SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 6, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

Contact Person For More Information: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 30, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–06962 Filed 3–30–23; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97210; File No. SR–MEMX–2023–06]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend and Restate the Limited Liability Company Agreement of MEMX Holdings LLC

March 28, 2023.

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 17, 2023, 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 Sixth Amended and Restated Limited Liability Company Agreement (the ''Sixth Amended LLC Agreement'') of MEMX Holdings LLC (''Holdco'') as the Seventh Amended and Restated Limited Liability Company Agreement of Holdco (the ''Seventh Amended LLC Agreement'') to reflect certain amendments, as further described below. 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[5] to reflect: (i) amendments related to the creation of the Class D Units[6] in connection with the sale by Holdco of Class D Units to certain new and existing Members[7] in a capital raise transaction (the ''Transaction''); (ii) amendments related to certain changes with respect to the Holdco Board in connection with the Transaction; (iii) an amendment to the definition of ''Company Related Party''; (iv) an amendment to the provision relating to the preparation and delivery of Holdco's annual budget; and (v) various clarifying, updating, conforming, and other non-substantive amendments. Each of these amendments is discussed below.

Background

The primary purpose of the Exchange's proposal to amend and restate the Holdco LLC Agreement is to create a new class of membership interest in Holdco, the Class D Units, which are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the existing Class C Units except for the original purchase price of such Units, and

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] References herein to the ''Holdco LLC Agreement'' refer to the Sixth Amended LLC Agreement or the Seventh Amended LLC Agreement, as appropriate in the context. All section references herein are to sections of the Holdco LLC Agreement unless indicated otherwise. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Holdco LLC Agreement.

[6] As proposed, the term ''Class D Units'' means the Class D–1 Units and the Class D–2 Units; the term ''Class D–1 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class D–1 Units'' in the Holdco LLC Agreement; and the term ''Class D–2 Units'' means the Units having the privileges, preference, duties, liabilities, obligations and rights specified with respect to ''Class D–2 Units'' in the Holdco LLC Agreement. The term ''Unit'' means a unit representing a fractional part of the membership interests of the members of Holdco. *See* Section 1.1 for the full definition of Unit.

[7] 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.

effectuate the sale by Holdco of Class D Units to certain new and existing Members pursuant to the Transaction.

The proceeds resulting from the sale of Class D Units pursuant to the Transaction will be paid to Holdco by the new and existing Members participating in the Transaction as purchasers of Class D 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. Although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will exceed any ownership or voting limitations applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction and the amendments to the Holdco LLC Agreement proposed herein.[8]

Additionally, in connection with the Transaction, one new Member, Optiver PSI B1 LLC (''Optiver''), will receive the right to nominate a Director, thereby increasing the size of the Holdco Board from fourteen (14) to fifteen (15) Directors. Other than this change to the composition of the Holdco Board, a proposed change to the definition of ''Supermajority Board Vote'' to maintain the current affirmative vote threshold and the addition of an ''Options Market Structure Committee,'' 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 March 8, 2023, in accordance with the Holdco LLC Agreement. The Exchange expects the Transaction to be completed pursuant to one or more closings that would occur within ninety (90) days of the initial closing. The Exchange expects the initial closing to occur on or shortly after the date on which the amendments to the Holdco LLC Agreement proposed herein become effective.

Amendments Related to the Creation of the Class D Units

In connection with the Transaction, the proposal would amend the Holdco LLC Agreement to create a new class of Units, the Class D Units, in order to effectuate the sale by Holdco of Class D Units to the Participating Members. As proposed, the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the existing Class C Units except that the Class D Units are being sold at a different price per Unit than which the Class C Units were previously sold, which results in the need for Holdco to create a new class of Units (*i.e.,* the Class D Units) to facilitate the Transaction. Other than the original purchase price of such Units being different, the Class D Units are the exact same security in every respect and are functionally equivalent to the Class C Units.

Authorization and Issuance of the Class D Units

Section 3.2 currently contains provisions related to the authorization and issuance of the Class A Units, the Class C Units, and the Common Units and that specify the voting rights associated with such Units. The proposal would amend Section 3.2 to similarly reflect the creation of the Class D Units, including to add new paragraph (f), which contains provisions related to the authorization and issuance of the Class D Units (comprised of the Class D–1 Units and the Class D–2 Units, as described below) and that specifies the voting rights associated with such Units by reference to the applicable paragraphs of Section 4.7, which prescribes the actions on which holders of Units are entitled to vote.

Voting Construct Applicable to Class D Units

The Exchange notes that previous amendments to the Holdco LLC Agreement changed the governance structure of Holdco from a construct in which the Members had no voting or management rights (except in very limited circumstances) and the authority to manage and control the business and affairs of Holdco was otherwise vested in the Holdco Board to a construct in which the Class A Units, the Class C Units, and the Common Units were divided into ''voting'' and ''non-voting'' series and the Members holding Class A Units, Class C Units and/or Common Units were granted certain voting rights associated with the ownership of such Units, with different voting rights associated with the ''voting'' series and the ''non-voting'' series of such classes of Units.[9] The sole purpose of this prior change to Holdco's governance structure was to facilitate certain Members' compliance with requirements and restrictions under the United States Bank Holding Company Act of 1956, as amended (''BHCA''), in light of 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 as well as interpretations of such amendments by certain Members that are subject to the BHCA.[10]

Under the current proposal, the Class D Units would similarly be divided into a ''voting'' series (*i.e.,* the Class D–1 Units), with certain voting rights as prescribed in Section 4.7 that mirror those of the Class C–1 Units, and a ''non-voting'' series (*i.e.,* the Class D–2 Units), with more limited voting rights as prescribed in Section 4.7 that mirror those of the Class C–2 Units. Like the creation of the ''voting'' and ''non-voting'' series of the Class C Units, the Class A Units, and the Common Units, the sole purpose of the proposal to create separate ''voting'' and ''non-voting'' series of Class D Units is to maintain a voting construct that facilitates certain Members' compliance with the BHCA.

