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 such 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–PEARL–2021–52, and should be submitted on or before November 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23932 Filed 11–2–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93452; File No. SR–MEMX–2021–15]

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

October 28, 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 October 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, 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

The Exchange is filing with the Commission a proposed rule change to amend and restate the Fifth Amended and Restated Limited Liability Company Agreement (the ''Fifth Amended Holdco LLC Agreement'') of MEMX Holdings LLC (''Holdco'') as the Sixth Amended and Restated Limited Liability Company Agreement of Holdco (the ''Sixth Amended Holdco 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: (i) Amendments related to the creation of the Class C Units[4] and the Common Units[5] in connection with the sale by Holdco of Class C Units to certain Members[6] in a capital raise transaction (the ''Transaction''); (ii) amendments related to the voting rights of the Members associated with the ownership of certain Units consistent with certain BHCA[7] considerations; (iii) amendments to provisions related to the election by a Member to specify the maximum voting percentage that such Member may have with respect to any determination under the Holdco LLC Agreement consistent with certain BHCA considerations; (iv) amendments to various other provisions related to BHCA considerations; (v) amendments related to certain governance changes with respect to the Holdco Board in connection with the Transaction; and (vi) various clarifying, updating, conforming, and other non-substantive amendments. Each of these amendments is discussed below.[8]

Background

There are two primary purposes of the Exchange's proposal to amend and restate the Holdco LLC Agreement as described herein—

(1) to create two new classes of membership interests in Holdco (*i.e.,* the Class C Units and the Common Units), each of which is divided into a ''voting'' series and a ''non-voting'' series, and effectuate the sale by Holdco of Class C Units to certain Members pursuant to the Transaction; [9] and

(2) to divide each of the two existing series [10] of Class A Units (*i.e.,* the Class A–

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] As proposed, the term ''Class C Units'' means the Class C–1 Units and the Class C–2 Units; the term ''Class C–1 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class C–1 Units'' in the Holdco LLC Agreement; and the term ''Class C–2 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class C–2 Units'' in the Holdco LLC Agreement. The term ''Units'' means a unit representing a fractional part of the membership interests of the members of Holdco. Currently, there are two classes of Units—the Class A Units (which are divided into the Class A–1 Units and the Class A–2 Units) and the Class B Units.

[5] As proposed, the term ''Common Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Common Units'' in the Holdco LLC Agreement. As proposed, the Common Units are divided into the Voting Common Units and the Nonvoting Common Units.

[6] The term ''Member'' refers to a person (*i.e.,* an individual or entity) that owns one or more Units and is admitted as a limited liability company member of Holdco.

[7] The term ''BHCA'' means the United States Bank Holding Company Act of 1956, as amended and in effect from time to time, and the rules and regulations promulgated thereunder.

[8] All section references herein are to sections of the Holdco LLC Agreement unless indicated otherwise.

[9] The Exchange notes that no Common Units will be sold in connection with the Transaction; however, as proposed, Class C Units are convertible into Common Units, as further described below.

[10] The Exchange notes that Section 3.2, which provides for the authorization and issuance of the Class A Units, currently refers to the Class A–1 Units and the Class A–2 Units as separate ''classes'' of Units; however, the Exchange is proposing to amend Section 3.2 to reflect that the Class A–1 Units and the Class A–2 Units are separate ''series'' of Units. The Holdco Board believes that the Class A–1 Units and the Class A–2 Units are more appropriately designated as separate ''series'' instead of ''classes'' of Units, as such Units have identical privileges, preference, duties, liabilities, obligations, and rights under the Holdco LLC Agreement and the only difference between such Units is the original purchase price paid by the applicable Members. In connection with this

Continued

1 Units and the Class A–2 Units) into a ''voting'' series and a ''non-voting'' series in a manner consistent with the proposed voting structure of the Class C Units and the Common Units.

The proceeds resulting from the sale of Class C Units pursuant to the Transaction will be paid to Holdco by the Members participating in the Transaction as purchasers of Class C Units (the ''Participating Members''), and such proceeds will be used by Holdco for general corporate expenses, including to support the operations and regulation of the Exchange, which is a subsidiary of Holdco. All Participating Members are currently investors in, and Members of, Holdco. Although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will own, directly or indirectly, Units constituting more than twenty percent (20%) of any class of Units or will otherwise exceed any ownership or voting limitation applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction.[11]

Currently, the Holdco LLC Agreement provides for a governance structure of Holdco in which the Members (*i.e.,* persons that own one or more Units) do not have any voting or management rights, except in certain very limited circumstances,[12] and the authority to manage and control the business and affairs of Holdco, including the right to amend or modify the Holdco LLC Agreement, is otherwise vested in the Holdco Board.[13] Due to certain requirements and restrictions under the BHCA applicable to certain Members, the Exchange is now proposing to modify this governance structure to provide for certain voting rights of the Members associated with the ownership of the Class A Units, the Class C Units, and the Common Units by dividing such classes of Units into ''voting'' and ''non-voting'' series and prescribing certain matters on which such series are entitled to vote. The Exchange notes that the sole purpose of the proposed changes to Holdco's governance structure with respect to the Members' voting rights associated with the ownership of such Units in this regard is to facilitate certain Members' continued compliance with requirements and restrictions under the BHCA regarding investments in nonbanking companies, in light of recent amendments to the BHCA regulations issued by the Board of Governors of the Federal Reserve System regarding the framework for determining ''control'' under the BHCA, which became effective on September 30, 2020, as well as interpretations of such amendments by certain Members that are subject to the BHCA.

Additionally, in connection with the Transaction, three Members that do not currently have the right to nominate a director (''Director'') to the Holdco Board—Citicorp North America, Inc. (''Citi''), UBS Americas Inc. (''UBS''), and Wells Fargo Central Pacific Holdings, Inc. (''Wells Fargo'')—will receive the right to nominate a Director, thereby increasing the size of the Holdco Board from eleven to fourteen Directors. Other than such change to the composition of the Holdco Board, a proposed change to the definition of Supermajority Board Vote,[14] and the proposed changes related to the Members' voting rights associated with the ownership of the Class A Units, the Class C Units, and the Common Units, each as further described below, the governance of Holdco would continue under its existing structure. None of the amendments to the Holdco LLC Agreement proposed herein would impact the governance of the Exchange.

The Transaction and all amendments to the Holdco LLC Agreement proposed herein were previously approved by the Holdco Board on October 22, 2021, in accordance with the Holdco LLC Agreement. The Exchange expects the Transaction to close on or shortly after the date on which the amendments to the Holdco LLC Agreement proposed herein become effective. The amendments to the Holdco LLC Agreement proposed herein will become effective on the date that such amendments are approved by the Commission (the ''Effective Date'').

Amendments Related to the Creation of the Class C Units and the Common Units

In connection with the Transaction, the Exchange is proposing to amend the Holdco LLC Agreement to create two new classes of Units—the Class C Units and the Common Units—in order to effectuate the sale of Class C Units by Holdco to the Participating Members. As proposed, the Class C Units and the Common Units are each divided into a ''voting'' series (*i.e.,* the Class C–1 Units and the Voting Common Units, respectively) with certain voting rights as prescribed in amended Section 4.7 and a ''non-voting'' series (*i.e.,* the Class C–2 Units and the Nonvoting Common Units, respectively) with more limited voting rights as prescribed in amended Section 4.7, as further described below. The sole purpose of creating separate series of Class C Units and Common Units with different voting rights (*i.e.,* a ''voting'' series and a ''non-voting'' series) is to facilitate certain Members' compliance with the BHCA, as described above.

Currently, Section 3.2 contains provisions related to the authorization and issuance of the Class A Units (including the Class A–1 Units and the Class A–2 Units) and that specify the voting rights associated with such Units.[15] The Exchange proposes to amend Section 3.2 to reflect the creation of the Class C Units and the Common Units and to add new paragraphs (e) and (f) that contain provisions related to the authorization and issuance of the Class C Units (including the Class C–1 Units and the Class C–2 Units) and the Common Units (including the Voting Common Units and the Nonvoting Common Units) and that specify the voting rights associated with such Units.[16] In connection with the creation of the Class C Units and the Common Units, the Exchange also proposes to add definitions of the following terms in Section 1.1 (the ''Definitions'' section of the Holdco LLC Agreement): Class C

proposed amendment, the Exchange also proposes to replace certain references to the term ''Class'' with references to the term ''series'' (and to add other references to the term ''series'') throughout the Holdco LLC Agreement, as appropriate, and to delete ''Class'' as a defined term in Section 1.1, as such term would no longer be used as a stand-alone term.

