

1. Text of the Proposed Rule Change

(a) MEMX LLC (“MEMX” or the “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend the Fourth Amended and Restated Limited Liability Company Agreement (the “Holdco LLC Agreement”) of MEMX Holdings LLC (“Holdco”), as further discussed 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.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the board of directors of Holdco (the “Holdco Board”) on July 17, 2020. The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the board of directors of the Exchange (the “Exchange Board”). Exchange staff will advise the Exchange Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

comments on the proposed rule change are:

Anders Franzon
General Counsel
MEMX LLC
(551) 370-1003

James Foley
Counsel
MEMX LLC
(551) 370-1042

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

(a) Purpose

The Exchange proposes to amend the Holdco LLC Agreement to: (i) add defined terms reflecting the admission of each of BLK SMI, LLC (“BlackRock”) and Wells Fargo Central Pacific Holdings, Inc. (“Wells Fargo”) as a Class A Member³ of Holdco (a “Holdco Class A Member”), amend the definitions of “Excluded Class A Member”⁴ and “Bank Class A Member”⁵ to include reference to Wells Fargo and make other related conforming changes throughout the Holdco LLC Agreement; (ii) provide that the Holdco Board shall establish and designate a market structure committee of the Holdco Board (the “Holdco Market Structure Committee”) and that a representative of BlackRock shall be a member of such Committee and the chairperson of such Committee if BlackRock so

³ The term “Class A Member” refers to a Member of Holdco holding Class A-1 Units or Class A-2 Units of Holdco. See Section 1.1 of the Holdco LLC Agreement. The term “Member” refers to a person admitted as a member of Holdco.

⁴ Presently, the term “Excluded Class A Member” refers to UBS Americas Inc. See Section 1.1 of the Holdco LLC Agreement.

⁵ The term “Bank Class A Member” refers to each of Banc of America Strategic Investments Corporation, Strategic Investments I, Inc., UBS Americas Inc., JPMC Strategic Investments I Corporation, Goldman Sachs PSI Global Holdings, LLC, and any other Member of Holdco that is specifically designated as a Bank Class A Member (which would include Wells Fargo pursuant to the proposed amendments described herein), in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement.

requests; (iii) update the compositional requirements of the Industry Advisory Board⁶ of Holdco (the “Holdco Industry Advisory Board”) to reflect that BlackRock has been admitted as a Holdco Class A Member, and as such would be entitled to appoint a representative to the Holdco Industry Advisory Board, and to make other clarifying changes to such requirements and related provisions; (iv) specify the compositional requirements of any Holdco Subsidiary Industry Advisory Board (as defined below); and (v) clarify that Members of Holdco which do not operate (or have an Affiliate⁷ that operates) a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges are not required to cause any such Member of Holdco (or its Affiliates, as applicable) to use good faith efforts to connect to the Exchange, and specifically provide that such requirement also does not apply to BlackRock and its Affiliates.

Add “BlackRock” and “Wells Fargo” as Defined Terms

On April 7, 2020, Wells Fargo purchased Class A Units of Holdco and was admitted as a Holdco Class A Member, as previously approved by the Holdco Board. On May 11, 2020, BlackRock purchased Class A Units of Holdco and was admitted as a Holdco Class A Member, as previously approved by the Holdco Board.

The Exchange now proposes to add “BlackRock” and “Wells Fargo” as defined terms in the Holdco LLC Agreement to reflect that each of BlackRock and Wells Fargo has been admitted as a Holdco Class A Member. The proposed definitions of BlackRock

⁶ The term “Industry Advisory Board” refers to an advisory board of Holdco with industry representation. See Section 8.19(a) of the Holdco LLC Agreement.

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

and Wells Fargo are consistent with the definitions of other Holdco Class A Members with similar rights and preferences as BlackRock and Wells Fargo, respectively. Related to the addition of Wells Fargo as a defined term in the Holdco LLC Agreement, the Exchange also proposes to amend the definition of the term “Excluded Class A Member” to include reference to Wells Fargo (in addition to UBS Americas Inc.), as Wells Fargo was granted the same rights under the Holdco LLC Agreement as UBS Americas Inc. by the Holdco Board, and to make related conforming changes throughout the Holdco LLC Agreement to reflect that there would be two Excluded Class A Members instead of one as presently drafted (such as changing references to “the Excluded Class A Member” to “each Excluded Class A Member”). The Exchange also proposes to amend the definition of “Bank Class A Member” to include reference to Wells Fargo as a designated Bank Class A Member. Presently, the designation of Wells Fargo as a Bank Class A Member under the Holdco LLC Agreement does not impact the governance of Holdco or any Holdco Subsidiary, or have any other effect, but is consistent with Holdco’s approach of including an Excluded Class A Member that is a bank within this definition. The designation as a Bank Class A Member would only have an effect to the extent Wells Fargo becomes a Nominating Class A Member with the right to appoint a director of Holdco at some point in the future. The Exchange believes these are non-substantive changes to update the corporate documents of Holdco to reflect the recent admission of two new Holdco Class A Members and to harmonize other defined terms used in the Holdco LLC Agreement.

8 The term “Nominating Class A Member” refers to a Class A Member of Holdco which has the right to nominate a director to the Holdco Board. See Section 8.3(b) of the Holdco LLC Agreement.

Holdco Market Structure Committee

Section 8.9 of the Holdco LLC Agreement presently provides that the Holdco Board may designate one or more committees, which shall be comprised of one or more directors and alternate directors of the Holdco Board, and that such committees shall have the authority to make recommendations to the Holdco Board in an advisory role only and shall not have the authority to act for or on behalf of, or to bind, Holdco or any of its subsidiaries (including the Exchange) (each, a “Holdco Subsidiary” and, collectively, the “Holdco Subsidiaries”).

Pursuant to Section 8.9, on May 5, 2020, the Holdco Board established and designated the Holdco Market Structure Committee as a committee of the Holdco Board and approved a charter directing the Holdco Market Structure Committee to consider and present to the Holdco Board non-binding recommendations regarding matters relating to market structure applicable to Holdco and the Holdco Subsidiaries, which matters may include, but are not limited to, regulatory proposals, infrastructure and resiliency initiatives, transparency initiatives, market and commercial trends and market data issues, as the Holdco Board considers such market structure matters in the course of its duties. The charter of the Holdco Market Structure Committee and the resolutions of the Holdco Board related to the designation of the Holdco Market Structure Committee provide that, so long as BlackRock remains a Nominating Class A Member of Holdco (a “Holdco Nominating Class A Member”), BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on the Holdco Market Structure Committee at all times and that, if BlackRock so requests, a representative of BlackRock shall be the chairperson of the Holdco Market Structure Committee.