Under the proposal, Section 4.7 would be amended to reflect the creation of the Class D Units and provide for the voting rights associated with the ownership of the Class D–1 Units and the Class D–2 Units. Specifically, the Class D–1 Units and/or the Class D–2 Units, as applicable, would vote together with the Class C–1 Units and/or the Class C–2 Units, as applicable, on all matters on which the Class C–1 and/or the Class C–2 Units are currently entitled to vote, subject to two exceptions set forth in amended Section 4.7(d) and proposed new Section 4.7(f), which are described below, and the voting construct applicable to the Class D Units would exactly mirror the voting construct applicable to the Class C Units since, as noted above, they are intended to be the exact same type of membership interest with all of the same privileges, preference, duties, liabilities,

[8] *See* Section 3.5, which sets forth certain limitations with respect to the ownership and voting of Units. The Exchange notes that the proposal contains an amendment to Section 3.5, which is described below.

[9] *See* Securities Exchange Act Release No. 93452 (October 28, 2021), 86 FR 60683 (November 3, 2021) (SR–MEMX–2021–15). The Exchange notes that the voting rights of holders of Class A Units, Class C Units, and/or Common Units remain very limited and relate only to voting on significant corporate matters related to the administration, ownership, capital, or dissolution of Holdco or any Holdco subsidiary (other than the Exchange), and the authority to manage and control the business and affairs of Holdco, including the right to amend or modify the Holdco LLC Agreement, remains otherwise vested in the Holdco Board. *See* Section 4.6(a).

[10] *Id.*

obligations and rights under the Holdco LLC Agreement.

The only actions on which the Class D Units would vote on their own, and not together with the Class C Units, are set forth in: (i) amended Section 4.7(d), which 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 D–1 Units shall not be effected without the approval of a majority of the then-outstanding Class D–1 Units; and (ii) proposed new Section 4.7(f), which provides that any exchange, reclassification or cancellation (whether by merger, consolidation or otherwise) or modification of the terms of all or part of the Class D Units which exchange, reclassification, cancellation or modification, as applicable, significantly and adversely affects the rights or preferences of the Class D Units shall not be effected without the approval of the majority of the then-outstanding Class D–1 Units and Class D–2 Units, voting together as a single class. These exceptions to the general principle that the Class D Units vote together with the Class C Units are rooted in common corporate law principles and are intended to safeguard the Class D Units against actions that significantly and adversely affect the Class D Units specifically, and such provisions mirror existing provisions that confer the same voting rights associated with the Class C Units with respect to actions that significantly and adversely affect the Class C Units specifically. In connection with these proposed amendments to Section 4.7, the proposal would further amend Section 4.7 to renumber the existing paragraphs after proposed new paragraph (g) and update relevant section references throughout the Holdco LLC Agreement accordingly.

The proposal would also 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 providing for certain voting rights associated with the ownership of Class D Units, as described above, and to otherwise reflect the creation of the Class D Units.

Additionally, the proposal would amend Section 3.10, which contains provisions that permit a Class A Member and/or Class C Member to elect to specify the maximum voting percentage that such Member may have with respect to its Voting Class A Units and/or Class C–1 Units (any such election, a ''Restricted Voting Election'') and that provide for the conversion of Voting Class A Units and/or Class C–1 Units into Nonvoting Class A Units and/or Class C–2 Units, respectively, and vice versa, in certain circumstances to maintain such Member's specified maximum voting percentage with respect to such Units. Section 3.10 is primarily in place in its current form to provide a mechanism for Class A Members and/or Class C Members to manage any potential deemed voting interests attributable to the Voting Class A Units and/or Class C–1 Units for BHCA and/or other regulatory purposes, although any Member holding Voting Class A Units and/or Class C–1 Units is able to make a Restricted Voting Election with respect to such Units for any purpose.

Currently, Section 3.10 provides that a Class A Member may notify Holdco of a Restricted Voting Election with respect to its Voting Class A Units (''Maximum Voting Class A Voting Percentage''), and a Class C Member may notify Holdco of a Restricted Voting Election with respect to its Class C–1 Units (''Maximum Class C–1 Voting Percentage''). The proposal would amend Section 3.10 to reflect the creation of the Class D Units and group the Class D–1 Units together with the Class C–1 Units for purposes of Section 3.10 in a manner consistent with the harmonized voting structure with respect to such Units described above, such that a Member holding Class C–1 Units and/or Class D–1 Units would now be permitted to notify Holdco of a Restricted Voting Election with respect to its Class C–1 Units and/or Class D–1 Units (''Maximum Class C–1/D–1 Voting Percentage''). In connection with this change, the proposal would also amend the following defined terms to reflect that the Class D–1 Units are now grouped together with the Class C–1 Units for purposes of Section 3.10: ''Class C–1 Voting Percentage'' would become ''Class C–1/D–1 Voting Percentage'';[11] ''Maximum Class C–1 Voting Percentage'' would become ''Maximum Class C–1/D–1 Voting Percentage'';[12] and ''Prior Class C–1 Voting Percentage'' would become ''Prior Class C–1/D–1 Voting Percentage.''[13] Similarly, the proposal would amend Exhibit F, which is a Restricted Voting Election Notice form used by Members to notify Holdco of a Restricted Voting Election, to reflect that a Class C Member and/or Class D Member would now elect to specify a Maximum Class C–1/D–1 Voting Percentage rather than a Maximum Class C–1 Voting Percentage. The provisions in Section 3.10 regarding the conversion of Voting Class A Units and/or Class C–1 Units into Nonvoting Class A Units and/or Class C–2 Units, respectively, and vice versa, in certain circumstances to maintain such Member's specified maximum voting percentage with respect to such Units would also be amended to include provisions relating to the conversion of Class D–1 Units into Class D–2 Units, and vice versa, in the same circumstances and on the same terms that are currently specified with respect to the Class A Units and Class C Units. Additionally, the other provisions of Section 3.10 would similarly be amended to reflect the creation of the Class D Units, including to add references to Class D Units and Class D–1 Units, as applicable, alongside references to Class C Units and Class C–1 Units, as applicable.