[11] *See* Section 3.5, which sets forth certain limitations with respect to the ownership and voting of Units.

[12] Section 4.6 currently provides that, except as required by applicable law or the provisions of Section 15.9, Members do not have any voting or management rights. Section 15.9 provides that a Member's consent is required in connection with amendments or modifications to the Holdco LLC Agreement that modify the rights or obligations of such Member in a manner that is disproportionately adverse to such Member (or a type, class or series of Units held by such Member) or that materially increase an existing obligation or impose a new material obligation on such Member. As further described below, the Exchange is proposing to amend Sections 4.6 and 4.7 to reflect the prescription of certain additional voting rights associated with the Class A Units.

[13] *See* Sections 4.6, 8.2, and 15.9.

[14] *See* Section 1.1 for the definition of Supermajority Board Vote.

[15] The Exchange notes that it is proposing to amend Section 3.2 to reflect changes to the voting rights associated with the Class A Units, as further described below.

[16] The voting rights associated with the Class C Units and the Common Units are specified in proposed new paragraphs (e) and (f) of Section 3.2 by reference to the applicable paragraphs of amended Section 4.7, which prescribe the actions on which such Units are entitled to vote, as further described below.

Member; [17] Class C–1 Units; [18] Class C–2 Units; [19] Class C Unit Original Purchase Price; [20] Class C Units; [21] Common Member; [22] Common Units; [23] Converted Common Units; [24] Converted Common Member; [25] Nonvoting Common Units; [26] and Voting Common Units.[27] The Exchange also proposes to amend the definitions of ''Units'' and ''Pro Rata Portion'' in Section 1.1 to reflect the creation of, and include references to, the Class C Units and the Common Units.

The Exchange notes that no Common Units will be sold in connection with the Transaction and, as stated in proposed new Section 3.2(f), no Common Units will be issued and outstanding as of the Effective Date. However, as proposed, Class C Units are convertible into Common Units, and proposed Section 3.2(f) provides in this regard that Common Units will only be issuable in connection with an investment in Holdco or upon conversion of Class C Units as set forth in proposed new Section 3.11. In this connection, the Exchange proposes to add a new Section 3.11 entitled ''Class C Unit Conversion'' that provides for the conversion rights of Class C Units, and to re-number existing Section 3.11 to Section 3.12 and update relevant section references throughout the Holdco LLC Agreement accordingly. Proposed Section 3.11(a) provides for the optional conversion of Class C Units as set forth in proposed new Exhibit G to the Holdco LLC Agreement,[28] and proposed Section 3.11(b) provides for the mandatory conversion of Class C Units upon the consummation of a Qualified Public Offering.[29] Proposed Section 3.11(c) provides that in the event of any conversion to Common Units of any Class C Units, Class C–1 Units shall be converted into Voting Common Units, and Class C–2 Units shall be converted into Nonvoting Common Units. This conversion structure is designed to keep the same voting construct in place with respect to the Common Units that are issued upon the conversion of any Class C Units in a manner consistent with the BHCA considerations described above.

The primary distinction between the Class C Units and the Common Units, as well as the primary purpose of providing for the convertibility of Class C Units into Common Units, is the respective priority of Distributions [30] made to the Members with respect to such Units, which is the main economic consequence of a Member's ownership of such Units. The respective priority of Distributions made to the Members with respect to the different classes of Units is currently set forth in Section 7.3 for Distributions other than of proceeds in the event of a liquidation of Holdco and in Section 13.3 for Distributions of proceeds in the event of a liquidation of Holdco. In this connection, the Exchange proposes to amend Sections 7.3 and 13.3 to reflect the respective priority of Distributions with respect to the Class C Units and the Common Units under such sections. As such proposed amendments include the addition of new paragraphs, and the re-numbering of certain existing paragraphs, in Sections 7.3 and 13.3, the Exchange also proposes to update relevant section references throughout the Holdco LLC Agreement accordingly.

As noted above, there are currently two classes of Units—the Class A Units and the Class B Units.[31] As the Class B Units represent an incentive pool and do not have many of the rights and obligations associated with the Class A Units, there are currently several terms and provisions in the Holdco LLC Agreement that are associated only with the Class A Units and the Class A Members, and thus, make specific reference to ''Class A Units'' and/or ''Class A Members.'' However, as proposed, the Class C Units will generally have the same rights and obligations as the Class A Units with two primary distinctions: (i) The convertibility of Class C Units into Common Units; and (ii) the respective priority of Distributions under Sections 7.3 and 13.3. Other than these distinctions, a Member's ownership of Class A Units and/or Class C Units would generally confer the same rights and obligations on such Member with respect to such Units. Accordingly, the Exchange is proposing to make several amendments throughout the Holdco LLC Agreement to reflect that the Class C Units have such rights and obligations and to otherwise reflect the creation of the Class C Units, including to add references to ''Class C Units'' or ''Class C Member'' alongside references to ''Class A Units'' or ''Class A Member,'' as applicable, where appropriate for this purpose; replace references to ''Class A Member'' with references to ''Member'' where appropriate for this purpose; add proposed new Section 10.1(a)(ii)(C)(II) related to the transfer of Class C Units as permitted by the Holdco Board, which is consistent with the current provision related to the transfer of Class A Units as permitted by the Holdco

[17] As proposed, the term ''Class C Member'' means a Member holding Class C–1 Units or Class C–2 Units, as applicable, in its capacity as such, together with its Affiliates that hold Class C–1 Units or Class C–2 Units, as applicable (for the sake of clarity, such Member and such Affiliates shall be considered to be one (1) Class C Member).

[18] *See supra* note 4 for the proposed definition of the term ''Class C–1 Units''.

[19] *See supra* note 4 for the proposed definition of the term ''Class C–2 Units''.

[20] As proposed, the term ''Class C Unit Original Purchase Price'' means the purchase price per Class C Unit set forth in the Members Schedule as of the Effective Date.

[21] *See supra* note 4 for the proposed definition of the term ''Class C Units''.

[22] As proposed, the term ''Common Member'' means a Member holding Common Units in its capacity as such, together with its Affiliates that hold Common Units (for the sake of clarity, such Member and such Affiliates shall be considered to be one (1) Common Member).

[23] *See supra* note 5 for the proposed definition of the term ''Common Units''.

[24] As proposed, the term ''Converted Common Units'' means the Common Units which were issued in connection with the conversion of Class C Units pursuant to proposed new Section 3.11, as further described below.

[25] As proposed, the term ''Converted Common Member'' means a Member holding Converted Common Units in its capacity as such, together with its Affiliates that hold Converted Common Units (for the sake of clarity, such Member and such Affiliates shall be considered to be one (1) Converted Common Member).

[26] As proposed, the term ''Nonvoting Common Units'' refers to the Nonvoting Common Units described in proposed new Section 3.2(f)(iii).

[27] As proposed, the term ''Voting Common Units'' refers to the Voting Common Units described in proposed new Section 3.2(f)(ii).

[28] The Exchange proposes to add new Exhibit G to the Holdco LLC Agreement, which contains provisions related to the conversion rights of the Class C Units. Specifically, proposed new Exhibit G includes provisions related to the mechanics of, and processes associated with, the optional conversion of Class C Units into Common Units; the ratio of Common Units issuable upon the optional conversion of Class C Units; and the adjustment to the Class C Unit Conversion Price and other actions in connection with certain diluting issuances of Common Units, Distributions payable on the Common Units, stock splits and combinations, and reorganizations of Holdco. The Exchange also proposes to add a definition of the term ''Exempted Securities'' in Section 1.1 to reference the definition of such term as set forth in Exhibit G, which refers to the types of Units that are deemed not to be diluting issues for purposes of adjustments to the Class C Unit Conversion Price, and to amend the definition of the term ''New Securities'' in Section 9.1(b) to exclude from such term the conversion of Class C Units pursuant to proposed new Sections 3.10(d), 3.10(e), or 3.11 and certain Common Units that are deemed Exempted Securities. The Exchange also proposes to add any matter subject to determination by Supermajority Board Vote pursuant to Section 1.4 of Exhibit G as a Supermajority Board Matter in Exhibit C. *See* Section 1.1 for the definition of Supermajority Board Matter.