The Exchange now proposes to amend Section 8.9 to, without deleting or modifying any existing text, add a provision requiring the Holdco Board to establish the Holdco Market Structure Committee and providing for the foregoing rights of BlackRock related to its representation on the Holdco Market Structure Committee, as previously approved by the Holdco Board. As amended by the proposed change, Section 8.9 would continue to permit the Holdco Board to designate representation on the Holdco Market Structure Committee from among the Holdco Nominating Class A Members by appointing directors and alternate directors on the Holdco Board to such Committee and would additionally provide for the specific rights of BlackRock to appoint a representative to serve on such Committee and for such representative to serve as the chairperson of such Committee, in each case if BlackRock so requests. While these specific rights apply only to BlackRock, as noted above, the other Holdco Nominating Class A Members will have representation on the Holdco Market Structure Committee as designated by the Holdco Board, which has generally agreed that each Holdco Nominating Class A Member shall have the right to appoint a representative to serve on such Committee if such Holdco Nominating Class A Member so requests. Thus, each Holdco Nominating Class A Member is presently entitled to have representation on the Market Structure Committee and, as noted above, the Market Structure Committee only considers matters in a non-binding capacity and it is the Holdco Board, with representation from all Holdco Nominating Class A Members as provided under the Holdco LLC Agreement, that must ultimately take action with respect to such matters. Moreover, each Member of Holdco and the Holdco Board has been advised of BlackRock's specific rights with respect to representation on the Holdco Market

Structure Committee, and such rights were approved by the Holdco Board on May 5, 2020, without any objection raised by any Member of Holdco or the Holdco Board. Accordingly, the proposed change would update the corporate documents of Holdco to implement a requirement which was already permitted under the Holdco LLC Agreement and which the Holdco Board has already agreed to and satisfied by action taken on May 5, 2020. The Exchange and the Holdco Board each believes that amending the Holdco LLC Agreement to include a requirement that the Holdco Market Structure Committee be established would ensure that the Holdco Market Structure Committee remains in place and further believes that having the Holdco Market Structure Committee in place (specifically with BlackRock's representation, including as chairperson, if BlackRock so desires) would meaningfully aid the Holdco Board in considering market structure-related matters and would ultimately help Holdco and the Exchange to promote a fair, transparent and efficient experience for all investors.

Holdco Industry Advisory Board

Section 8.19 of the Holdco LLC Agreement, which contains provisions relating to the creation and functioning of the Holdco Industry Advisory Board, provides that, if established, the Holdco Industry Advisory Board will provide advice and guidance to the Holdco Board and the management of Holdco and the Exchange relating to, among other things, technical and operational matters relating to the Exchange, but it will not be a committee of the Holdco Board. Section 8.19(a) contains provisions that specify the compositional requirements of the Holdco Industry Advisory Board and presently provides that "Promptly after the Effective Date,"⁹ the Holdco Board may, upon a

⁹ The term "Effective Date" refers to the effective date of the Holdco LLC

determination to do so by Supermajority Board Vote,¹⁰ establish the Holdco Industry Advisory Board.

The Exchange now proposes to amend Section 8.19(a) of the Holdco LLC Agreement to (i) update the compositional requirements of the Holdco Industry Advisory Board to reflect that BlackRock has been admitted as a Holdco Class A Member, and as such would be entitled to appoint a representative to the Holdco Industry Advisory Board if it so desires, and to make other clarifying changes relating to certain terms currently used in that section, and (ii) delete the phrase “Promptly after the Effective Date,” as such phrase is inapplicable and confusing in the context given the elective nature of the Holdco Board’s ability to establish the Holdco Industry Advisory Board.

Section 8.19(a) presently provides, among other things, that the Holdco Industry Advisory Board shall be comprised of: (i) one representative of (a) each Market Maker Class A Member¹¹ which is a Holdco Nominating Class A Member, (b) each Retail

Agreement, which is February 19, 2020.

¹⁰ The term “Supermajority Board Vote” means the affirmative vote of at least seventy-seven percent (77%) of the votes of all directors of Holdco then entitled to vote on the matter under consideration and who have not recused themselves, whether or not present at the applicable meeting of the Holdco Board; provided that if such affirmative vote threshold results in the necessity of the affirmative vote of all such directors of Holdco with respect to such matter, an affirmative vote of all but one of such directors of Holdco shall be required instead with respect to such matter. See Section 1.1 of the Holdco LLC Agreement.

¹¹ The term “Market Maker Class A Member” refers to each of Citadel Securities Principal Investments LLC, Virtu Getco Investments, LLC, Jane Street Group, LLC, and any other Member of Holdco that is specifically designated as a Market Maker Class A Member (of which there are none as of the date of this filing), in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement. On May 12, 2020, Virtu Getco Investments, LLC changed its name to Virtu Investments LLC.

Broker Class A Member¹² which is a Holdco Nominating Class A Member, (c) each Bank Class A Member which is a Holdco Nominating Class A Member, and (d) the Excluded Class A Member so long as it is entitled to appoint an observer to the Holdco Board (a “Holdco Board Observer”), and (ii) such members of the Exchange as determined by the Holdco Board. The proposed amendment would eliminate the references in this section to certain specific categories of Holdco Class A Members, namely, Market Maker Class A Member, Retail Broker Class A Member, and Bank Class A Member and would replace such references with a single reference to Holdco Nominating Class A Members, as all of the Holdco Class A Members that make up such categories, together with BlackRock, now comprise all of the Holdco Nominating Class A Members.

The effect of the proposed change is to eliminate unnecessary references to specific categories of Holdco Class A Members and replace such references with a single reference to Holdco Nominating Class A Members, which now includes BlackRock in addition to the Holdco Class A Members that comprise the categories of Holdco Class A Members presently referenced, and to provide that for so long as each Holdco Nominating Class A Member remains a Holdco Nominating Class A Member or is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC

¹² The term “Retail Broker Class A Member” refers to each of E*TRADE Financial Corporation, Devonshire Investors (Delaware) LLC, The Charles Schwab Corporation, Datek Online Management Corp., and any other Member of Holdco that is specifically designated as a Retail Broker Class A Member (of which there are none as of the date of this filing) and which, or an Affiliate of which, is a broker-dealer registered with the Financial Industry Regulatory Authority, Inc. which provides services to retail customers, in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement.