Convertibility and Conversion of Class D Units

As the Class D Units are the exact same type of membership interest as the Class C Units, which are convertible into Common Units as set forth in Section 3.11 (which references additional conversion terms set forth in Exhibit G—Conversion Rights of Class C Units), as proposed, the Class D Units are also convertible into Common Units under the same terms applicable to the Class C Units. Accordingly, the proposal would amend Section 3.11 and Exhibit G to reflect the creation of the Class D Units, include references to the Class D Units where appropriate, and include conversion provisions applicable to the Class D Units that mirror those applicable to the Class C Units. Proposed new Section 3.11(d) provides that in the event of any conversion to Common Units of any Class D Units, Class D–1 Units shall be converted into Voting Common Units, and Class D–2 Units shall be converted into Nonvoting Common Units. This conversion structure mirrors that applicable to the

[11] As proposed, the term ''Class C–1/D–1 Voting Percentage'' would be defined in Section 1.1 and would mean 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 and Class D–1 Units held by a Member and (ii) the denominator of which is the number of then issued and outstanding Class C–1 Units and Class D–1 Units held by all Members.

[12] As proposed, the term ''Maximum Class C–1/D–1 Voting Percentage'' would be defined in Section 3.10(a) and would refer to a Class C Member's or a Class D Member's maximum Class C–1/D–1 Voting Percentage.

[13] As proposed, the term ''Prior Class C–1/D–1 Voting Percentage'' would be defined in Section 3.10(e)(ii) and would refer to a Class C Member's or a Class D Member's Class C–1/D–1 Voting Percentage immediately prior to the issuance of any new Units or Unit Equivalents.

Class C Units (*i.e.,* Class C–1 Units are convertible into Voting Common Units, and Class C–2 Units are convertible into Nonvoting Common Units) and is similarly designed to keep the same voting construct in place with respect to the Common Units that are issued upon the conversion of any Class D Units (*i.e.,* Converted Common Units) in a manner consistent with the BHCA considerations described above. The Exchange notes that current Section 3.2(f), which would be renumbered as Section 3.2(g) to account for proposed new paragraph (f) described above, contains provisions relating to the Common Units and specifically provides that Common Units shall only be issuable in connection with an investment in the Company or upon conversion of Class C Units. As the Class D Units are also convertible into Common Units on the same terms as the Class C Units, as described above, the proposal would amend Section 3.2(g) to reflect that Common Units would also be issuable upon the conversion of Class D Units.

Amendment to Definitions and Other References To Reflect the Creation of the Class D Units

In connection with the creation of the Class D Units, the proposal would add definitions of the following terms in Section 1.1 (*i.e.,* the ''Definitions'' section of the Holdco LLC Agreement): Class D Member; [14] Class D–1 Units; [15] Class D–2 Units; [16] Class D Unit Original Purchase Price; [17] and Class D Units.[18] The proposal would also add references to Class D Units and/or Class D Members alongside references to Class C Units and/or Class C Members, as applicable, where appropriate throughout the Holdco LLC Agreement. Additionally, the proposal would amend the definitions of ''Converted Common Units''; ''Pro Rata Portion''; and ''Units'' in Section 1.1 to reflect the creation of, and include references to, the Class D Units.

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

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

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

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

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

Priority of Distributions of the Class D Units

Like the Class C Units, the primary distinction between the Class D Units and the Common Units, as well as the primary purpose of providing for the convertibility of Class D Units into Common Units, is the respective priority of Distributions [19] 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 with respect to Distributions other than of proceeds in the event of a liquidation of Holdco, and in Section 13.3 with respect to Distributions of proceeds in the event of a liquidation of Holdco. The proposal would amend Sections 7.3 and 13.3 to reflect the priority of Distributions with respect to the Class D Units, which, as the Class D Units are the exact same type of membership interest as the Class C Units, is the same in each case for the Class D Units as for the Class C Units (*i.e.,* the Class D Units and the Class C Units are effectively treated as the same class of membership interest for such purposes and receive shares of Distributions together at the same times and on the same terms on a pro rata basis).

Rights and Obligations of the Class D Units

There are currently several provisions in the Holdco LLC Agreement related to the rights and obligations associated with the Class C Units and the Class C Members, and thus, make specific reference to ''Class C Units'' and/or ''Class C Members.'' As noted above, under the proposal, the Class D Units are the exact same type of membership interest and therefore have the same rights and obligations as the Class C Units, and thus, a Member's ownership of Class D Units would confer the same rights and obligations with respect to such Units as a Member's ownership of Class C Units. Accordingly, the proposal would make several amendments throughout the Holdco LLC Agreement to reflect that the Class D Units have such rights and obligations and to otherwise reflect the creation of the Class D Units, including to add references to Class D Units and/or Class D Member alongside references to Class C Units and/or Class C Member, as applicable, where appropriate for this purpose. Such changes include amendments to reflect that the Class D Units are subject to the same terms as the Class C Units regarding the Member meeting rights set forth in Sections 4.7(j) and (o) (renumbered from (h) and (m) due to the other amendments to Section 4.7 described above), the pre-emptive rights set forth in Section 9.1, the Director nomination rights set forth in Section 8.10, the Board Observer appointment rights set forth in Section 8.13, the Exchange Board Observer appointment rights set forth in Section 8.18(g), the right of first offer set forth in Section 10.3, the drag-along rights set forth in Section 10.4, the tag-along rights set forth in Section 10.5, the regulatory hardship transfer and surrender rights set forth in Section 10.6, the information rights set forth in Section 12.1, and the waiver consent rights set forth in Section 15.10.

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

Amendment to Section 3.5 Related to the Treatment of Class C Units, Class D Units, and Common Units as a Single Class for Purposes of Sections 3.5 and 3.8

Section 3.5 sets forth certain limitations with respect to the ownership and voting of Units, which are intended to prevent the concentration of voting power and control of Holdco, and, in turn, the Exchange, above certain specified thresholds. Specifically, Section 3.5(a) provides that for so long as Holdco controls the Exchange, subject to certain limited exceptions: (i) no Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than forty percent (40%) of any class of Units; (ii) no Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units; and (iii) no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than twenty percent (20%) of the voting power of the then issued and outstanding Units, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect

of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Units which would represent more than twenty percent (20%) of such voting power.