[29] *See* Section 1.1 for the definition of Qualified Public Offering.

[30] *See* Section 1.1 for the definition of Distribution.

[31] The Class B Units are intended to be an incentive pool and may only be issued to employees, officers, directors, or other service providers of Holdco or any subsidiary of Holdco pursuant to the Amended and Restated MEMX Holdings LLC 2018 Profits Interests Plan (the ''Incentive Plan''). The Class B Units have no voting rights, except as required by applicable law, and do not have many of the rights and obligations associated with the Class A Units as set forth in the Holdco LLC Agreement. *See* Section 3.3.

Board in current Section 10.1(a)(i)(C); [32] and change the defined term ''Nominating Class A Member'' to ''Nominating Member'' in Sections 1.1 and 8.3(a) and replace all references to such term throughout the Holdco LLC Agreement accordingly.

Additionally, as proposed, the Common Units (or the Converted Common Units, as applicable) will have certain of the same rights and obligations as the Class A Units and the Class C Units. Accordingly, the Exchange is also proposing to make several amendments throughout the Holdco LLC Agreement to reflect that the Common Units (or the Converted Common Units, as applicable) have such rights and obligations, including to add references to ''Common Units'' or ''Common Member'' (or ''Converted Common Units'' or ''Converted Common Member,'' as applicable) alongside references to ''Class A Units'' or ''Class A Member,'' as applicable, where appropriate for this purpose; replace references to ''Class A Member'' with references to ''Member'' where appropriate for this purpose; change the defined term ''Tag-along Class A Member'' to ''Tag-along Member'' in Sections 1.1 and 10.5 and update all references to such term throughout the Holdco LLC Agreement accordingly; change the defined term ''Fully Participating Tag-along Class A Member'' to ''Fully Participating Tag-along Member'' in Sections 1.1 and 10.5 and replace all references to such term throughout the Holdco LLC Agreement accordingly; and change the defined term ''Qualified Class A Member'' to ''Qualified Member'' in Sections 1.1 and 12.1 and replace all references to such term throughout the Holdco LLC Agreement accordingly.

The Exchange is also proposing to make amendments to the Holdco LLC Agreement's provisions related to meetings of the Members to reflect certain rights associated with the Class C Units in this regard, which amendments include amending new Section 4.7(h) (current Section 4.7(a)), which currently sets forth the requirements for Directors and Class A Members to call a meeting of the Members, to reflect that a meeting of the Members may also be called by the Class C Members holding, in the aggregate, at least twenty percent (20%) of the aggregate then-outstanding Class C Units and amending new Section 4.7(m) (current Section 4.7(f)) to reflect that a quorum for the transaction of business by the Members is the presence of Members holding at least fifty percent (50%) of the then-outstanding Class A Units *and Class C Units* (considered in the aggregate). The Exchange notes that, as proposed, the Common Members would not have any such rights, and thus, would not be referenced in these amended provisions.

As the Participating Members will be purchasing Class C Units in connection with the Transaction, such Members will become Class C Members as of the Effective Date. In this connection, the Exchange is proposing to amend the definitions of the applicable Members that are defined in Section 1.1 to reflect that such Members will be Class C Members as of the Effective Date.[33]

Amendments Related to the Voting Rights of Members Associated With the Ownership of Certain Units

As noted above, in order to facilitate certain Members' continued compliance with certain restrictions under the BHCA in light of recent amendments to the relevant BHCA regulations, the Exchange is proposing to amend the Holdco LLC Agreement to modify the governance structure of Holdco, which currently does not provide for any voting or management rights of the Members (except in certain very limited circumstances [34]) to provide for certain voting rights of the Members associated with the existing Class A Units, as well as the proposed new Class C Units and Common Units, as prescribed in amended Section 4.7, which is further described below.

In this connection, consistent with the voting/non-voting construct of the proposed new Class C Units and Common Units, the Exchange is proposing to amend the Holdco LLC Agreement to divide each existing series of the Class A Units (*i.e.,* the Class A–1 Units and the Class A–2 Units) into a ''voting'' series and a ''non-voting'' series. Specifically, as proposed, the existing Class A–1 Units and Class A–2 Units would be designated as the ''voting'' series of the Class A Units (referred to collectively as the ''Voting Class A Units'') and the proposed new Nonvoting Class A–1 Units and Nonvoting Class A–2 Units would be designated as the ''non-voting'' series of the Class A Units (referred to collectively as the ''Nonvoting Class A Units'').[35] In this connection, the Exchange proposes to amend Section 3.2 to reflect the creation of the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units and to add new paragraphs (c) and (d) that contain provisions related to the authorization and issuance of the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units and that specify the voting rights associated with such Units.[36] In connection with the creation of the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units, the Exchange also proposes to add definitions of the following terms in Section 1.1: Nonvoting Class A Units; [37] Nonvoting Class A–1 Units; [38] Nonvoting Class A–2 Units; [39] and Voting Class A Units.[40] The Exchange also proposes to amend the definitions of ''Class A Member'' and ''Class A Units'' in Section 1.1 to reflect the creation of the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units, as well as to include references to the Nonvoting Class A Units, the Nonvoting Class A–1 Units, and/or the Nonvoting Class A–2 Units, as applicable, throughout the Holdco LLC Agreement where appropriate for this purpose.

The proposed changes to the voting rights of the Members are reflected in the proposed amendments to Section 4.7, which include the addition of new paragraphs (a) through (g) that prescribe the actions on which the various series of Units are entitled to vote, as follows:

- Proposed new paragraph (a) provides that the following actions shall

[32] In connection with this proposed amendment, the Exchange also proposes to add definitions of ''Released Class C Member'' and ''Released Class C Units'' in Section 1.1 and proposed new Section 10.1(a)(ii)(C)(II) that are consistent with the definitions of ''Released Class A Member'' and ''Released Class A Units'' as such terms are currently defined in current Section 10.1(a)(i)(C).

[33] The Participating Members that are defined in Section 1.1 are Bank of America, Citadel, Fidelity, Goldman Sachs, Jane Street, JPMorgan, Morgan Stanley, UBS, Virtu, and Wells Fargo. The Exchange notes that it is also proposing to add ''Citi'' as a defined term in Section 1.1, which would reflect that Citi is a Class C Member, as further described below.

[34] *See supra* note 12.

[35] The Exchange notes that no additional Class A Units will be issued in connection with the Transaction or the amendments to the Holdco LLC Agreement proposed herein; instead, certain of the issued and outstanding Class A–1 Units and Class A–2 Units currently held by the Class A Members would be reclassified into Nonvoting Class A–1 Units and Nonvoting Class A–2 Units, respectively.

[36] The voting rights associated with the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units are specified in proposed new paragraphs (c) and (d) of Section 3.2 by reference to the applicable paragraphs of amended Section 4.7, which prescribe the actions on which such Units are entitled to vote, as further described below.

[37] As proposed, the term ''Nonvoting Class A Units'' means the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units.

[38] As proposed, the term ''Nonvoting Class A–1 Units'' refers to the Nonvoting Class A–1 Units described in proposed new Section 3.2(c).

[39] As proposed, the term ''Nonvoting Class A–2 Units'' refers to the Nonvoting Class A–2 Units described in proposed new Section 3.2(d).