Agreement, each such Holdco Nominating Class A Member is entitled to appoint a representative to the Holdco Industry Advisory Board if it so desires. The proposed change would also update the reference to “the Excluded Class A Member” in this section to “each Excluded Class A Member” to reflect Wells Fargo’s inclusion in that defined term, but it would not in any way affect any Excluded Class A Member’s right to appoint a representative to the Holdco Industry Advisory Board, which are in addition to the rights of each Holdco Nominating Class A Member to appoint a representative to the Holdco Industry Advisory Board. In short, the proposed amendment would add BlackRock to the group of Holdco Class A Members that, together with the Excluded Class A Members, each have the right to appoint a representative to the Holdco Industry Advisory Board and would simplify the language used to reflect this.

The Exchange also proposes to amend Section 8.19(a) to delete the phrase “Promptly after the Effective Date,” with respect to the Holdco Board’s ability to establish the Holdco Industry Advisory Board. The ability granted to the Holdco Board by Section 8.19(a) to establish the Holdco Industry Advisory Board is elective in nature, as the existing language provides that Holdco Board *may* establish the Holdco Industry Advisory Board, and as such was not intended by the Members of Holdco to be required to be exercised at any specific time (or at all). Instead, the language was intended to, and does in effect, provide that this ability may only be exercised if and when the Holdco Board determines to do so by Supermajority Board Vote. The phrase “Promptly after the Effective Date,” is therefore inapplicable and may cause confusion in this context as it could be read to imply an unintended and undefined durational requirement with respect to the Holdco Board’s ability and discretion to establish the Holdco Industry Advisory

Board. Accordingly, deleting this phrase would clarify the provision to more accurately reflect the intent of the Members of Holdco for the Holdco Board to have the ability to establish the Holdco Industry Advisory Board at such time as determined by Supermajority Board Vote (or not at all) rather than within any specific amount of time following the Effective Date. The Holdco Industry Advisory Board has not been established as of the date of this filing.

Holdco Subsidiary Industry Advisory Boards

The Exchange proposes to amend Section 8.19 of the Holdco LLC Agreement to add a new clause (c) to specify the compositional requirements of any Holdco Subsidiary Industry Advisory Board. Specifically, the proposed new Section 8.19(c) provides that, with respect to any committee or advisory board of any Holdco Subsidiary which has functions similar to the contemplated functions of the Holdco Industry Advisory Board (any such committee or advisory board, a “Holdco Subsidiary Industry Advisory Board”), (a) each Holdco Class A Member which is a Holdco Nominating Class A Member, for so long as it remains a Holdco Nominating Class A Member or is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC Agreement, and (b) each Excluded Class A Member, for so long as it is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC Agreement, would have the right, but not the obligation, to appoint a representative to such Holdco Subsidiary Industry Advisory Board.

The Exchange believes that the proposed compositional requirements relating to any Holdco Subsidiary Industry Advisory Board are consistent with the proposed updated compositional requirements relating to the Holdco Industry Advisory Board, and as such

would provide for a uniform approach by Holdco and the Holdco Subsidiaries to considering matters within the scope of such industry advisory boards. No Holdco Subsidiary Industry Advisory Board has been established as of the date of this filing.

Connection to the Exchange by Certain Members

Section 11.8 of the Holdco LLC Agreement presently provides that each Member of Holdco shall use (or shall ensure that any of its Affiliates that it determines are to be members of the Exchange use) good faith efforts to take such actions as are necessary to enable such Member (or its Affiliates, as applicable) to connect to the Exchange prior to the operational date of the Exchange in a manner that would permit such Member (or its Affiliates, as applicable) to use the Exchange in a fair, equitable and non-discriminatory manner.

The Exchange now proposes to amend Section 11.8 to clarify that Members of Holdco which do not operate (or have an Affiliate that operates) a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges are not required to use (or cause its Affiliates, as applicable, to use) good faith efforts to connect to the Exchange, as connection to the Exchange by such persons may not be permissible under Exchange Rule 2.3, which requires, among other things, that each member of the Exchange be a registered broker or dealer. The Exchange believes that the proposed amendment clarifies the existing language in Section 11.8, which could be read to require Members of Holdco (or their Affiliates, as applicable) that are not registered as a broker or dealer to use good faith efforts to connect to the Exchange in a manner inconsistent with Exchange Rule 2.3, to more accurately reflect the intent of the Members of Holdco to require only those Members of Holdco (or their Affiliates, as applicable) which operate a U.S.-registered

broker-dealer that executes transactions directly on U.S. exchanges to use good faith efforts to connect to the Exchange in a manner consistent with the Exchange's rules and the Act.

BlackRock is an asset manager, and its business model does not involve acting as a broker-dealer on behalf of third parties on U.S. exchanges. For clarity's sake, BlackRock does have Affiliates that are U.S.-registered broker-dealers but these Affiliates do not execute transactions directly on U.S. exchanges, so out of an abundance of caution, the Exchange also proposes to further amend Section 11.8 to specifically provide that the requirement to connect to the Exchange shall not apply to BlackRock and its Affiliates. If BlackRock were to alter its business model so that it or any broker-dealer Affiliate did execute transactions directly on a U.S. exchange and, specifically, were to connect to the Exchange, the Exchange would require such connection to be conducted in a manner that would permit such person to use the Exchange in a fair, equitable and non-discriminatory manner consistent with the existing requirements of Section 11.8.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(1),¹⁴ in particular, in that it enables 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, and to enforce compliance by its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(1).

Section 6(b)(5) of the Act,¹⁵ which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed amendments to the Holdco LLC Agreement to add “BlackRock” and “Wells Fargo” as defined terms and make related conforming changes to certain definitions and other provisions, to update and clarify the compositional requirements of, and remove inapplicable and confusing language relating to, the Holdco Industry Advisory Board, and to add a provision requiring the Holdco Board to establish the Holdco Market Structure Committee and providing for certain rights of BlackRock relating to its representation on such Committee would update and clarify the relevant provisions of the Holdco LLC Agreement in a manner consistent with actions already taken by the Holdco Board as currently permitted by the Holdco LLC Agreement, and as such would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange believes the proposed amendment to the Holdco LLC Agreement to specify compositional requirements for any Holdco Subsidiary Industry Advisory Board consistent with the proposed updated compositional requirements relating to the Holdco Industry Advisory Board would establish a uniform approach by Holdco and the Holdco Subsidiaries to the consideration of matters within the scope of such industry

¹⁵ 15 U.S.C. 78f(b)(5).

advisory boards, which include technical and operational matters relating to the Exchange, and as such would promote the maintenance of a fair and orderly market and the protection of investors and the public interest.