The Exchange notes that while the Class D Units and the Class C Units may be considered separate classes of Units due to the naming convention of such Units (*i.e.,* being referred to as Class C vs. Class D) and for certain general corporate law purposes (*i.e.,* entitled to vote separately on any matters that affect such Units specifically), as discussed above, the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the Class C Units and also vote together with, and in the same manner as, the Class C Units pursuant to Section 4.7 on all actions on which such Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units or the Class D Units specifically). Thus, as noted above, such Units are functionally equivalent with the only difference between such Units being the original purchase price paid by the applicable purchasing Members, which difference is the sole reason for the creation of the new Class D Units. Therefore, the Exchange and the Holdco Board believe that the Class C Units and the Class D Units should generally be treated as a single class of Units for most purposes, as evidenced by the proposed amendments described above that reflect the identical treatment under the Holdco LLC Agreement. Additionally, as noted above, the Class C Units and the Class D Units are both convertible into Common Units on the same terms, and, once converted, such Common Units retain the same voting construct, rights, and obligations as the Class C Units and/or Class D Units from which they were converted (other than the priority of Distributions, as described above), and Common Units vote together with the Class C Units and the Class D Units and in the same manner pursuant to Sections 4.7(c) and (j) on all actions on which Class C Units and Class D Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units and/or the Class D Units specifically). As such, ownership of Class C Units, Class D Units, and/or Common Units effectively confer the same ownership rights to the holders of any such Units as relates to voting and governance of Holdco (*i.e.,* other than economic consequences resulting from priority of Distributions).

Accordingly, the proposal would amend Section 3.5, which sets forth certain limitations with respect to the ownership and voting of Units, to include a new paragraph (e), which provides that notwithstanding anything in the Holdco LLC Agreement to the contrary, the provisions of the Holdco LLC Agreement shall be construed in a manner such that the Class C Units, the Class D Units, and the Common Units together shall be treated as a single class of securities for purposes of Sections 3.5 and 3.8.

The Exchange reiterates that Members have limited control through ownership of Units, which is comprised of voting power associated with Units with respect to the limited actions prescribed in Section 4.7 and a Nominating Member's ability to nominate a Director to the Holdco Board, and, accordingly, the authority to manage and control the business and affairs of Holdco remains generally vested in the Holdco Board.[20] The Exchange further notes that Member representation on the Holdco Board is limited to one (1) Director per Nominating Member regardless of the amount/class of Units held by such Member, and the proposed change to treat the Class C Units, the Class D Units, and the Common Units together as a single class of securities for purposes of Sections 3.5 and 3.8 does not change this fact. In turn, Directors each have one vote, and thus, the general control of Holdco is widely dispersed (*i.e.,* as amended, there will be fifteen (15) Directors with one vote each, so each Director (and each Member that they represent) has less than seven percent (7%) of the voting power on the majority of matters related to the governance of Holdco).

The Exchange also notes that combining Class C Units, Class D Units, and Common Units does not increase the relative voting power or control of any Members, including the holders of Class A Units, as holders of Class A Units still vote as a separate class pursuant to Section 4.7(a) in the same manner as today. Rather, the only impact to voting power or control is dilution to Members holding Class C Units because the Exchange is bringing in new investors that will have voting power due to their holding Class D Units that will vote together with such Class C Units, as well as dilution to Members holding Class A Units in the sole event that the Class A Units vote together with the Class C Units and Class D Units with respect to the liquidation, dissolution or winding up of Holdco pursuant to Section 4.7(j). The only impact to ownership values is similarly dilutive, for both Members holding Class A Units and those holding Class C Units. However, the Holdco LLC Agreement contains provisions that permit such Members holding Class A Units and/or Class C Units to purchase Class D Units in the Transaction to retain their current proportionate ownership (and, in turn, control and voting power) to the extent they are concerned about any such dilution, and none of the proposed changes will impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act, and the rules and regulations promulgated thereunder, nor does it impair the ability of the SEC to enforce the Exchange Act and the rules and regulations promulgated thereunder with respect to the Exchange.

The Exchange notes that the proposed new Section 3.5(e) does not seek to treat Class A Units as a single class along with Class C Units, Class D Units, and Common Units for this purpose because Class A Units are economically distinct, as they are best characterized as participating preferred securities and are not convertible into Common Units, and because the Class A Units vote as a separate class (*i.e.,* not together with the Class C Units and Common Units) pursuant to Section 4.7(a). However, the Exchange also notes that in connection with any investment in Holdco it reviews the ownership of Units in the aggregate (*i.e.,* not based on class) and considers such aggregated ownership as the most meaningful way to consider the ownership and voting limitations for purposes of assessing relative control.

The Exchange notes that Section 3.8, which would remain unchanged, contains provisions allowing an Exchange Member that (together with its Related Persons) owns, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units to transfer the number of Units which account for the excess over such twenty percent (20%) ownership limitation, so the proposed new Section 3.5(e) makes clear that the same rule applying to the treatment of ownership of Class C Units, Class D Units, and Common Units for purposes of Section 3.5 described above would also apply to Section 3.8, as such section also contains a provision related to an ownership threshold, for purposes of which the Exchange and the Holdco Board believes Class C Units, Class D Units, and Common Units are functionally equivalent and appropriately treated as a single class.

[20] *See supra* note 7.

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

In connection with the Transaction, Optiver will become a Member with the right to nominate a Director to the Holdco Board (*i.e.,* a Nominating Member). Therefore, the size of the Holdco Board will increase from fourteen (14) to fifteen (15) Directors, as of the Effective Date. To reflect this change, the proposal would amend the Holdco LLC Agreement to add a definition of ''Optiver'' in Section 1.1 that reflects Optiver as a Class D Member and is consistent with the definitions of other Nominating Members with similar rights as Optiver; amend the definition of ''Market Maker Member'' [21] in Section 1.1 to include a reference to Optiver as a designated Market Maker Member; amend Section 8.3(a) to reflect the increased size of the Holdco Board at fifteen (15) Directors; and amend Section 8.3(b) to reference Optiver as a Member with the right to nominate a Director.

