth Amended LLC Agreement Effective Date. The Exchange also proposes to make conforming amendments to Sections 10.6(a) and 12.4(c) of the Holdco LLC Agreement to replace references to ''Effective Date'' with references to ''Fourth Amended LLC Agreement Effective Date'' as appropriate in the context.

Technical and Conforming Amendments To Amend and Restate the Holdco LLC Agreement

The Exchange proposes to make technical and conforming amendments to Section 2.1(b), the cover page, the table of contents, the lead-in, the recitals, and the signature pages of the Holdco LLC Agreement to reflect that the Holdco LLC Agreement is being amended and restated from the Fourth Amended LLC Agreement to the Fifth Amended LLC Agreement.

2. Statutory Basis

The Exchange believes that the proposed amendments to the Holdco LLC Agreement are consistent with Section 6(b) of the Act,[33] in general, and further the objectives of Section 6(b)(1) of the Act,[34] in particular, in that such amendments enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions

[31] *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[32] *See supra* note 6.

[33] 15 U.S.C. 78f(b).

[34] 15 U.S.C. 78f(b)(1).

of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed amendments are consistent with Section 6(b)(5) of the Act,[35] which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed amendments to reflect governance changes that resulted from or were made in connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination, and to make conforming changes to defined terms, are appropriate and consistent with the Act, as such amendments would update and clarify the relevant provisions of the Holdco LLC Agreement to reflect governance changes with respect to Holdco and the Exchange that have already occurred by operation of the Holdco LLC Agreement and/or pursuant to authorization by the Holdco Board or action by a Class A Member, as applicable, as described above. The Exchange believes that updating the Holdco LLC Agreement to reflect the current state of affairs with respect to the governance of Holdco and the Exchange would further the goal of transparency and add clarity with respect to the corporate documents of the Exchange's parent company, thereby enabling the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promoting just and equitable principles of trade, removing impediments to and perfect the mechanism of a free and open market, and protecting investors and the public interest.

The Exchange believes the proposed amendments to add ''Buy Side Class A Member'' and ''Buy Side Director'' as new defined terms, group Buy Side Class A Members together with Retail Broker Class A Members for purposes of the Holdco Board's quorum provisions, and make conforming changes to defined terms, are appropriate and consistent with the Act, as the Exchange believes such amendments would improve the governance of Holdco by reducing potential logistical concerns with respect to establishing a quorum of the Holdco Board at meetings of the Holdco Board. As noted above, the effect of these amendments is to group Buy Side Directors (which would currently include only the Director nominated by BlackRock) together with Retail Broker Directors (which currently includes only the Director nominated by Fidelity) for purposes of establishing a quorum of the Holdco Board such that a Director of either of those categories would be required to be present to establish a quorum of the Holdco Board. The Exchange believes this change would improve the governance of Holdco by no longer requiring the Director nominated by a single Class A Member to be present to establish a quorum of the Holdco Board at a meeting of the Holdco Board, which the Exchange believes may be impractical as requiring one specific Director to establish a quorum at meetings of the Holdco Board could result in difficulty establishing a quorum, and thus conducting the business, of the Holdco Board if such Director is unavailable for a meeting.

Similarly, the Exchange believes the proposed amendments to Section 4.7(e) and Section 8.7 to permit email communications for purposes of those sections to be sent by any Officer (rather than just the CEO) and to no longer require that such email communications clearly state that an email response shall be deemed to be an email communication for purposes of those sections would improve the governance of Holdco, as such amendments would simplify and streamline the procedures for actions taken by written consent of the Holdco Members and the Holdco Board via email communications by broadening the group of Officers that may send an email communication for these purposes and eliminating an unnecessary technical requirement. As noted above, simplification of these procedures is particularly helpful at this time as actions of the Holdco Members and the Holdco Board are more likely to be taken by written consent via email communications than at in-person meetings due to the COVID–19 pandemic.