The Exchange believes the proposed amendment to the Holdco LLC Agreement to not require Members of Holdco (or their Affiliates, as applicable) which do not operate a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges, including BlackRock and its Affiliates, to connect to the Exchange would add clarity to the Holdco LLC Agreement in a manner that would enable the Exchange to comply, and enforce compliance by its members, with the provisions of the Act and the rules of the Exchange, which require each member of the Exchange to be a registered broker or dealer (or person associated with a registered broker or dealer), and as a result would foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act. The Exchange also believes that specifically stating that BlackRock and its Affiliates are not required to connect to the Exchange is consistent with the Act and the rules of the Exchange for the reasons set forth above and to avoid potential confusion because BlackRock does have Affiliates that are U.S.-registered broker-dealers but that do not execute transactions directly on U.S. exchanges.

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

Because the proposed rule change relates to: (i) the compositional requirements of certain non-binding advisory committees and boards of the Exchange and its parent

company and (ii) clarifying and other non-substantive changes to the corporate documents of the Exchange's parent company, and not the operations of the Exchange, 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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder¹⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed amendments to the Holdco LLC Agreement described above would not significantly affect the protection of investors and the public interest. In addition, the Exchange does not believe that this proposal imposes any significant burden on competition because the proposed amendments to the Holdco

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

LLC Agreement do not address competitive issues but are concerned solely with updating the corporate documents of the Exchange's parent company and the administration and governance of the Exchange, its parent company and their respective committees and advisory boards, as discussed above.

Furthermore, Rule 19b-4(f)(6)(iii)¹⁸ requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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 respectfully requests 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 as soon as possible. As the Exchange continues to prepare for the commencement of its operations as a national securities exchange, it is in the process of facilitating the connection of its future

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

members, including the Members of Holdco (or their Affiliates, as applicable) currently required under Section 11.8 of the Holdco LLC Agreement to use good faith efforts to connect to the Exchange prior to the operational date of the Exchange. Waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Holdco LLC Agreement to reflect the clarified requirements regarding connection to the Exchange by certain Members (or their Affiliates, as applicable) consistent with the Exchange's rules and the Act, would reflect updated Holdco and Exchange committee and advisory board governance practices, and would bring greater clarity to the Holdco LLC Agreement, each as discussed above, in a timely manner, thereby creating more consistent and clear standards for the administration and governance of the Exchange and its parent company.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Exchange Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2020-05]
[Insert date]

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

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 [insert date], 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ 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 proposed rule change to amend the Fourth Amended and Restated Limited Liability Company Agreement (the "Holdco LLC Agreement") of MEMX Holdings LLC ("Holdco"), as further discussed below. Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

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 the Holdco LLC Agreement to: (i) add defined terms reflecting the admission of each of BLK SMI, LLC (“BlackRock”) and Wells Fargo Central Pacific Holdings, Inc. (“Wells Fargo”) as a Class A Member⁵ of Holdco (a “Holdco Class A Member”), amend the definitions of “Excluded Class A Member”⁶ and “Bank Class A Member”⁷ to include reference to Wells Fargo and make other related

⁵ The term “Class A Member” refers to a Member of Holdco holding Class A-1 Units or Class A-2 Units of Holdco. See Section 1.1 of the Holdco LLC Agreement. The term “Member” refers to a person admitted as a member of Holdco.

⁶ Presently, the term “Excluded Class A Member” refers to UBS Americas Inc. See Section 1.1 of the Holdco LLC Agreement.

⁷ The term “Bank Class A Member” refers to each of Banc of America Strategic Investments Corporation, Strategic Investments I, Inc., UBS Americas Inc., JPMC Strategic Investments I Corporation, Goldman Sachs PSI Global Holdings, LLC, and any other Member of Holdco that is specifically designated as a Bank Class A Member (which would include Wells Fargo pursuant to the proposed amendments described herein), in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement.

conforming changes throughout the Holdco LLC Agreement; (ii) provide that the board of directors of Holdco (the “Holdco Board”) shall establish and designate a market structure committee of the Holdco Board (the “Holdco Market Structure Committee”) and that a representative of BlackRock shall be a member of such Committee and the chairperson of such Committee if BlackRock so requests; (iii) update the compositional requirements of the Industry Advisory Boards of Holdco (the “Holdco Industry Advisory Board”) to reflect that BlackRock has been admitted as a Holdco Class A Member, and as such would be entitled to appoint a representative to the Holdco Industry Advisory Board, and to make other clarifying changes to such requirements and related provisions; (iv) specify the compositional requirements of any Holdco Subsidiary Industry Advisory Board (as defined below); and (v) clarify that Members of Holdco which do not operate (or have an Affiliate⁹ that operates) a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges are not required to cause any such Member of Holdco (or its Affiliates, as applicable) to use good faith efforts to connect to the Exchange, and specifically provide that such requirement also does not apply to BlackRock and its Affiliates.

Add “BlackRock” and “Wells Fargo” as Defined Terms

On April 7, 2020, Wells Fargo purchased Class A Units of Holdco and was admitted as a Holdco Class A Member, as previously approved by the Holdco Board. On

- 8 The term “Industry Advisory Board” refers to an advisory board of Holdco with industry representation. See Section 8.19(a) of the Holdco LLC Agreement.
- 9 The term “Affiliate” refers to, with respect to any person, any other person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such person. See Section 1.1 of the Holdco LLC Agreement.

May 11, 2020, BlackRock purchased Class A Units of Holdco and was admitted as a Holdco Class A Member, as previously approved by the Holdco Board.

The Exchange now proposes to add “BlackRock” and “Wells Fargo” as defined terms in the Holdco LLC Agreement to reflect that each of BlackRock and Wells Fargo has been admitted as a Holdco Class A Member. The proposed definitions of BlackRock and Wells Fargo are consistent with the definitions of other Holdco Class A Members with similar rights and preferences as BlackRock and Wells Fargo, respectively. Related to the addition of Wells Fargo as a defined term in the Holdco LLC Agreement, the Exchange also proposes to amend the definition of the term “Excluded Class A Member” to include reference to Wells Fargo (in addition to UBS Americas Inc.), as Wells Fargo was granted the same rights under the Holdco LLC Agreement as UBS Americas Inc. by the Holdco Board, and to make related conforming changes throughout the Holdco LLC Agreement to reflect that there would be two Excluded Class A Members instead of one as presently drafted (such as changing references to “the Excluded Class A Member” to “each Excluded Class A Member”). The Exchange also proposes to amend the definition of “Bank Class A Member” to include reference to Wells Fargo as a designated Bank Class A Member. Presently, the designation of Wells Fargo as a Bank Class A Member under the Holdco LLC Agreement does not impact the governance of Holdco or any Holdco Subsidiary, or have any other effect, but is consistent with Holdco’s approach of including an Excluded Class A Member that is a bank within this definition. The designation as a Bank Class A Member would only have an effect to the extent Wells Fargo becomes a Nominating Class A Member¹⁰ with the right to appoint a director of

¹⁰ The term “Nominating Class A Member” refers to a Class A Member of Holdco

Holdco at some point in the future. The Exchange believes these are non-substantive changes to update the corporate documents of Holdco to reflect the recent admission of two new Holdco Class A Members and to harmonize other defined terms used in the Holdco LLC Agreement.