In addition, the proposal would 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; provided that if such affirmative vote threshold results in the necessity of the affirmative vote of eight (8) such Directors or fewer, an affirmative vote of all but two (2) of such Directors shall be required instead with respect to such matter. As the size of the Holdco Board will increase as a result of the Transaction, as described above, the proposal seeks to amend the definition of ''Supermajority Board Vote'' in Section 1.1 to change the affirmative vote threshold from seventy-seven percent (77%) of the votes of all Directors then entitled to vote to seventy-three percent (73%) of the votes of all Directors then entitled to vote, which would maintain the current voting structure in that the affirmative vote of the same number of Directors would be required assuming that all Directors are entitled to vote on a matter and none have recused themselves. Specifically, under the current structure with fourteen (14) Directors, assuming all such Directors are entitled to vote on a matter and none have recused themselves, a matter would be approved as an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a matter, and under the proposed structure with fifteen (15) Directors a matter would similarly be approved as an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a matter. Accordingly, the Holdco Board and the Exchange believe it is appropriate to maintain this voting structure which results in an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a particular matter. The proposal would not change any other aspect of the definition.

The proposal also would amend Section 8.9 to establish an Options Market Structure Committee and to restructure such Section in connection with this addition. Currently, Section 8.9 addresses committees of the Holdco Board, including the right of the Holdco Board to establish one or more committees of the Holdco Board that have the authority to make recommendations to the Holdco Board, but not to act for or on behalf of, or to bind Holdco. Section 8.9 also states that the Holdco Board shall establish a market structure committee and that so long as BlackRock remains a Nominating Member, (a) BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on such market structure committee at all times, and (b) if BlackRock so requests, a representative of BlackRock shall be the chairperson of such market structure committee. The Exchange proposes to establish paragraph (a) to Section 8.9, which would maintain the existing general language regarding committees and to entitle such paragraph ''Board Advisory Committees'', and to establish paragraph (b) to Section 8.9, which would describe Market Structure Committees generally and restate much of the language from paragraph (a), including that such Market Structure Committees shall have the power to make recommendations to, but not act for or on behalf of, or to bind the Holdco Board.

Proposed paragraph (b)(i) would describe the existing Market Structure Committee (which would be renamed as the Equities Market Structure Committee) and would provide that such committee shall be composed of Directors, Alternate Directors, Board Observers and/or other representatives of Nominating Members. Further, paragraph (b)(i) would include the existing language providing that so long as BlackRock remains a Nominating Member, (A) BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on the Equities Market Structure Committee at all times, and (B) if BlackRock so requests, a representative of BlackRock shall be the chairperson of the Equities Market Structure Committee.

Proposed paragraph (b)(ii) would mirror paragraph (b)(i), as described above, and would describe the new Options Market Structure Committee. Paragraph (b)(ii) would provide that the Options Market Structure Committee shall be composed of Directors, Alternate Directors, Board Observers and/or other representatives of Members. Further, paragraph (b)(ii) would provide similar rights to Optiver as those currently provided to BlackRock, and state that so long as Optiver remains a Nominating Member, (A) Optiver shall have the right, but not the obligation, to designate one of its representatives to serve on the Options Market Structure Committee at all times, and (B) if Optiver so requests, a representative of Optiver shall be the chairperson of the Options Market Structure Committee.

The Exchange notes that the Board currently has the right to establish committees by Supermajority Board Vote, and the codification of the existence, composition and details regarding the Market Structure Committees does not impact the governance of Holdco. Rather, the purpose of codifying the Market Structure Committees is in recognition of their importance to Holdco in providing advice to Holdco regarding developments in market structure applicable to these asset classes, namely equities and options. As noted above, neither Market Structure Committee will have the power to act for or on behalf of, or to bind, the Holdco Board. The Exchange also notes that it believes it is appropriate to make clear that it will allow other representatives of Nominating Members of Holdco (in the case of the Equities Market Structure Committee) and Members of Holdco (in the case of the Options Market Structure Committee), and not just Directors, Alternate Directors and Observers, to sit on such Market Structure Committees because many of Holdco's Members have representatives with particular expertise on market structure that can

[21] The term ''Market Maker Member'' refers to each of Citadel, Virtu, Jane Street and any other Member that is specifically designated as a Market Maker Member, 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 Market Maker Member under the Holdco LLC Agreement is that at least one Director nominated by any Market Maker Member (*i.e.,* a Market Maker Director) is generally required to establish a quorum for the transaction of business of the Holdco Board. *See* Section 8.6(a).

be valuable to Holdco but who do not sit on the Holdco Board.

Amendment to the Definition of ''Company Related Party''

The proposal seeks to amend the definition of ''Company Related Party'' in the Holdco LLC Agreement.[22] Specifically, the proposal would amend this term to also include any Person Controlled [23] by one or more Persons already listed in the current definition. The Exchange and the Holdco Board believe it is appropriate to designate any such Person as a Company Related Party, and therefore subject any contract, arrangement or transaction between such Person, on the one hand, and Holdco or any Holdco subsidiary, on the other hand (*i.e.,* a Company Related Party Transaction [24]), to the Holdco LLC Agreement's specific procedures for the Holdco Board's evaluation and approval of a Company Related Party Transaction, as the Exchange and the Holdco Board believe such Persons have a sufficient affiliation with Holdco to warrant the applicability of the Company Related Party Transaction procedures, which are designed to mitigate the potential conflicts of interest inherent in such transactions.[25]

Amendment to the Provision Relating to the Preparation and Delivery of the Annual Budget

The proposal seeks to amend the Holdco LLC Agreement's provision relating to the preparation and delivery of Holdco's annual budget. Currently, Section 12.4(a) provides that at least forty-five (45) calendar days prior to the start of any fiscal year (beginning with the fiscal year starting on January 1, 2020), Holdco shall prepare and deliver to the Holdco Board an annual budget setting forth all reasonably anticipated expenses of Holdco and its subsidiaries on a consolidated basis during the course of the upcoming Fiscal Year (the ''Annual Budget''). The proposal would amend Section 12.4(a) to delete the requirement that the Annual Budget must be prepared and delivered to the Holdco Board at least forty-five (45) calendar days prior to the start of the fiscal year. Instead, as proposed, Holdco would be required to prepare and deliver the Annual Budget to the Holdco Board on any date prior to the start of the fiscal year. The Exchange and the Holdco Board believe this change is appropriate because it would permit Holdco to deliver the Annual Budget, and seek the Holdco Board's approval of such Annual Budget, at the Holdco Board's fourth quarter meeting, which is typically scheduled on a date in December that is within forty-five (45) calendar days of the start of the fiscal year. The Annual Budget would therefore still be required to be prepared and delivered before the start of the fiscal year, but with greater flexibility on the timing.