[40] As proposed, the term ''Voting Class A Units'' means Class A–1 Units and the Class A–2 Units.

not be effected without the approval of a majority of the then-outstanding Voting Class A Units, voting together as a single class: (i) Subject to Sections 7.2(b), 7.3 and 13.3, approval of any Distributions of profits or capital of Holdco to the Members (other than Tax Advances [41]); (ii) approval of a transaction to which Holdco is a party and which results in a Change of Control; [42] (iii) any liquidation, dissolution or winding up of any subsidiary of Holdco (other than the Exchange) and, if applicable, the related appointment of a liquidating trustee; and (iv) commencement, filing or initiation of any proceeding relating to voluntary or involuntary bankruptcy or insolvency with respect to Holdco;

• proposed new paragraph (b) provides that any waiver or amendment of any provision of the Holdco LLC Agreement which would significantly and adversely affect the rights, preferences, powers or privileges of the Class A–1 Units and Class A–2 Units shall not be effected without the approval of the majority of the then-outstanding Voting Class A Units, voting together as a single class;

• proposed new paragraph (c) provides that the following actions shall not be effected without the approval of a majority of the then-outstanding Class C–1 Units and Voting Common Units, voting together as a single class: (i) Subject to Sections 7.2(b), 7.3 and 13.3, approval of any Distributions of profits or capital of Holdco to the Members (other than Tax Advances); (ii) approval of a transaction to which Holdco is a party and which results in a Change of Control; (iii) any liquidation, dissolution or winding up of any subsidiary of Holdco (other than the Exchange) and, if applicable, the related appointment of a liquidating trustee; and (iv) commencement, filing or initiation of any proceeding relating to voluntary or involuntary bankruptcy or insolvency with respect to Holdco;

• proposed new paragraph (d) provides that any waiver or amendment of any provision of the Holdco LLC Agreement which would materially and adversely affect the rights, preferences, powers or privileges of the Class C–1 Units shall not be effected without the approval of a majority of the then-outstanding Class C–1 Units;

• proposed new paragraph (e) provides that the following actions (which shall be construed in a manner consistent with 12 CFR 225.2(q)(2)(i)) shall not be effected without the approval of the majority of the then-outstanding Class C–1 Units and Class C–2 Units, voting together as a single class: (i) Any issuance of Units or Unit Equivalents [43] of Holdco that have (A) a preference in respect of Distributions or return of capital that is senior to the holders of the Class C Units or (B) no right to convert into Common Units; and (ii) any exchange, reclassification or cancellation (whether by merger, consolidation or otherwise) or modification of the terms of all or part of the Class C Units which exchange, reclassification, cancellation or modification, as applicable, significantly and adversely affects the rights or preferences of the Class C Units;

• proposed new paragraph (f) provides that the following actions (which shall be construed in a manner consistent with 12 CFR 225.2(q)(2)(i)) shall not be effected without the approval of the majority of the then-outstanding Class A–1 Units, Class A–2 Units, Nonvoting Class A–1 Units and Nonvoting Class A–2 Units, voting together as a single class: (i) Any issuance of Units or Unit Equivalents of Holdco that have a preference in respect of Distributions or return of capital that is senior to the holders of the Class A Units; and (ii) any exchange, reclassification or cancellation (whether by merger, consolidation or otherwise) or modification of the terms of all or part of the Class A Units which exchange, reclassification, cancellation or modification, as applicable, significantly and adversely affects the rights or preferences of the Class A Units; and

• proposed new paragraph (g) provides any liquidation, dissolution or winding up of Holdco (which shall be construed in a manner consistent with 12 CFR 225.2(q)(2)(i)) shall not be effected without the approval of the majority of the then-outstanding Class A–1 Units, Class A–2 Units, Nonvoting Class A–1 Units, Nonvoting Class A–2 Units, Class C–1 Units, Class C–2 Units, Voting Common Units and Nonvoting Common Units, voting together as a single class.[44]

The Exchange notes that each of the actions set forth in proposed new paragraphs (a) through (g) on which certain Members are entitled to vote are significant corporate matters solely related to the administration, ownership, capital, or dissolution of Holdco or any Holdco subsidiary (other than the Exchange) and, except as set forth therein (or as otherwise currently provided in the Holdco LLC Agreement), the authority to manage and control the business and affairs of Holdco, including the right to amend or modify the Holdco LLC Agreement, would continue to be vested in the Holdco Board as it is today. As reflected in proposed new paragraphs (a) through (g) of Section 4.7, each of the Voting Class A Units, the Class C–1 Units, and the Voting Common Units series has broader voting rights than the Nonvoting Class A Units, the Class C–2 Units, and the Nonvoting Common Units series, respectively, in that the former series are entitled to vote in some capacity on a wider array of actions than the latter series. The Exchange notes that the distinctions with respect to the actions on which such series are entitled to vote pursuant to amended Section 4.7, as described above, are what separate such series into ''voting'' series and ''non-voting'' series for BHCA purposes in a manner intended to facilitate certain Members' continued compliance with the BHCA. As noted above, the sole purpose of providing for the voting rights associated with the ''voting'' and ''non-voting'' series of the Class A Units, the Class C Units, and the Common Units as set forth in proposed new paragraphs (a) through (g) of Section 4.7 is to facilitate such Members' continued compliance with the BHCA.

In connection with the foregoing proposed amendments to Section 4.7, the Exchange proposes to further amend Section 4.7 to re-number the existing paragraphs to begin after proposed new paragraph (g) and to update relevant section references throughout the Holdco LLC Agreement accordingly; to amend paragraphs (a) and (b) of Section 3.2 to reflect the additional voting rights associated with the Class A–1 Units and the Class A–2 Units as prescribed in amended Section 4.7; to amend Section 7.2(a) to reflect that the Holdco Board's discretion regarding the amounts and timing of Distributions to Members is subject to the required approvals of the Voting Class A Units, the Class C–1 Units, and the Voting Common Units, as applicable, pursuant to proposed new Sections 4.7(a)(i) and 4.7(c)(i); and to amend Section 13.1(a) to reflect that a determination to dissolve and wind up the affairs of Holdco requires the approval of the applicable Members pursuant to proposed new Section 4.7(g)

[41] *See* Section 1.1 for the definition of Tax Advances.

[42] *See* Section 1.1 for the definition of Change of Control.

[43] *See* Section 1.1 for the definition of Unit Equivalents.

[44] The Exchange notes that each action described in proposed new paragraphs (a) through (g) would also require approval of the Holdco Board by Supermajority Board Vote, which is also currently required with respect to each of such actions under the Holdco LLC Agreement.

in addition to the approval of the Holdco Board by Supermajority Board Vote. Additionally, the Exchange proposes to amend Section 4.6, which also relates to the voting rights of the Members, in a manner that conforms and is consistent with the proposed amendments to Section 4.7 that provide for certain voting rights of the Members associated with the ownership of Class A Units, Class C Units, and Common Units; to otherwise reflect the creation of the Class C Units, the Common Units, and the Nonvoting Class A Units; to delete certain language relating to the treatment of the Class A Units and the Class B Units for certain BHCA purposes that is no longer consistent with the proposed voting structure of such Units; and to make minor formatting and other non-substantive changes.

Amendments Related to a Member's Maximum Voting Percentage

In connection with the Transaction and the proposed amendments to the voting structure of the Units described above, including the creation of the ''voting'' and ''non-voting'' series of Class C Units (*i.e.,* the Class C–1 Units and the Class C–2 Units, respectively) and the similar division of the Class A Units into ''voting'' and ''non-voting'' series (*i.e.,* the Voting Class A Units and the Nonvoting Class A Units), the Exchange is also proposing to amend the Holdco LLC Agreement's provisions related to a Member's election to specify the maximum voting percentage that such Member may have with respect to any determination under the Holdco LLC Agreement, which are set forth in Section 3.10. As with the proposed amendments to the voting structure of the Units, the purpose of the amendments to Section 3.10 is to facilitate certain Members' compliance with the BHCA.

Currently, Section 3.10 provides that a Class A Member may notify Holdco of its election (a ''Restricted Voting Election'') to be treated for purposes of the Holdco LLC Agreement as a ''Restricted Voting Member'' such that the maximum percentage of the aggregate voting interests attributable to the Class A Units that such Member may own is the percentage designated in such Member's Restricted Voting Election.[45] Notwithstanding the fact that the Class A Units are currently intended to not have any voting rights other than as required by applicable law, this provision was included in the current Holdco LLC Agreement out of an abundance of caution in connection with the BHCA considerations of certain Class A Members in order to provide a mechanism for Class A Members to manage any potential deemed voting interests attributable to the Class A Units for BHCA and/or other regulatory purposes. Section 3.10 also currently contains certain notification procedures of Holdco in connection with its receipt of any Restricted Voting Election and provides for certain types of transfers of Class A Units by a Restricted Voting Member (*e.g.,* pursuant to a widespread public distribution to non-Affiliates) in which the aggregate voting interests attributable to the Class A Units transferred by such Restricted Voting Member would no longer be limited to such Restricted Voting Member's Maximum Aggregate Voting Interest with respect to the transferee (such transfers, ''Permitted Regulatory Transfers'').[46]

The Exchange is now proposing to amend Section 3.10 to maintain the Restricted Voting Election mechanism for Class A Members with respect to the Voting Class A Units (*i.e.,* the ''voting'' series of the Class A Units) and to similarly provide for the Restricted Voting Election mechanism for Class C Members with respect to the Class C–1 Units (*i.e.,* the ''voting'' series of the Class C Units). Specifically, Section 3.10(a) would now provide that any Class A Member or Class C Member may make a Restricted Voting Election to specify its respective maximum Voting Class A Voting Percentage[47] (the ''Maximum Voting Class A Voting Percentage'') or its respective maximum Class C–1 Voting Percentage[48] (the ''Maximum Class C–1 Voting Percentage'').[49] Any Maximum Voting Class A Voting Percentage or Maximum Class C–1 Voting Percentage specified in a Restricted Voting Election would generally be irrevocable, subject to certain specified exceptions, in a manner consistent with BHCA restrictions. In this connection, the Exchange proposes to amend new Exhibit F (current Exhibit H) to the Holdco LLC Agreement, which is the form of Restricted Voting Election Notice to be used by a Restricted Voting Member, to reflect that a Restricted Voting Member may now specify a Maximum Voting Class A Voting Percentage and a Maximum Class C–1 Voting Percentage.