Holdco Market Structure Committee

Section 8.9 of the Holdco LLC Agreement presently provides that the Holdco Board may designate one or more committees, which shall be comprised of one or more directors and alternate directors of the Holdco Board, and that such committees shall have the authority to make recommendations to the Holdco Board in an advisory role only and shall not have the authority to act for or on behalf of, or to bind, Holdco or any of its subsidiaries (including the Exchange) (each, a “Holdco Subsidiary” and, collectively, the “Holdco Subsidiaries”).

Pursuant to Section 8.9, on May 5, 2020, the Holdco Board established and designated the Holdco Market Structure Committee as a committee of the Holdco Board and approved a charter directing the Holdco Market Structure Committee to consider and present to the Holdco Board non-binding recommendations regarding matters relating to market structure applicable to Holdco and the Holdco Subsidiaries, which matters may include, but are not limited to, regulatory proposals, infrastructure and resiliency initiatives, transparency initiatives, market and commercial trends and market data issues, as the Holdco Board considers such market structure matters in the course of its duties. The charter of the Holdco Market Structure Committee and the resolutions of the Holdco

which has the right to nominate a director to the Holdco Board. See Section 8.3(b) of the Holdco LLC Agreement.

Board related to the designation of the Holdco Market Structure Committee provide that, so long as BlackRock remains a Nominating Class A Member of Holdco (a “Holdco Nominating Class A Member”), BlackRock shall have the right, but not the obligation, to designate one of its representatives to serve on the Holdco Market Structure Committee at all times and that, if BlackRock so requests, a representative of BlackRock shall be the chairperson of the Holdco Market Structure Committee.

The Exchange now proposes to amend Section 8.9 to, without deleting or modifying any existing text, add a provision requiring the Holdco Board to establish the Holdco Market Structure Committee and providing for the foregoing rights of BlackRock related to its representation on the Holdco Market Structure Committee, as previously approved by the Holdco Board. As amended by the proposed change, Section 8.9 would continue to permit the Holdco Board to designate representation on the Holdco Market Structure Committee from among the Holdco Nominating Class A Members by appointing directors and alternate directors on the Holdco Board to such Committee and would additionally provide for the specific rights of BlackRock to appoint a representative to serve on such Committee and for such representative to serve as the chairperson of such Committee, in each case if BlackRock so requests. While these specific rights apply only to BlackRock, as noted above, the other Holdco Nominating Class A Members will have representation on the Holdco Market Structure Committee as designated by the Holdco Board, which has generally agreed that each Holdco Nominating Class A Member shall have the right to appoint a representative to serve on such Committee if such Holdco Nominating Class A Member so requests. Thus, each Holdco Nominating Class A Member is presently entitled to have representation on the

Market Structure Committee and, as noted above, the Market Structure Committee only considers matters in a non-binding capacity and it is the Holdco Board, with representation from all Holdco Nominating Class A Members as provided under the Holdco LLC Agreement, that must ultimately take action with respect to such matters. Moreover, each Member of Holdco and the Holdco Board has been advised of BlackRock's specific rights with respect to representation on the Holdco Market Structure Committee, and such rights were approved by the Holdco Board on May 5, 2020, without any objection raised by any Member of Holdco or the Holdco Board. Accordingly, the proposed change would update the corporate documents of Holdco to implement a requirement which was already permitted under the Holdco LLC Agreement and which the Holdco Board has already agreed to and satisfied by action taken on May 5, 2020. The Exchange and the Holdco Board each believes that amending the Holdco LLC Agreement to include a requirement that the Holdco Market Structure Committee be established would ensure that the Holdco Market Structure Committee remains in place and further believes that having the Holdco Market Structure Committee in place (specifically with BlackRock's representation, including as chairperson, if BlackRock so desires) would meaningfully aid the Holdco Board in considering market structure-related matters and would ultimately help Holdco and the Exchange to promote a fair, transparent and efficient experience for all investors.

Holdco Industry Advisory Board

Section 8.19 of the Holdco LLC Agreement, which contains provisions relating to the creation and functioning of the Holdco Industry Advisory Board, provides that, if established, the Holdco Industry Advisory Board will provide advice and guidance to the

Holdco Board and the management of Holdco and the Exchange relating to, among other things, technical and operational matters relating to the Exchange, but it will not be a committee of the Holdco Board. Section 8.19(a) contains provisions that specify the compositional requirements of the Holdco Industry Advisory Board and presently provides that “Promptly after the Effective Date,”¹¹ the Holdco Board may, upon a determination to do so by Supermajority Board Vote,¹² establish the Holdco Industry Advisory Board.

The Exchange now proposes to amend Section 8.19(a) of the Holdco LLC Agreement to (i) update the compositional requirements of the Holdco Industry Advisory Board to reflect that BlackRock has been admitted as a Holdco Class A Member, and as such would be entitled to appoint a representative to the Holdco Industry Advisory Board if it so desires, and to make other clarifying changes relating to certain terms currently used in that section, and (ii) delete the phrase “Promptly after the Effective Date,” as such phrase is inapplicable and confusing in the context given the elective nature of the Holdco Board’s ability to establish the Holdco Industry Advisory Board.

Section 8.19(a) presently provides, among other things, that the Holdco Industry Advisory Board shall be comprised of: (i) one representative of (a) each Market Maker

¹¹ The term “Effective Date” refers to the effective date of the Holdco LLC Agreement, which is February 19, 2020.

¹² The term “Supermajority Board Vote” means the affirmative vote of at least seventy-seven percent (77%) of the votes of all directors of Holdco then entitled to vote on the matter under consideration and who have not recused themselves, whether or not present at the applicable meeting of the Holdco Board; provided that if such affirmative vote threshold results in the necessity of the affirmative vote of all such directors of Holdco with respect to such matter, an affirmative vote of all but one of such directors of Holdco shall be required instead with respect to such matter. See Section 1.1 of the Holdco LLC Agreement.