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

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

Amendments To Delete Obsolete Provisions and Language

The proposal would make the following amendments to the Holdco LLC Agreement to delete provisions and language that are now obsolete due to the passage of time:

- *Deletion of Sections 10.1(a)(ii) and (iii).* The proposal would amend Section 10.1(a) to delete paragraphs (ii) and (iii) thereunder, as such paragraphs contain provisions relating to certain restrictions on the transfer of Units, which by their terms only apply prior to September 5, 2022. As this date has already passed, these provisions are now obsolete, and the proposal would therefore delete such provisions and replace such provisions with a ''Reserved.'' placeholder to maintain the paragraph numbering.
- *Deletion of certain defined terms in Section 1.1.* The proposal would delete the following defined terms ''Released Class A Member''; ''Released Class A Units''; ''Released Class C Member''; and ''Released Class C Units'' in Section 1.1, as such terms are only used in Section 10.1(a)(ii), which section would itself be entirely deleted under the proposal as it is now obsolete, as described immediately above.
- *Deletion of language in Section 2.5(a).* The proposal would delete language in Section 2.5(a) that requires prior approval of the Holdco Board by Supermajority Board Vote of any expansion of the business of Holdco or any Holdco subsidiary into an options exchange and/or global equities exchange prior to December 14, 2021, as such date has already passed, and therefore, this language is now obsolete.

Clarifying Amendment to Section 4.6(b)

Currently, Section 4.6(b) provides that if applicable law requires that the Members vote on a particular matter, Members shall vote together as a single class (other than the Class B Members, the Class A Members (including the holders of Class A–1 Units and the holders of Class A–2 Units), the holders of Class C–2 Units, and the holders of Nonvoting Common Units (if any) which shall nevertheless not vote unless applicable law, as applicable, requires that they also vote). This provision is intended to reflect the ''voting'' and ''non-voting'' Units distinction under Holdco's governance structure, as described above, and as such, the ''non-voting'' Units are intended to not vote even if the Members are required to vote together as a single class under applicable law unless applicable law requires that such non-voting Units vote. However, the reference in this section to ''the Class A Members (including the holders of Class A–1 Units and the holders of Class A–2 Units)'' was made inadvertently, and instead, this section should only reference the ''non-voting'' series of the Class A Units (*i.e.,* the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units). Thus, the proposal would correct this inadvertent drafting error and make clear that the ''holders of Nonvoting Class A Units'' (which includes the Nonvoting Class A–1 Units and the Nonvoting Class A–2 Units) are included in this provision rather than all of the Class A Members. The Exchange notes that this proposed change is intended to merely correct an inadvertent drafting error and clarify the original intent of this provision rather than to make a substantive change.

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

The proposal would make various technical and conforming amendments to the cover page, table of contents,

[22] As set forth in Section 1.1, the term ''Company Related Party'' currently means (a) any manager, officer, director, employee, independent contractor and/or consultant of Holdco or any Holdco subsidiary, (b) (i) any Member or holder of equity interests of Holdco or any Holdco subsidiary, (ii) any Affiliate or any manager, officer, director, employee, independent contractor and/or consultant of any Member or holder of equity interests of Holdco or any Holdco subsidiary or (iii) any manager, officer, director, employee, independent contractor and/or consultant of any Affiliate of a Member or holder of equity interests of Holdco or any Holdco subsidiary, and (c) any Immediate Family Member of any Person specified in clause (a).

[23] The term ''Control'' means, when used with respect to any specified Person, the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise. *See* Section 1.1.

[24] *See* Section 1.1 for the definition of Company Related Party Transaction.

[25] *See* Section 8.16 for the procedures relating to the Holdco Board's evaluation and approval of Company Related Party Transactions.

lead-in, recitals, and exhibits of the Holdco LLC Agreement to reflect that it is being amended and restated as the Seventh Amended LLC Agreement. Additionally, the proposal would amend the definition of ''Agreement'' to reference the Seventh Amended LLC Agreement; add ''Sixth Amended LLC Agreement'' as a defined term; replace references to ''Fifth Amended LLC Agreement'' with references to ''Sixth Amended LLC Agreement'' throughout the Holdco LLC Agreement where appropriate (*i.e.,* when referencing the prior version of the Holdco LLC Agreement); and update the certificate legend set forth in Section 3.12(b) to include a reference to the Seventh Amended LLC Agreement. Each of these proposed amendments is a conforming change intended to reflect the amendment and restatement of the Holdco LLC Agreement.

Clean-Up Amendments

Lastly, the proposal would make various non-substantive ''clean-up'' amendments throughout the Holdco LLC Agreement to correct minor drafting errors, update section references (*i.e.,* to reflect appropriate sections/paragraphs that were renumbered as a result of the proposed changes described herein), 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,[26] in general, and further the objectives of Section 6(b)(1) of the Act,[27] 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,[28] 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.

Amendments Related to the Creation of the Class D Units

The Exchange believes that the creation of the Class D Units is consistent with the Act, as it would facilitate additional investment and funding into Holdco resulting from the sale of Class D Units pursuant to the Transaction, and such proceeds could be used by Holdco for general corporate expenses, including to support the operations and regulation of the Exchange, which would enable the Exchange 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, and, in turn, would protect investors and the public interest. Further, the Exchange believes that the proposal for the Class D Units to be the exact same type of membership interest as the existing Class C Units (only with a different purchase price for such Units, as described above) is consistent with the Act because, as described above, the Class D Units would have the same privileges, preference, duties, liabilities, obligations and rights, and be subject to the same voting construct, as the Class C Units under the current Holdco LLC Agreement, which facilitates certain Members' compliance with the BHCA and provides for a governance structure of Holdco that is consistent with the structure currently in place, which was previously approved by the Commission.[29] As the Class D Units are the same type of membership interest as the Class C Units and do not otherwise impact the governance of Holdco or any Holdco subsidiary (including the Exchange), the Exchange believes that the creation of the Class D Units and related amendments to the Holdco LLC Agreement associated with the Class D Units relate solely to the administration of Holdco and the Transaction, and that such amendments would not impact the governance or operations of the Exchange. Accordingly, the Exchange does not believe the creation of the Class D Units or the Transaction would in any way restrict 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.