While the proposed amendments aimed at improving the governance of Holdco do not directly impact the governance or operations of the Exchange or the Exchange Board, the Exchange believes that having a more efficient and effective governance structure in place for its parent company would indirectly benefit the Exchange's governance and operations, thereby enabling the Exchange to be so organized as to have the capacity to carry out the purposes of the Act, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange believes the proposed amendments to Section 8.18(i) to provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary (other than the Exchange [36]), are consistent with the Act, as such amendments update this section to reflect the admission of BlackRock as a Nominating Class A Member. As described above, the effect of these proposed amendments is to add BlackRock, which became a Nominating Class A Member following the Fourth Amended LLC Agreement Effective Date, to the group of Class A Members that holds this right in a manner consistent with the Holdco Members' original intent of granting this right to each Nominating Class A Member. The Exchange also believes that amending Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have this right with respect to a Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote, which is already the case under the Holdco LLC Agreement's Supermajority Board Vote provisions, as described above, is consistent with the Act, as it would clarify this result in Section 8.18(i). For the reasons described above, the Exchange believes that the proposed amendments to Section 8.18(i) would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

The Exchange believes the proposed amendments to clarify provisions relating to the elimination or waiver of a Nominating Class A Member's right to nominate a Director, correct inadvertent drafting errors, delete obsolete language and make other conforming changes consistent with the other proposed amendments to the Holdco LLC Agreement described above, reflect updated Class A Member entity names, and make technical and conforming changes to reflect that the Holdco LLC Agreement is being amended and restated from the Fourth Amended LLC Agreement to the Fifth Amended LLC Agreement are consistent with the Act, as such amendments would add update and clarify the Holdco LLC Agreement, thereby increasing transparency and helping to avoid any potential confusion resulting from retaining outdated, obsolete, or unclear provisions. For

[35] 15 U.S.C. 78f(b)(5).

[36] *See supra* note 24.

these reasons, the Exchange believes such amendments would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

Finally, the Exchange believes the proposed amendment to maintain the Directors and Observers Schedule attached as Exhibit B to the Holdco LLC Agreement on an ongoing basis, rather than as of a specific date, is consistent with the Act, as it would enable the Exchange to maintain a copy of the Holdco LLC Agreement with an up-to-date Directors and Observers Schedule on its public website, thereby increasing transparency with respect to the governance of the Exchange's parent company, which the Exchange believes would protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is not intended to address competitive issues but rather is concerned solely with the update and maintenance of Holdco's corporate documents and the governance, administration, and functioning of Holdco and certain Holdco Subsidiaries (other than the Exchange), as described above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[37] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[38] which requires that an exchange be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As summarized above, the Exchange proposes to amend and restate the Holdco LLC Agreement to make changes that are necessitated by recent consolidation among several of its shareholders. Relatedly, the Exchange proposes changes to the classification of its shareholders, which is relevant to the quorum provisions. Finally, the Exchange proposes other governance changes that impact, among other things, written consents, director nominations, updates to reflect the addition of Blackrock as a shareholder, and obsolete language.

The Commission finds that the proposed rule changes are consistent with the Exchange Act, including Section 6(b)(1) thereunder, in that they update the Holdco LLC Agreement to reflect corporate changes among its shareholders, preserve a balanced approach to the quorum provision, accommodate a new shareholder into the governance framework of Holdco, and make updates that do not materially alter Holdco governance or adversely impact governance of the Exchange.

In particular, the Commission believes that the Exchange's proposed amendments to the provisions governing quorum of the Holdco Board are consistent with Section 6(b)(1) of the Act in that the amendments are meant to guard against any particular Holdco shareholder exerting undue influence over the affairs of Holdco. Specifically, the Exchange has proposed to add ''Buy Side Class A Member'' and ''Buy Side Director'' as new defined terms, and group Buy Side Director(s) together with Retail Broker Director(s) for purposes of the Holdco Board's quorum provision. Under current rules, quorum requires the presence of (1) a Market Maker Director, (2) a Bank Director, and (3) a Retail Broker Director.[39] However, as a result of recent consolidation that reduced the number of shareholders that are Retail Broker Class A Members,[40] there currently remains only one Retail Broker Director nominated to Holdco by a single Retail Broker Class A Member, meaning that quorum of the Holdco Board could depend on the presence of a single individual.[41] The Exchange's proposal to group the Holdco director appointed by the new Buy Side Class A Member (*i.e.,* Blackrock) together with the Holdco director that can be appointed by the remaining Retail Broker Class A Member (*i.e.,* Fidelity) for the quorum provision will enable the Holdco Board to preserve a balanced approach to its quorum provision without providing any one shareholder with the power to withhold quorum and thus exercise undue influence over Holdco or its exchange subsidiary.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MEMX–2021–04 the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MEMX–2021–04. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

[37] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78f(b)(1).