Also in connection with the proposed voting structure of the Class A Units and the Class C Units, the Exchange proposes to provide in new Section 3.10(d) for the automatic conversion of a Restricted Voting Member's Voting Class A Units and Class C–1 Units into Nonvoting Class A Units and Class C–2 Units, respectively, to the extent that a Restricted Voting Member would be deemed to own, control, or have the power to vote (for any reason) a number of Voting Class A Units or Class C–1 Units, as applicable, that causes such Restricted Voting Member to exceed its Maximum Voting Class A Voting Percentage or Maximum Class C–1 Voting Percentage, as applicable. This automatic conversion feature is designed to ensure that a Restricted Voting Member does not exceed its Maximum Voting Class A Voting Percentage or Maximum Class C–1 Voting Percentage for any reason to facilitate any such Restricted Voting Member's compliance with the BHCA.

Additionally, the Exchange proposes to provide in new Section 3.10(e) for: (i) The automatic conversion of a Restricted Voting Member's Nonvoting Class A Units and Class C–2 Units into Voting Class A Units and Class C–1 Units, respectively, if such Nonvoting Class A Units or Class C–2 Units, as applicable, are transferred to a third party (other than another Restricted Voting Member or an Affiliate of the transferee Restricted Voting Member) in connection with a Permitted Regulatory Transfer; and (ii) the optional

[45] Such maximum percentage is currently referred to in the Holdco LLC Agreement as a Member's ''Maximum Aggregate Voting Interest'' which is defined in Section 1.1 with a reference to the definition of such term in Section 3.10. In connection with the proposed amendments to Section 3.10 described below, the Exchange is proposing to delete such defined term and add new defined terms that are conceptually similar with respect to the respective maximum voting percentages of a Member's Class A Voting Units and Class C–1 Units, as further described below.

[46] The Exchange proposes to add the defined term ''Permitted Regulatory Transfers'' in Section 1.1 to refer to the definition of such term in proposed new Section 3.10(e)(i), which refers to such transactions as set forth therein.

[47] The Exchange proposes to add the defined term ''Voting Class A Voting Percentage'' in Section 1.1 which means at any time of calculation, a fraction, expressed as a percentage (a) the numerator of which is be the number of then issued and outstanding Voting Class A Units held a Class A Member and (b) the denominator of which is the number of then issued and outstanding Voting Class A Units held by all Class A Members.

[48] The Exchange proposes to add the defined term ''Class C–1 Voting Percentage'' in Section 1.1 which means, at any time of calculation, a fraction, expressed as a percentage, (i) the numerator of which is the number of then issued and outstanding Class C–1 Units held by a Class C Member and (ii) the denominator of which is the number of then issued and outstanding Class C–1 Units held by all Class C Members.

[49] The Exchange proposes to add the defined terms ''Maximum Voting Class A Voting Percentage'' and ''Maximum Class C–1 Voting Percentage'' in Section 1.1 to refer to the definitions of such terms as set forth in Section 3.10(a), which are consistent with the definitions of such terms herein.

conversion (''Permitted Anti-Dilution Conversion'') of a Restricted Voting Member's Nonvoting Class A Units and Class C–2 Units into Voting Class A Units and Class C–1 Units, respectively, by delivery of a notice to Holdco (a ''Voting Conversion Notice'') if Holdco issues any new Units or Unit Equivalents that cause the Voting Class A Units or Class C–1 Units, as applicable, held by such Restricted Voting Member to represent a Voting Class A Voting Percentage or Class C–1 Voting Percentage, as applicable, that is less than such Restricted Voting Member's Voting Class A Voting Percentage or Class C–1 Voting Percentage, as applicable, immediately prior to such issuance (such Restricted Voting Member's ''Prior Voting Class A Voting Percentage'' and ''Prior Class C–1 Voting Percentage'', respectively) to the extent such conversion does not exceed such Prior Voting Class A Voting Percentage or Prior Class C–1 Voting Percentage, as applicable.[50]

The Exchange is also proposing to amend Section 3.10 to include additional provisions related to the effect and construction of such section consistent with the BHCA, which are designed to facilitate certain Members' continued compliance with the BHCA in light of the proposed voting structure of the Class A Units and the Class C Units described herein. The Exchange notes that it is also proposing certain other amendments to Section 3.10, including modifications to Holdco's notification procedures and other administrative provisions related to recordkeeping in connection with any Restricted Voting Election.

Amendments to Various Provisions Related to BHCA Considerations

The Exchange is also proposing to make certain amendments to the Holdco LLC Agreement to update existing provisions and include additional provisions for the purpose of facilitating certain Members' continued compliance with BHCA requirements and restrictions.

First, the Exchange is proposing to amend Section 7.5, which relates to Distributions of securities or other property held by Holdco made ''in kind'' to Members, to update such provision in a manner consistent with the BHCA considerations of Members subject to the BHCA. Currently, Section 7.5 provides that, except as required by applicable law, Holdco is not authorized to make Distributions to the Members in the form of securities or other property held by Holdco. This restriction on Distributions made in kind to Members by Holdco will remain in place, but the Exchange now proposes to amend Section 7.5 to also provide that no Member may be required to accept consideration with respect to a merger, business combination or other transaction to which Holdco or any Holdco subsidiary is a party in the form of securities or other property if such Member notifies Holdco that receipt of such consideration by such Member would violate the BHCA or other applicable law or cause such Member to control or be presumed to control the issuer of such asset under the BHCA, and that in either such case, the affected Member may elect, in the alternative, to receive the fair market value of such consideration in cash. The purpose of adding this provision is to ensure that any Member subject to the BHCA is not required to receive non-cash consideration if such receipt would have adverse consequences under the BHCA with respect to such Member in connection with a transaction involving Holdco or any Holdco subsidiary that involves the distribution of non-cash consideration to Members made by a third party (or otherwise not directly Distributed by Holdco), which is not currently covered by Section 7.5. Thus, the purpose of this proposed amendment is to address an additional scenario where a distribution of non-cash consideration may be made to the Members in connection with their ownership of Units in a manner that protects Members subject to the BHCA against adverse consequences resulting from non-cash distributions in connection therewith and thereby facilitates such Member's continued compliance with the BHCA. Additionally, the Exchange proposes to further amend Section 7.5 to provide a carve-out from the general restriction on Distributions made in kind to Members set forth therein to the extent otherwise expressly provided in the Holdco LLC Agreement. The purpose of this change is to resolve a conflict between the terms of Section 13.3(f), which provides that a liquidator of Holdco may in certain circumstances Distribute non-cash assets in kind to Members, while Section 7.5 currently prohibits this only subject to applicable law. Thus, this proposed amendment is intended to resolve an existing conflict between such provisions and clarify the intent thereof.

Also for purposes of facilitating certain Members' continued compliance with the BHCA, the Exchange proposes to add new paragraph (i) of Section 11.3 to state that Holdco represents and warrants that Holdco is not a covered fund (as such term is defined in 12 CFR 248.10(b)), and not a bank, bank holding company, depository institution or holding company for a depository institution, as such terms are defined in the BHCA, and that Holdco shall not allow itself to become a covered fund, bank, bank holding company, depository institution or holding company for a depository institution (as so defined). The Exchanges [sic] notes that it believes such representations of Holdco are true as of the date hereof.