As noted above, although each Member's proportionate ownership of Holdco will change as a result of the Transaction, no Member will exceed any ownership or voting limitations applicable to the Members set forth in the Holdco LLC Agreement after giving effect to the Transaction and the proposed amendments to the Holdco LLC Agreement (including the amendment to Section 3.5 to treat the Class C Units, the Class D Units, and the Common Units as a single class of securities for purposes of such section). As described above, while the Class D Units and the Class C Units may be considered separate classes of Units due to the naming convention of such Units (*i.e.,* being referred to as Class C vs. Class D) and for certain general corporate law purposes (*i.e.,* entitled to vote separately on any matters that affect such Units specifically), the Class D Units are the exact same type of membership interest (*i.e.,* have the same privileges, preference, duties, liabilities, obligations and rights) as the Class C Units and also vote together with, and in the same manner as, the Class C Units pursuant to Section 4.7 on all actions on which such Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units or the Class D Units specifically), and thus, such Units are functionally equivalent with the only difference between such Units being the original purchase price paid by the applicable purchasing Members, which difference is the sole reason for the creation of the new Class D Units. Additionally, as noted above, the Class C Units and the Class D Units are both convertible into Common Units on the same terms, and, once converted, such Common Units retain the same voting construct, rights, and obligations as the Class C Units and/or Class D Units from which they were converted (other than the priority of Distributions, as described above), and Common Units vote together with the Class C Units and the Class D Units and in the same manner pursuant to Section 4.7 on all actions on which Class C Units and Class D Units are entitled to vote (other than actions that significantly and adversely affect the Class C Units and/or the Class D Units specifically). As such, as noted above, ownership of Class C Units, Class D Units, and/or Common Units effectively confer the same ownership rights to the holders of any such Units as relates to voting and governance of Holdco (*i.e.,* other than economic consequences resulting from priority of Distributions).

Additionally, as discussed above, the proposal to treat the Class C Units, the Class D Units, and the Common Units as a single class for purposes of Sections

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(1).

[28] 15 U.S.C. 78f(b)(5).

[29] *See supra* note 7.

3.5 and 3.8 does not impact a Member's representation on the Holdco Board (which is limited to one (1) Director per Nominating Director regardless of the amount/class of Units held by such Member), does not increase the relative voting power or control of any Members, and is in fact dilutive to all Members' voting power and control to the extent that Class D Units now vote together with Class C Units generally and also with Class A Units solely with respect to the liquidation, dissolution or winding up of Holdco pursuant to Section 4.7(j). Therefore, the Exchange believes the amendment to treat the Class C Units, the Class D Units, and the Common Units together as a single class of securities for purposes of the ownership limitations and related provisions set forth in Sections 3.5 and 3.8 is appropriate and consistent Section 6(b)(1) of the Act,[30] 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, and because such amendments will not impair the ability of the Exchange to carry out its functions and responsibilities as an ''exchange'' under the Exchange Act, and the rules and regulations promulgated thereunder, nor do such amendments impair the ability of the SEC to enforce the Exchange Act and the rules and regulations promulgated thereunder with respect to the Exchange.

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

As described above, in connection with the Transaction, Optiver will receive the right to nominate a Director and the size of the Holdco Board will increase from fourteen (14) to fifteen (15) Directors, as of the Effective Date. The Exchange believes the proposed amendments to reflect these changes are appropriate and consistent with the Act, as such amendments would update and clarify the relevant provisions of the Holdco LLC Agreement to reflect changes with respect to the Holdco Board that will result from the Transaction, as described above.

Similarly, the Exchange believes the proposed amendment to the definition of Supermajority Board Vote to change the affirmative vote threshold from seventy-seven percent (77%) of the votes of all Directors then entitled to vote to seventy-three percent (73%) of the votes of all Directors then entitled to vote is appropriate and consistent with the Act, as the resulting voting structure is consistent with the current voting structure which results in an affirmative Supermajority Board Vote if eleven (11) Directors vote in favor of a particular matter assuming that all Directors are entitled to vote on a matter and none have recused themselves, as described above. The Exchange believes that updating the Holdco LLC Agreement to reflect these changes with respect to the Holdco Board 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.

Lastly, the Exchange believes the proposed amendment to the Section 8.9 to separate Board Advisory Committees generally from Market Structure Committees and establish the Options Market Structure Committee is appropriate and consistent with the Act, as the codification of these committees does not impact the governance of Holdco, as described above, but rather reflects the existence of such committees and their importance to Holdco in providing advice to Holdco regarding developments in market structure applicable to each asset class. As noted above, neither Market Structure Committee has the power to act for or on behalf of, or to bind, Holdco. The Exchange believes that updating the Holdco LLC Agreement to reflect these changes with respect to the Holdco Board 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.

Amendment to the Definition of ''Company Related Party''

The Exchange believes the proposed amendment to the definition of ''Company Related Party'' is consistent with the Act, as it would broaden the definition of such term and designate additional Persons that have an affiliation with Holdco (*i.e.,* Persons that are Controlled by one or more Persons that are currently deemed Company Related Parties) as Company Related Parties, thereby subjecting any contract, arrangement or transaction between any such Person, on the one hand, and Holdco or any Holdco subsidiary, on the other hand (*i.e.,* a Company Related Party Transaction), to the Holdco LLC Agreement's specific procedures for the Holdco Board's evaluation and approval of a Company Related Party Transaction. The Exchange notes that the proposed amendment would not remove any Person currently included in the definition of Company Related Party from such definition. As the Holdco LLC Agreement's Company Related Party Transaction procedures are designed to mitigate the potential conflicts of interest inherent in such transactions, the Exchange believes the proposed amendment to broaden the definition of Company Related Party and thereby subject transactions with additional Persons that have an affiliation with Holdco to such procedures would enable the Exchange and its parent company 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, promote just and equitable principles of trade, and protect investors and the public interest.