[39] *See* Section 8.6(a)(i) of the Holdco LLC Agreement.

[40] *See supra* notes 5–9 and accompanying text.

[41] *See supra* note 15 and accompanying text (noting that Schwab irrevocably waived its right to nominate a director of Holdco).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2021–04 and should be submitted on or before April 30, 2021.

V. Accelerated Approval of Proposed Rule Change

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed rule changes update the Holdco LLC Agreement to reflect recent corporate changes among its shareholders and make other updates that do not materially alter Holdco governance or adversely impact governance of the Exchange. Accordingly, the proposed changes do not appear to present any novel regulatory issues. Furthermore, the Commission believes that the proposed amendments to the provisions relating to a quorum of the Holdco Board are necessary to preserve an appropriate balance and to avoid a situation in future Holdco Board meetings of one shareholder having an inappropriate and disproportionate impact on quorum. Accelerated approval of the proposal allows the updated quorum provision to take effect prior to the next Holdco Board meeting. For these reasons, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[42]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[43] that the proposed rule change (SR–MEMX–2021–04) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[42] 15 U.S.C. 78s(b)(2)

[43] *Id.*

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91479; File No. SR–CboeBZX–2021–023]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Extend the Cutoff Time for Accepting on Close Orders Entered for Participation in the Exchange's Closing Auction and To Clarify Changes to the Definitions of Late-Limit-On-Close and Late-Limit-On-Open Orders as Provided in Exchange Rule 11.23

April 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to extend the cutoff time for accepting on close orders entered for participation in the Exchange's Closing Auction and make clarifying changes to the definitions of Late-Limit-On-Close (''LLOC'') and Late-Limit-On-Open (''LLOO'') orders as provided in Exchange Rule 11.23. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the cutoff time for accepting on close orders entered for participation in the Exchange's Closing Auction.[3] Additionally, the Exchange proposes to make clarifying changes to the definition of Late-Limit-On-Close (''LLOC'')[4] and Late-Limit-On-Open (''LLOO'')[5] as provided in Exchange Rules 11.23(a)(11) and (12), respectively.

Currently, Users may submit Market-On-Close (''MOC'')[6] and Limit-On-Close (''LOC'')[7] [sic] until 3:55 p.m. ET (''Closing Auction Cutoff''), at which point any additional MOC and LOC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 11.23(c).

[4] The term ''Late-Limit-On-Close'' or ''LLOC'' shall mean a BZX limit order that is designated for execution only in the Closing Auction. To the extent a LLOC bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOC bid or offer, respectively, will assume its entered limit price. *See* Exchange Rule 11.23(a)(11).

[5] The term ''Late-Limit-On-Open'' or ''LLOO'' shall mean a BZX limit order that is designated for execution only in the Opening Auction. To the extent a LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOO bid or offer, respectively, will assume its entered limit price. Notwithstanding the foregoing, a LLOO order entered during the Quote-Only Period of an IPO will be converted to a limit order with a limit price equal to the original User entered limit price and any LLOO orders not executed in their entirety during the IPO Auction will be cancelled upon completion of the IPO Auction. *See* Exchange Rule 11.23(a)(12).

[6] The term ''Market-On-Close'' or ''MOC'' shall mean a BZX market order that is designated for execution only in the Closing Auction or Cboe Market Close. *See* Exchange Rule 11.23(a)(15).

[7] The term ''Limit-On-Close'' or ''LOC'' shall mean a BZX limit order that is designated for execution only in the Closing Auction. *See* Exchange Rule 11.23(a)(13).