Class A Member¹³ which is a Holdco Nominating Class A Member, (b) each Retail Broker Class A Member¹⁴ which is a Holdco Nominating Class A Member, (c) each Bank Class A Member which is a Holdco Nominating Class A Member, and (d) the Excluded Class A Member so long as it is entitled to appoint an observer to the Holdco Board (a “Holdco Board Observer”), and (ii) such members of the Exchange as determined by the Holdco Board. The proposed amendment would eliminate the references in this section to certain specific categories of Holdco Class A Members, namely, Market Maker Class A Member, Retail Broker Class A Member, and Bank Class A Member and would replace such references with a single reference to Holdco Nominating Class A Members, as all of the Holdco Class A Members that make up such categories, together with BlackRock, now comprise all of the Holdco Nominating Class A Members.

The effect of the proposed change is to eliminate unnecessary references to specific categories of Holdco Class A Members and replace such references with a single reference to Holdco Nominating Class A Members, which now includes BlackRock in

¹³ The term “Market Maker Class A Member” refers to each of Citadel Securities Principal Investments LLC, Virtu Getco Investments, LLC, Jane Street Group, LLC, and any other Member of Holdco that is specifically designated as a Market Maker Class A Member (of which there are none as of the date of this filing), in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement. On May 12, 2020, Virtu Getco Investments, LLC changed its name to Virtu Investments LLC.

¹⁴ The term “Retail Broker Class A Member” refers to each of E*TRADE Financial Corporation, Devonshire Investors (Delaware) LLC, The Charles Schwab Corporation, Datek Online Management Corp., and any other Member of Holdco that is specifically designated as a Retail Broker Class A Member (of which there are none as of the date of this filing) and which, or an Affiliate of which, is a broker-dealer registered with the Financial Industry Regulatory Authority, Inc. which provides services to retail customers, in each case, together with each of their respective Affiliates. See Section 1.1 of the Holdco LLC Agreement.

addition to the Holdco Class A Members that comprise the categories of Holdco Class A Members presently referenced, and to provide that for so long as each Holdco Nominating Class A Member remains a Holdco Nominating Class A Member or is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC Agreement, each such Holdco Nominating Class A Member is entitled to appoint a representative to the Holdco Industry Advisory Board if it so desires. The proposed change would also update the reference to “the Excluded Class A Member” in this section to “each Excluded Class A Member” to reflect Wells Fargo’s inclusion in that defined term, but it would not in any way affect any Excluded Class A Member’s right to appoint a representative to the Holdco Industry Advisory Board, which are in addition to the rights of each Holdco Nominating Class A Member to appoint a representative to the Holdco Industry Advisory Board. In short, the proposed amendment would add BlackRock to the group of Holdco Class A Members that, together with the Excluded Class A Members, each have the right to appoint a representative to the Holdco Industry Advisory Board and would simplify the language used to reflect this.

The Exchange also proposes to amend Section 8.19(a) to delete the phrase “Promptly after the Effective Date,” with respect to the Holdco Board’s ability to establish the Holdco Industry Advisory Board. The ability granted to the Holdco Board by Section 8.19(a) to establish the Holdco Industry Advisory Board is elective in nature, as the existing language provides that Holdco Board *may* establish the Holdco Industry Advisory Board, and as such was not intended by the Members of Holdco to be required to be exercised at any specific time (or at all). Instead, the language was intended to, and does in effect, provide that this ability may only be exercised if and when the Holdco

Board determines to do so by Supermajority Board Vote. The phrase “Promptly after the Effective Date,” is therefore inapplicable and may cause confusion in this context as it could be read to imply an unintended and undefined durational requirement with respect to the Holdco Board’s ability and discretion to establish the Holdco Industry Advisory Board. Accordingly, deleting this phrase would clarify the provision to more accurately reflect the intent of the Members of Holdco for the Holdco Board to have the ability to establish the Holdco Industry Advisory Board at such time as determined by Supermajority Board Vote (or not at all) rather than within any specific amount of time following the Effective Date. The Holdco Industry Advisory Board has not been established as of the date of this filing.

Holdco Subsidiary Industry Advisory Boards

The Exchange proposes to amend Section 8.19 of the Holdco LLC Agreement to add a new clause (c) to specify the compositional requirements of any Holdco Subsidiary Industry Advisory Board. Specifically, the proposed new Section 8.19(c) provides that, with respect to any committee or advisory board of any Holdco Subsidiary which has functions similar to the contemplated functions of the Holdco Industry Advisory Board (any such committee or advisory board, a “Holdco Subsidiary Industry Advisory Board”), (a) each Holdco Class A Member which is a Holdco Nominating Class A Member, for so long as it remains a Holdco Nominating Class A Member or is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC Agreement, and (b) each Excluded Class A Member, for so long as it is entitled to appoint a Holdco Board Observer pursuant to the terms of the Holdco LLC Agreement, would have the right, but not the obligation, to appoint a representative to such Holdco Subsidiary

Industry Advisory Board.

The Exchange believes that the proposed compositional requirements relating to any Holdco Subsidiary Industry Advisory Board are consistent with the proposed updated compositional requirements relating to the Holdco Industry Advisory Board, and as such would provide for a uniform approach by Holdco and the Holdco Subsidiaries to considering matters within the scope of such industry advisory boards. No Holdco Subsidiary Industry Advisory Board has been established as of the date of this filing.

Connection to the Exchange by Certain Members

Section 11.8 of the Holdco LLC Agreement presently provides that each Member of Holdco shall use (or shall ensure that any of its Affiliates that it determines are to be members of the Exchange use) good faith efforts to take such actions as are necessary to enable such Member (or its Affiliates, as applicable) to connect to the Exchange prior to the operational date of the Exchange in a manner that would permit such Member (or its Affiliates, as applicable) to use the Exchange in a fair, equitable and non-discriminatory manner.

The Exchange now proposes to amend Section 11.8 to clarify that Members of Holdco which do not operate (or have an Affiliate that operates) a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges are not required to use (or cause its Affiliates, as applicable, to use) good faith efforts to connect to the Exchange, as connection to the Exchange by such persons may not be permissible under Exchange Rule 2.3, which requires, among other things, that each member of the Exchange be a registered broker or dealer. The Exchange believes that the proposed amendment clarifies the existing language in Section 11.8, which could be read to require Members of Holdco

(or their Affiliates, as applicable) that are not registered as a broker or dealer to use good faith efforts to connect to the Exchange in a manner inconsistent with Exchange Rule 2.3, to more accurately reflect the intent of the Members of Holdco to require only those Members of Holdco (or their Affiliates, as applicable) which operate a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges to use good faith efforts to connect to the Exchange in a manner consistent with the Exchange's rules and the Act.