Amendments Related to Governance Changes With Respect to the Holdco Board in Connection With the Transaction

In connection with the Transaction, each of Citi, UBS, and Wells Fargo will receive the right to nominate a Director. Additionally, each of Citi, UBS, and Wells Fargo has expressed that it will nominate a Director, thereby increasing the size of the Holdco Board from eleven to fourteen Directors, as of the Effective Date. To reflect such governance changes, the Exchange proposes to amend the Holdco LLC Agreement to add a definition of ''Citi'' in Section 1.1 that is consistent with the definitions of other Nominating Members with similar rights and preferences as Citi; amend the definition of ''Bank Class A Member'' [51] in Section 1.1 to include a reference to Citi as a

[50] The Exchange proposes to add the defined terms ''Permitted Anti-Dilution Conversion'', ''Prior Class C–1 Voting Percentage'', ''Prior Voting Class A Voting Percentage'', and ''Voting Conversion Notice'' in Section 1.1 to refer to the definitions of such terms as set forth in amended Section 3.10, which are consistent with the definitions of such terms herein.

[51] The term ''Bank Class A Member'' refers to each of Bank of America, Morgan Stanley, UBS, JPMorgan, Goldman Sachs, Wells Fargo, and any other Member that is specifically designated as a Bank Class A Member (which would also include Citi, as proposed herein), in each case, together with each of their respective Affiliates. *See* Section 1.1. The Exchange notes that the only consequence of designation as a Bank Class A Member under the Holdco LLC Agreement is that at least one Director nominated by any Bank Class A Member (*i.e.,* a Bank Director) is generally required to establish a quorum for the transaction of business of the Holdco Board. *See* Section 8.6(a). In connection with the proposed amendments to replace references to ''Class A Member'' with references to ''Member'' where appropriate throughout the Holdco LLC Agreement, as described above, the Exchange is proposing to change the defined terms ''Bank Class A Member'' to ''Bank Member''; ''Buy Side Class A Member'' to ''Buy Side Member''; ''Market Maker Class A Member'' to ''Market Maker Member''; and ''Retail Broker Class A Member'' to ''Retail Broker Member'' in Section 1.1 to reflect that a Member's designation as one of these categories is not tied to its ownership of Class A Units exclusively and to update references to such terms throughout the Holdco LLC Agreement accordingly.

designated Bank Member; amend the definitions of ''UBS'' and ''Wells Fargo'' in Section 1.1 to reflect that each is now a Nominating Member and is no longer an Excluded Class A Member;[52] delete the definition of ''Excluded Class A Member'' in Section 1.1 and make related conforming changes throughout the Holdco LLC Agreement to reflect that there are no longer any Excluded Class A Members; amend Section 8.3(a) to reflect the increased size of the Holdco Board at fourteen Directors; and amend Section 8.3(b) to reference each of Citi, UBS, and Wells Fargo as Members with the right to nominate a Director.

In addition, the Exchange proposes to amend the definition of Supermajority Board Vote in Section 1.1, as further described below. Currently, the term Supermajority Board Vote means the affirmative vote of at least seventy-seven percent (77%) of the votes of all Directors 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 Board. This aspect of the definition is not changing, however, the definition also currently states that if the affirmative vote threshold results in the necessity of the affirmative vote of all such Directors with respect to such matter, that an affirmative vote of all but one of such Directors shall instead be required. This provision is intended to cover situations where a large number of Directors are recused from voting on a matter or the size of the Board is such that a Board vote would require unanimity and instead allows a matter to be approved so long as all but one Director is in favor of a particular voting matter. The Exchange proposes to modify the provision to instead state that if the affirmative vote threshold results in the necessity of the affirmative vote of eight (8) Directors or fewer, an affirmative vote of all but two (2) such Directors shall be required instead with respect to such matter. The proposed change will ensure that a more consistent voting structure is maintained even if several Directors are recused from voting on a particular matter. Under the current structure with eleven (11) Directors a matter can be approved as an affirmative Supermajority Board Vote even if two (2) Directors vote against a matter and under the proposed structure with fourteen (14) Directors a matter can be approved as an affirmative Supermajority Board Vote even if three (3) Directors vote against a matter. Accordingly, the Holdco Board believes it is appropriate to maintain this relative voting structure even if eight (8) or fewer Directors are voting on a particular matter (*i.e.,* allowing a matter to be approved even if two (2) Directors vote against such matter).

Clarifying, Updating, Conforming, and Other Non-Substantive Amendments

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

Amendments to the Definition of ''Registration Date''

The term ''Registration Date'' is currently defined in Section 15.9(a) to mean the date that the Exchange is registered as a national securities exchange pursuant to Section 6(a) of the Act. On May 4, 2020, the Commission approved the Exchange's application for registration as a national securities exchange, and thus, the Registration Date occurred on such date.[53] Accordingly, the Exchange proposes to amend the Holdco LLC Agreement to reflect that the Registration Date occurred on such date by deleting the current definition of ''Registration Date'' in Section 15.9(a) and amending the definition of ''Registration Date'' in Section 1.1 to reference May 4, 2020.

Amendment to the Definition of ''Schwab''

The Exchange proposes to amend the definition of ''Schwab'' in Section 1.1 to reflect that Schwab is a Nominating Member, as the Holdco Board previously granted Schwab the right to nominate a Director in accordance with the Holdco LLC Agreement. Thus, the purpose of this proposed change is to update the definition of Schwab to reflect a previously-approved change with respect to the composition of the Holdco Board.

Amendments To Delete Obsolete Provisions and Language

The Exchange proposes to make the following amendments to the Holdco LLC Agreement to delete provisions and language that are now obsolete due to the passage of time or the occurrence of certain events:

- *Deletion of the defined term ''Exchange Application'':* The Exchange proposes to delete the defined term ''Exchange Application'' in Section 1.1, as such term is not currently used elsewhere in the Holdco LLC Agreement. Previously, the term ''Exchange Application'' was referenced only in Section 13.1(d) and referred to the application of the Exchange as a national securities exchange; however, Section 13.1(d) (including all references to the term ''Exchange Application'') was deleted in its entirety in connection with previous amendments to the Holdco LLC Agreement,[54] but the term ''Exchange Application'' was inadvertently not deleted from Section 1.1. Thus, this proposed amendment is intended to add clarity to the Holdco LLC Agreement by deleting an unused and obsolete defined term.
- *Deletion of language in #11 of Exhibit C:* Exhibit C to the Holdco LLC Agreement contains an enumerated list of the Supermajority Board Matters. The Exchange proposes to delete language in #11 of Exhibit C that refers to an event of dissolution as set forth in Section 13.1(d), which was inadvertently not deleted in connection with the previous amendments to the Holdco LLC Agreement that deleted Section 13.1(d) in its entirety, as described above.
- *Amendments to Section 8.18(a):* The Exchange proposes to amend Section 8.18(a) to delete paragraphs (i) and (ii). Currently, paragraph (i) provides for an obligation of Holdco to amend and restate the limited liability company agreement of the Exchange (the ''Exchange LLC Agreement'') that was in effect prior to the Registration Date as necessary in order to obtain registration for the Exchange as a national securities exchange (such amended and restated Exchange LLC Agreement is currently referred to in Section 8.18(a)(i) as the ''Restated MEMX LLC Agreement''), and paragraph (ii) provides that the Exchange shall be managed by the Exchange Board upon the execution and delivery of the Restated MEMX LLC Agreement. Each of the events described in paragraphs (i) and (ii) has already occurred and the Exchange is currently managed by the Exchange Board; thus, such provisions are now obsolete.[55] In connection with the deletion of these obsolete provisions, the Exchange also proposes to state in Section 8.18(a) that

[52] The term ''Excluded Class A Member'' currently refers to UBS and Wells Fargo and is generally intended to reference certain Class A Members that do not have the right to nominate a Director.

[53] On May 4, 2020, the Commission approved the Exchange's application for registration as a national securities exchange. *See* Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[54] *See* Securities Exchange Act Release No. 91478 (April 5, 2021), 86 FR 18570 (April 9, 2021).

[55] *See id.* The Exchange LLC Agreement was amended and restated as the Second Amended and Restated Limited Liability Company Agreement of MEMX LLC, which was executed, delivered, and became effective on May 19, 2020.

the Exchange shall be managed by the Exchange Board to reflect the current governance of the Exchange.