Amendment to the Provision Relating to the Preparation and Delivery of the Annual Budget

As described above, the proposal would amend Section 12.4(a) to delete the requirement that the Annual Budget must be prepared and delivered to the Holdco Board at least forty-five (45) calendar days prior to the start of the fiscal year. Instead, as proposed, Holdco would be required to prepare and deliver the Annual Budget to the Holdco Board on any date prior to the start of the fiscal year. The Exchange believes the proposed amendment to the Annual Budget provision is appropriate and consistent with the Act, as such amendment would permit Holdco to deliver the Annual Budget, and seek the Holdco Board's approval of such Annual Budget, at the Holdco Board's fourth quarter meeting, which is typically scheduled on a date in December that is within forty-five (45) calendar days of the start of the fiscal year. The Annual Budget would therefore still be required to be prepared

[30] 15 U.S.C. 78f(b)(1).

and delivered before the start of the fiscal year, but with greater flexibility on the timing, as described above. The Exchange believes that such change is related solely to the administration of Holdco and thus would not have any impact on the Exchange's ability 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, and therefore, such change is consistent with the Act.

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

The Exchange believes the proposed amendments to make clarifications, correct inadvertent drafting errors, delete obsolete language, make conforming changes consistent with the other proposed amendments to the Holdco LLC Agreement described above, and make other technical and conforming changes to reflect that the Holdco LLC Agreement is being amended and restated from the Sixth Amended LLC Agreement to the Seventh 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.

The Exchange believes the proposed amendments to the Holdco LLC Agreement described in this proposal 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's LLC Agreement dealing with the availability or protection of information, books and records, undue influence, conflicts of interest (other than to broaden the definition of Company Related Party and subject additional transactions to the Holdco LLC Agreement's procedures designed to mitigate conflicts of interest), unfair control by an affiliate, or regulatory independence of the Exchange.

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 with the creation of an additional class of Units in connection with the Transaction as well as updates and other changes to the corporate documents of Holdco related to the administration and governance 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and subparagraph (f)(6) of Rule 19b–4 thereunder.[32]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay contained in Rule 19b–4(f)(6)(iii) so that the Exchange may amend the Holdco LLC Agreement to create an additional class of Units in order to facilitate the closing of the Transaction as soon as possible. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed changes to the Holdco LLC Agreement do not materially alter Holdco's existing governance framework or raise novel issues as the new Class D Units are functionally equivalent to the Class C Units other than the original purchase price of such Units being different. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing. 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.[33] If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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–MEMX–2023–06 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–2023–06. 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

[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2023–06 and should be submitted on or before April 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

RIN 3245–AI02

Small Business Innovation Research Program and Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of technical amendments; request for comments.

SUMMARY: The Small Business Administration is amending the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs Policy Directive to incorporate a template for agencies participating in the SBIR or STTR programs (Participating Agencies) to request the disclosure of statutorily required information from SBIR or STTR applicants.

DATES: These revisions to the SBIR/STTR Policy Directive take effect on May 3, 2023, without further action, unless significant adverse comment is received by May 3, 2023. If significant adverse comment is received, SBA will publish a timely withdrawal of the notice in the **Federal Register**.

ADDRESSES: You may submit comments, identified by number SBA–XXX–XXXX, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

SBA will post all comments on *www.regulations.gov.* Please do not submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erick Page-Littleford at (202) 718–7738 or *erick.page-littleford@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The mission of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs is to engage small business concerns (SBCs) to support scientific excellence and technological innovation through the investment of Federal research and research and development (R/R&D) funding in critical American priorities to build a strong national economy. Both programs follow a three-phase process throughout the Federal Government to solicit proposals and award funding agreements for R/R&D: Phase I, Phase II, and Phase III.

Section 9 of the Small Business Act (the Act), 15 United States Code (U.S.C.) 638(j) and (p), requires that the Small Business Administration (SBA) issue a policy directive setting forth guidance to the Participating Agencies. The SBIR and STTR (SBIR/STTR) Policy Directive outlines how agencies must generally conduct their programs. Each Participating Agency, however, may tailor its program to meet the needs of the individual Agency, as long as the general principles of the program set forth in the Act and directive are followed. Therefore, when incorporating SBIR/STTR policy into agency-specific regulations and procedures, Participating Agencies may develop and apply processes needed to implement the policy effectively; however, no Participating Agency may develop and apply policies, directives, or clauses that contradict, weaken, or conflict with the policy as stated in the Policy Directive.

SBA reviews its SBIR/STTR Policy Directive regularly to determine areas that need updating and further clarification. The SBIR and STTR Extension Act of 2022 (Extension Act), Public Law 117–183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638(g)(13)–(17), (o)(17)–(21), and (vv), to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address responsibilities of Participating Agencies to collect disclosures of information about the applicant's investment and foreign ties, as required by the Extension Act. This amendment provides a common template, based on the statutory language in the Act, to uniformly capture the required disclosures. This action is designated a direct final rulemaking because SBA is adopting the statutory language for the disclosure template questions with minor clarifying edits.

II. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35. Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv). The collection of information pursuant to the disclosure template is referenced in section 15 U.S.C. 638(vv)(2)(A) and (B), is related to the implementation of a due diligence program, and therefore is exempt from the requirements of the Paperwork Reduction Act.

III. Amendment

Section 9—Responsibilities of SBIR/STTR Agencies and Departments

The Extension Act, Public Law 117–183 (Sep. 30, 2022), amended section 9 of the Act; 15 U.S.C. 638 (g)(13)–(17), (o)(17)–(21), and (vv) to require small businesses applying for SBIR or STTR awards to disclose information about the applicant's investment and foreign ties. This information must be provided by applicants for an SBIR or STTR award and must be considered as part of each Participating Agency's implementation of a due diligence program to assess security risks, as required by section 4 of the Extension Act, and incorporated into the Act at section 638(vv)(2). Sections 4(b)(2)(B) and 5(c) of the Extension Act exclude the application of the Paperwork Reduction Act, 44 U.S.C. chapter 35, to the collection of information related to the implementation of a due diligence program authorized by 15 U.S.C. 638(vv).

SBA is amending Section 9(a) of the Policy Directive and adding an appendix to address the responsibilities of Participating Agencies to collect

[34] 17 CFR 200.30–3(a)(12).