BlackRock is an asset manager, and its business model does not involve acting as a broker-dealer on behalf of third parties on U.S. exchanges. For clarity's sake, BlackRock does have Affiliates that are U.S.-registered broker-dealers but these Affiliates do not execute transactions directly on U.S. exchanges, so out of an abundance of caution, the Exchange also proposes to further amend Section 11.8 to specifically provide that the requirement to connect to the Exchange shall not apply to BlackRock and its Affiliates. If BlackRock were to alter its business model so that it or any broker-dealer Affiliate did execute transactions directly on a U.S. exchange and, specifically, were to connect to the Exchange, the Exchange would require such connection to be conducted in a manner that would permit such person to use the Exchange in a fair, equitable and non-discriminatory manner consistent with the existing requirements of Section 11.8.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(1),¹⁶ in particular, in that

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(1).

it enables 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, and to enforce compliance by its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed amendments to the Holdco LLC Agreement to add “BlackRock” and “Wells Fargo” as defined terms and make related conforming changes to certain definitions and other provisions, to update and clarify the compositional requirements of, and remove inapplicable and confusing language relating to, the Holdco Industry Advisory Board, and to add a provision requiring the Holdco Board to establish the Holdco Market Structure Committee and providing for certain rights of BlackRock relating to its representation on such Committee would update and clarify the relevant provisions of the Holdco LLC Agreement in a manner consistent with actions already taken by the Holdco Board as currently permitted by the Holdco LLC Agreement, and as such would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Exchange believes the proposed amendment to the Holdco LLC Agreement

¹⁷ 15 U.S.C. 78f(b)(5).

to specify compositional requirements for any Holdco Subsidiary Industry Advisory Board consistent with the proposed updated compositional requirements relating to the Holdco Industry Advisory Board would establish a uniform approach by Holdco and the Holdco Subsidiaries to the consideration of matters within the scope of such industry advisory boards, which include technical and operational matters relating to the Exchange, and as such would promote the maintenance of a fair and orderly market and the protection of investors and the public interest.

The Exchange believes the proposed amendment to the Holdco LLC Agreement to not require Members of Holdco (or their Affiliates, as applicable) which do not operate a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges, including BlackRock and its Affiliates, to connect to the Exchange would add clarity to the Holdco LLC Agreement in a manner that would enable the Exchange to comply, and enforce compliance by its members, with the provisions of the Act and the rules of the Exchange, which require each member of the Exchange to be a registered broker or dealer (or person associated with a registered broker or dealer), and as a result would foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act. The Exchange also believes that specifically stating that BlackRock and its Affiliates are not required to connect to the Exchange is consistent with the Act and the rules of the Exchange for the reasons set forth above and to avoid potential confusion because BlackRock does have Affiliates that are U.S.-registered broker-dealers but that do not execute transactions directly on U.S.

exchanges.

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

Because the proposed rule change relates to: (i) the compositional requirements of certain non-binding advisory committees and boards of the Exchange and its parent company and (ii) clarifying and other non-substantive changes to the corporate documents of the Exchange's parent company, and not the operations of the Exchange, 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.

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:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. 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) of the Act¹⁸ and Rule 19b-4(f)(6)¹⁹ thereunder. 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 necessary or appropriate in the public interest, for the protection of investors, or

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4.

otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will 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 e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2020-05 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-2020-05. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MEMX-2020-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

²⁰ 17 CFR 200.30-3(a)(12).

Exhibit 5

(additions are double-underlined; deletions are [bracketed])

* * * * *

**FOURTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

OF

MEMX HOLDINGS LLC

Dated as of February 19, 2020

(conformed copy including August 2020 amendments)

* * * * *

1.1 Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.1:

* * * * *

“Bank Class A Member” means 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, in each case, together with each of their respective Affiliates. For the avoidance of doubt, no Bank Class A Member shall be deemed a Market Maker Class A Member or a Retail Broker Class A Member, and no Market Maker Class A Member and no Retail Broker Class A Member shall be deemed a Bank Class A Member for the purposes of this Agreement.

* * * * *

“BlackRock” means BLK SMI, LLC, a Delaware limited liability company, together with its Affiliates that hold Units. For the sake of clarity, (a) BLK SMI, LLC and its Affiliates holding Units (if any) shall be deemed to be one (1) Member, one (1) Class A Member, one (1) Nominating Class A Member, and one (1) holder of Units of each applicable type, class or series that BLK SMI, LLC and/or its Affiliates hold, (b) BLK SMI, LLC (for so long as it holds Units) shall be entitled to receive notices on behalf of itself and its Affiliates that hold Units, and shall be entitled to take all actions under this Agreement with respect to itself and its Affiliates that hold Units, and (c) at such time as BLK SMI, LLC no longer holds any Units, BLK SMI, LLC shall designate an Affiliate that then holds Units as the Member entitled to receive notices and take actions on behalf of itself and its Affiliates pursuant to written notice to the Company.

* * * * *

“Exchange Board Observer Appointing Member” means (a) each Class A Member that is a Nominating Class A Member and (b) [the]each Excluded Class A Member, subject, in each case, to Section 8.18(g)(iv).

* * * * *

“Excluded Class A Member” means each of UBS and Wells Fargo.

* * * * *

“Wells Fargo” means Wells Fargo Central Pacific Holdings, Inc., a California corporation, together with its Affiliates that hold Units. For the sake of clarity, (a) Wells Fargo Central Pacific Holdings, Inc. and its Affiliates holding Units (if any) shall be deemed to be one (1) Member, one (1) Class A Member, one (1) Excluded Class A Member, and one (1) holder of Units of each applicable type, class or series that Wells Fargo Central Pacific Holdings, Inc. and/or its Affiliates hold, (b) Wells Fargo Central Pacific Holdings, Inc. (for so long as it holds Units) shall be entitled to receive notices on behalf of itself and its Affiliates that hold Units, and shall be entitled to take all actions under this Agreement with respect to itself and its Affiliates that hold Units, and (c) at such time as Wells Fargo Central Pacific Holdings, Inc. no longer holds any Units, Wells Fargo Central Pacific Holdings, Inc. shall designate an Affiliate that then holds Units as the Member entitled to receive notices and take actions on behalf of itself and its Affiliates pursuant to written notice to the Company.

* * * * *

8.3 Board Composition; Vacancies.

(a) (No change.)