• *Amendments to Section 3.8:* The Exchange proposes to delete language in Section 3.8 that contemplates a time prior to the Registration Date, since, as noted above, the Registration Date already occurred on May 4, 2020.

• *Deletion of Section 11.8:* Currently, Section 11.8 requires certain Members (or their Affiliates, as applicable) that operate a U.S.-registered broker-dealer to connect to the Exchange prior to the first date on which the Exchange commences operating a national securities exchange. As the Exchange first commenced operations as a national securities exchange on September 21, 2020, the Exchange proposes to delete Section 11.8 in its entirety, as such provision is now obsolete.

Amendments To Replace References to ''Restated MEMX LLC Agreement'' With ''MEMX LLC Agreement''

As noted above, the term ''Restated MEMX LLC Agreement'' is currently defined in Section 8.18(a)(i) and refers to a version of the Exchange LLC Agreement that was already amended and restated as necessary in order to obtain registration for the Exchange as a national securities exchange. As the Exchange LLC Agreement was already amended and restated for this purpose (*i.e.,* as the Second Amended and Restated Limited Liability Company of MEMX LLC, which became effective on May 19, 2020 and is currently in effect) and the Exchange is proposing to delete Section 8.18(a)(i) in its entirety, as described above, the Exchange proposes to delete the defined term ''Restated MEMX LLC Agreement'' and add ''MEMX LLC Agreement'' as a defined term that references the Second Amended and Restated Limited Liability Company Agreement of MEMX LLC. In connection with such changes, the Exchange also proposes to replace all references to ''Restated MEMX LLC Agreement'' with references to ''MEMX LLC Agreement'' so that all such references are to the Exchange LLC Agreement that is currently in effect.

Amendments Related to the Removal of a Director From the Holdco Board

Section 8.4(a) generally provides that a Director may be removed from his or her position as such, or replaced at any time, upon the written request of the Nominating Member that nominated such Director. Additionally, Section 8.4(b) provides that a Nominating Member may irrevocably waive its right in Section 8.4(a) to remove or replace a Director nominated by such Nominating Member, which the Exchange believes certain Members may elect to do for purposes related to compliance with restrictions under the BHCA's ''control'' framework. Section 8.4(b) also currently provides that if a Nominating Member makes such an election to irrevocably waive its right to remove or replace a Director, and the Director nominated by such Nominating Member dies, resigns from the Holdco Board in accordance with Section 8.4(c) (*i.e.,* delivers his or her written resignation as a Director to the Holdco Board), or is removed as a result of a statutory disqualification, then the Nominating Member that nominated such Director may nominate a new Director to fill such vacancy. However, currently, Section 8.4 does not explicitly address the situation where a Director is terminated or resigns from his or her employment with such Nominating Member (or its Affiliate) but does not also resign from the Holdco Board by delivering his or her written resignation as a Director to the Holdco Board in accordance with Section 8.4(c). In this situation, the Exchange believes such Director would be deemed to have resigned as a Director from the Holdco Board, but for the avoidance of doubt, the Exchange is proposing to add new Section 8.4(f) to provide that any such Director would be automatically and immediately removed from his or her position as a Director upon Holdco's receipt of written notice from the Nominating Member that such Director has been terminated or resigned from his or her employment with the Nominating Member (or its Affiliate). In this connection, the Exchange also proposes to amend Section 8.4(b) to provide that a Nominating Member that has irrevocably waived its right to remove or replace a Director pursuant to Section 8.4(b) may also nominate a new Director to fill any vacancy resulting from proposed new Section 8.4(f).

Amendments Related to the Incentive Plan

The Exchange proposes to amend Section 3.3(b) to replace the second reference to the Amended and Restated MEMX Holdings LLC 2018 Profits Interests Plan with a reference to the appropriate defined term (*i.e.,* ''Incentive Plan'') and to clarify that any Class B Units issued by Holdco pursuant to the MembersX Holdings LLC 2018 Profits Interests Plan (a predecessor plan to the Incentive Plan) or the Incentive Plan prior to the Sixth Amended Holdco LLC Agreement Effective Date have not been cancelled, forfeited, repurchased or redeemed and subsequently re-issued. Each of these amendments is designed to clarify existing language in the Holdco LLC Agreement.

Amendments Related to Certain Agreements Between Holdco and the Members

The Exchange proposes to add substantially similar paragraphs in Sections 10.1, 10.2, 10.4, and 11.5 (*i.e.,* proposed new Section 10.1(a)(iii), proposed new Section 10.2(d), proposed new Section 10.4(f), and proposed new Section 11.5(e), respectively) stating that certain provisions in those sections constitute an individual agreement between Holdco, on the one hand, and each applicable Member, on the other hand, that such provisions do not constitute an agreement among the Members, and that only Holdco (and not the Members) shall have the right to enforce such provisions against any Member.[56] The Exchange notes that these proposed new paragraphs are intended to clarify, but not substantively modify, the enforceability of such existing provisions in the Holdco LLC Agreement with respect to Holdco and the Members.

Amendment Related to the Registration of MEMX Execution Services LLC With FINRA

Currently, Section 10.6(h) references MEMX Execution Services LLC[57] as a subsidiary of Holdco ''which plans to register with FINRA as a broker-dealer''; however, MEMX Executions Services LLC became registered with FINRA as a broker-dealer on June 5, 2020. Thus, the Exchange proposes to amend Section 10.6(h) to update this provision to reference MEMX Execution Services LLC as a subsidiary of Holdco ''that is registered with FINRA as a broker-dealer.''

Amendments Related to the Fourth Amended LLC Agreement Effective Date

Currently, the term ''Fourth Amended LLC Agreement Effective Date'' is defined in Section 1.1 as February 19, 2020, which was the date on which the Fourth Amended and Restated LLC Agreement of Holdco became effective. Such term is currently referenced in Sections 10.6(a) and 12.4(c). The Exchange proposes to delete the defined

[56] The Exchange notes that the provisions referenced in each of these proposed new paragraphs are existing provisions, which are remaining substantially the same, except as modified to reflect the creation of the Class C Units, as applicable, or otherwise for formatting purposes or in a non-substantive manner.

[57] MEMX Execution Services LLC is an affiliate of the Exchange that provides the outbound routing of orders from the Exchange to other trading centers pursuant to Exchange Rule 2.11.

term ''Fourth Amended LLC Agreement Effective Date'' in Section 1.1 and to amend Sections 10.6(a) and 12.4(c) to replace the references to such term with references to February 19, 2020 (or the appropriate date if referencing an anniversary of such date) and make related conforming changes. The purpose of these amendments is to simplify the Holdco LLC Agreement by deleting a defined term and instead making specific reference to the appropriate dates.

Amendments Related to the Exhibits to the Holdco LLC Agreement

Currently, Exhibit E to the Holdco LLC Agreement is intended to reference a copy of the Exchange LLC Agreement and Exhibit F to the Holdco LLC Agreement is reserved with a placeholder, as it was deleted in a prior version of the Holdco LLC Agreement. The Exchange now proposes to delete current Exhibit E, as a copy of the Exchange LLC Agreement is separately maintained on the Exchange's public website (along with the Holdco LLC Agreement) and there is no longer any purpose for its reference or inclusion as an exhibit to the Holdco LLC Agreement. In connection with this change, the Exchange also proposes to re-letter the exhibits to the Holdco LLC Agreement to reflect the proposed deletion of Exhibit E, the previous deletion of Exhibit F, and the proposed addition of new Exhibit G, as described above. Accordingly, current Exhibits G, H, I, and J would be re-lettered as Exhibits E, F, H, and I, respectively.

Technical and Conforming Amendments To Reflect the Amendment and Restatement of the Holdco LLC Agreement

The Exchange proposes to make technical and conforming amendments to the cover page, table of contents, lead-in, recitals, and exhibits of the Holdco LLC Agreement to reflect that it is being amended and restated as the Sixth Amended Holdco LLC Agreement. Additionally, the Exchange proposes to amend the definition of ''Agreement'' to reference the Sixth Amended Holdco LLC Agreement; add ''Fifth Amended LLC Agreement'' as a defined term to mean the Fifth Amended Holdco LLC Agreement; replace references to ''Fourth Amended LLC Agreement'' with references to ''Fifth Amended LLC Agreement'' throughout the Holdco LLC Agreement, as appropriate; and update the certificate legend set forth in proposed new Section 3.12(b) (currently Section 3.11(b)) to include a reference to the Sixth Amended Holdco LLC Agreement. Each of these proposed amendments are conforming changes intended to reflect the amendment and restatement of the Holdco LLC Agreement.

Clean-Up Amendments

Lastly, the Exchange is proposing to make various non-substantive ''clean-up'' amendments throughout the Holdco LLC Agreement to correct typos, update section references, make minor grammatical and punctuational edits, and make other clarification and ministerial changes to clarify existing language or modify such language to conform with the other proposed amendments described above.

2. Statutory Basis

The Exchange believes that the proposed amendments to the Holdco LLC Agreement are consistent with Section 6(b) of the Act,[58] in general, and further the objectives of Section 6(b)(1) of the Act,[59] 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 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,[60] 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 that the creation of the Class C Units and the Common Units is consistent with the Act as this will facilitate additional investments by existing Members of Holdco, including certain Members that do not currently have the right to nominate Directors to serve on the Holdco Board. Although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will own, directly or indirectly, Units constituting more than twenty percent (20%) of any class of Units or will otherwise exceed any ownership or voting limitation applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction. Thus, the Exchange does not believe the creation of new Units or the Transaction will have any impact on the Exchange's ability to be 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. Further, the Exchange believes the proposed changes to the Holdco LLC Agreement are consistent with, and will not interfere with, the self-regulatory obligations of the Exchange. The Exchange importantly notes that it is not proposing to amend any of the provisions within the Holdco LLC Agreement or the Exchange LLC Agreement dealing with the availability or protection of information, books and records, undue influence, conflicts of interest, unfair control by an affiliate, or regulatory independence of the Exchange.

The Exchange reiterates that the proposed addition of certain voting rights of the Members associated with the existing Class A Units, as well as the proposed new Class C Units and Common Units is solely to facilitate certain Members' compliance with the BHCA. The Exchange notes that each of the actions on which certain Members are entitled to vote are significant corporate matters solely related to the administration, ownership, capital, or dissolution of Holdco or any Holdco subsidiary (other than the Exchange) and, except as set forth therein (or as otherwise currently provided in the Holdco LLC Agreement), the authority to manage and control the business and affairs of Holdco, including the right to amend or modify the Holdco LLC Agreement, would continue to be vested in the Holdco Board as it is today. Similarly, the Exchange believes the amendments to the Holdco LLC Agreement's provisions related to a Member's election to specify the maximum voting percentage that such Member may have with respect to any determination under the Holdco LLC Agreement, which are set forth in Section 3.10, are simply an expansion of existing provisions regarding specification of a maximum voting percentage and are designed to facilitate certain Members' compliance with the BHCA. While the Act does not separately compel compliance with the BHCA, the Exchange does not believe that any of these changes significantly changes the governance with respect to Holdco and thus will not impact governance of the Exchange. Accordingly, the Exchange believes the proposed changes will allow it to be organized as to have the capacity to

[58] 15 U.S.C. 78f(b).

[59] 15 U.S.C. 78f(b)(1).

[60] 15 U.S.C. 78f(b)(5).

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.

As described above, in connection with the Transaction, each of Citi, UBS, and Wells Fargo will receive the right to nominate a Director and the size of the Holdco Board will increase from eleven to fourteen Directors, as of the Effective Date. The Exchange believes the proposed amendments to reflect the governance changes that will result from the Transaction 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, as described above. Similarly, the Exchange believes the proposed changes to the definition of Supermajority Board Vote to provide that if eight (8) or fewer Directors are voting on a particular matter that an affirmative vote is present if all but two (2) Directors vote in favor of the matter, as this is consistent with the voting structure for matters with more than eight (8) Directors voting, where an affirmative vote is present even if two (currently, with eleven Directors) or three (as proposed, with fourteen Directors) Directors vote against a particular matter. The Exchange believes that updating the Holdco LLC Agreement with respect to the governance of Holdco to reflect these changes would ensure 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 clarify, 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, and make technical and conforming changes to reflect that the Holdco LLC Agreement is being amended and restated from the Fifth Amended LLC Agreement to the Sixth Amended LLC Agreement are consistent with the Act, as such amendments would 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 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.

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 creation of additional classes of Units in connection with the Transaction as well as reflecting governance changes in connection with the Transaction, changes to the voting structure of existing Units consistent with the structure of the new Units, updates intended to facilitate compliance with the BHCA, and updates of Holdco's corporate documents related to the administration and functioning of Holdco, 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–MEMX–2021–15 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–MEMX–2021–15. 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 comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2021–15 and should be submitted on or before November 24, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–23927 Filed 11–2–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93451; File No. SR–BX–2021–048]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Request for PRISM

October 28, 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 October 14, 2021, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 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

The Exchange proposes to delay the implementation of an amendment to Options 3, Section 7(d)(1)(A) relating to ''Financial Information eXchange'' or ''FIX'' in connection with offering BX Participants the ability to utilize FIX to submit orders to its Price Improvement Auction (''PRISM'') mechanism.

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

BX received approval [3] to amend Options 3, Section 7(d)(1)(A), relating to FIX, to offer BX Participants the ability to utilize FIX to submit orders to its PRISM mechanism. BX's amendment permitted it to offer Participants a manner in which to send messages through FIX, to other BX Participants, for the specific purpose of requesting another BX Participant submit an ''Initiating Order'' [4] along with the sender's PRISM Order [5] into the PRISM mechanism [6] for execution pursuant to Options 3, Section 13.

Specifically, the amendment expanded the capabilities of the FIX protocol to allow a BX Participant (sender) to utilize FIX to send a message to other BX Participants (responders) with an order the sender represents as agent (''PRISM Order'') on behalf of a Public Customer, broker dealer or other entity requesting the responders provide a contra-side Initiating Order (a ''response'') and begin a PRISM auction (collectively a ''Request for PRISM'').[7] If a BX Participant desires to respond to the request, the BX Participant adds an Initiating Order to the sender's PRISM Order and submits the paired order directly into PRISM, through FIX, for processing in accordance with Options 3, Section 13.[8]

The Exchange originally intended to begin implementation of the proposed rule change by June 30, 2021 [9] and subsequently extended the implementation until November 1, 2021.[10] At this time, the Exchange proposes to delay the implementation so that it would begin implementation prior to June 30, 2022. The Exchange will issue an Options Trader Alert to Participants with the date of implementation.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is 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, by delaying the implementation of its amendment to Options 3, Section 7(d)(1)(A) to allow the Exchange additional time to develop and test this functionality. The Exchange believes that additional time to develop and test this functionality will ensure a successful launch of the functionality.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the adoption of the amendment to Options 3, Section 7(d)(1)(A) does not impose an undue burden on competition. Delaying the implementation of the functionality will allow the Exchange additional time to develop and test the functionality.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public

[61] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91124 (February 12, 2021), 86 FR 10363 (February 19, 2021) (SR–BX–2020–033) (Order Granting Approval of a Proposed Rule Change To Utilize the FIX Protocol To Submit Orders to BX's Price Improvement Auction Mechanism) (''Approval Order'').

[4] An Initiating Order is an order executed against principal interest or against any other order it represents as agent. *See* Options 3, Section 13.

[5] A PRISM Order is an order submitted by a BX Participant that it represents as agent on behalf of a Public Customer, broker dealer, or any other entity, electronically, for execution. *See* Options 3, Section 13.

[6] This proposal does not amend the PRISM rule within Options 3, Section 13 in connection with offering Participants the ability to submit a Request for PRISM through FIX.

[7] The Request for PRISM, if accepted and submitted into PRISM, would become the ''PRISM Order'' pursuant to Options 3, Section 13.

[8] BX Participants may elect to ''opt in'' to receive Requests for PRISM. BX Participants that do not elect to ''opt in'' will not receive such requests. Once a BX Participant elects to receive Requests for PRISM, they would receive all requests from any BX Participant submitting a Request for PRISM. The BX Participant cannot elect to only receive requests from certain Participants and the sender may not elect to send the request to a select group of BX Participants.

[9] *See* Approval Order page 10364, ''The Exchange intends to begin implementation of the proposed rule change by June 30, 2021.''

[10] *See* Securities Exchange Act Release No. 91864 (May 12, 2021), 86 FR 27003 (May 18, 2021) (SR–BX–2021–022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of BX's Request for PRISM).

[11] 15 U.S.C. 78f(b)

[12] 15 U.S.C. 78f(b)(5).