(b) The Company and the Members shall take such actions as may be required to ensure that the number of Directors constituting the Board is at all times such number as determined by the Board by Supermajority Board Vote. Each Class A Member other than [the]each Excluded Class A Member which, at the time of its initial investment in the Company, purchases at least five million (5,000,000) Class A Units shall have the right to nominate one (1) individual as a Director (the Class A Members which have the rights to nominate Directors hereunder collectively referred to herein as a “Nominating Class A Members” and individually as a “Nominating Class A Member”). All of the individuals so nominated shall be deemed elected to the Board upon such nomination. The right of a Nominating Class A Member to nominate a Director may be eliminated or waived, as applicable, as set forth in Section 8.10 and Section 8.11.

* * * * *

8.9 Committees. The Board may, by Supermajority Board Vote, designate from among the Directors and Alternate Directors one or more committees, each of

which shall be comprised of one or more Directors and Alternate Directors. Committees shall have the authority to make recommendations to the Board. Any committees which are so designated shall have an advisory role only and shall not have the authority to act for or on behalf of, or to bind, the Company or any Company Subsidiaries. No action taken by a committee shall be binding on the Company unless approved by the Board. The Board may dissolve any committee or remove any member of a committee at any time. Without limiting the generality of the foregoing, the Board shall establish a market structure committee. So long as BlackRock remains a Nominating Class A 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.

* * * * *

8.13 Board Observers.

(a) If a Class A Member no longer has the right to nominate a Director as a result of operation of Section 8.10, but continues to hold at least 1,250,000 Class A Units (subject to adjustment in the event of any Unit split, Unit combination, reorganization, reclassification, recapitalization or the like), such Class A Member shall have the right, but not the obligation, to appoint one (1) Board Observer. If such Class A Member has appointed such Board Observer and, thereafter, ceases to hold at least 1,250,000 Class A Units (subject to adjustment in the event of any Unit split, Unit combination, reorganization, reclassification, recapitalization or the like), such Class A Member shall no longer have the right to appoint a Board Observer and the Board Observer appointed by such Class A Member shall automatically and immediately be removed from his or her position as such. Notwithstanding anything contained herein to the contrary, as of the Effective Date [the]each Excluded Class A Member shall have the right, but not the obligation, to appoint one (1) Board Observer for so long as [the]such Excluded Class A Member holds at least 1,250,000 Class A Units (subject to adjustment in the event of any Unit split, Unit combination, reorganization, reclassification, recapitalization or the like).

* * * * *

8.19 Industry Advisory Board.

(a) [Promptly after the Effective Date, t]The Board may, upon a determination to do so by Supermajority Board Vote, establish an advisory board with industry representation (the “Industry Advisory Board”). If such Industry Advisory Board is established, it shall be comprised of (i) one representative of [each of] (A) each [Market Maker] Class A Member which is a Nominating Class A Member, for so long as it remains a Nominating Class A Member or is entitled to appoint a Board Observer pursuant to the terms of this Agreement, and (B) [each Retail Broker Class A Member which is a Nominating Class A Member, (C) each Bank Class A Member which is a Nominating Class A Member and (D) the]each Excluded Class A Member, for so long as it is entitled to appoint a Board Observer pursuant to the terms of this Agreement, in each

case if any of the foregoing desires to appoint a representative to the Industry Advisory Board, and (ii) if so determined by the Board, representatives of such other Members of the national securities exchange operated by MEMX LLC as determined by the Board (each such representative referred to herein as an “Industry Advisory Board Member”). With respect to the Class A Members which appoint an Industry Advisory Board Member pursuant to the immediately preceding clause (i), if such Class A Member no longer has the right to nominate at least one (1) Director hereunder, unless the Board determines otherwise by Supermajority Board Vote, such Class A Member shall no longer have the right to nominate an Industry Advisory Board Member and the Industry Advisory Board Member nominated by such Class A Member shall automatically and immediately be removed from the Industry Advisory Board.

(b) (No change.)

~~(c) If any Company Subsidiary (including MEMX LLC) establishes any committee or advisory board which has functions similar to the contemplated functions of the Industry Advisory Board, (i) each Class A Member which is a Nominating Class A Member, for so long as it remains a Nominating Class A Member or is entitled to appoint a Board Observer pursuant to the terms of this Agreement, and (ii) each Excluded Class A Member, for so long as it is entitled to appoint a Board Observer pursuant to the terms of this Agreement, would have the right, but not the obligation, to appoint a representative to such board or committee.~~

* * * * *

11.8 Agreements Regarding Certain Matters Relating to MEMX LLC. Subject to Applicable Law, each Member shall use (or shall ensure that any of its respective Affiliates that it determines, in its sole discretion, are to be Exchange Members use) good faith efforts to take such actions as are necessary (including building or acquiring the necessary technology) to enable such Member (or its Affiliates, as applicable) to, prior to the Operational Date (as defined in the Restated MEMX LLC Agreement), connect to the national securities exchange known as MEMX LLC in a manner that would permit such Member (or its Affiliates, as applicable) to use such national securities exchange in a fair, equitable and non-discriminatory manner. Notwithstanding the foregoing, the Company and the Members agree that the provisions of this Section 11.8 shall not apply to (i) any Member which does not operate, or have an Affiliate which operates, a U.S.-registered broker-dealer that executes transactions directly on U.S. exchanges or (ii) BlackRock or any of its Affiliates, and neither BlackRock and its Affiliates nor any such Member shall have any obligations hereunder.

* * * * *

13.1 Events of Dissolution. The Company shall be dissolved and its affairs wound up only upon the occurrence of any of the following events:

(a) (No change.)

(b) (No change.)

(c) (No change.)

(d) Within ten (10) days following the occurrence of any of the following events, provided, however, that for this clause (d) the Board may determine by majority vote not to dissolve the Company:

(i) (No change.)

(ii) prior to the approval of the Exchange Application, the SEC requires changes to the ownership or governance structure of MEMX LLC or the Company as contemplated herein, and such changes materially and adversely affect the rights and benefits expected with respect thereto as of the Effective Date by the Market Maker Class A Members, the Bank Class A Members or the Retail Broker Class A Members; provided, that the foregoing shall not apply to (A) any rights contemplated herein or in the Restated MEMX LLC Agreement regarding the right of any Class A Member, including [the]each Excluded Class A Member, to have an observer attend or participate in meetings of the Exchange Board or (B) any provisions of the Restated MEMX LLC Agreement relating to governance of MEMX LLC which include concepts that were not included in the constitutive documents of any other national securities exchange which were approved by the SEC.

* * * * *