Required fields are shown with yellow backgrounds and asterisks.

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 and restate the Fourth Amended and Restated Limited Liability Company Agreement (the "Fourth Amended LLC Agreement") of MEMX Holdings LLC ("Holdco") as the Fifth Amended and Restated Limited Liability Company Agreement of Holdco (the "Fifth Amended LLC Agreement") to reflect certain amendments, as further described below.[3] Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the Exchange.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1, and the text of the proposed rule change is provided in 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 February 16, 2021. 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

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

2 17 CFR 240.19b-4.

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

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

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

conforming, and other non-substantive amendments. Each of these amendments is discussed below.

Amendments Resulting from or in Connection with Combination Transactions Involving Class A Members

In October 2020, an affiliate of Strategic Investments I, Inc. ("Morgan Stanley")[5] completed a combination transaction with E*TRADE Financial Corporation[6] resulting in Morgan Stanley and/or one of its affiliates directly or indirectly owning all of the equity interests in E*Trade and all such entities becoming Affiliates[7] of each other (the "Morgan Stanley-E*Trade Combination"). In that same month, The Charles Schwab Corporation ("Schwab")[8] completed a combination transaction with an affiliate of Datek Online Management Corp. ("TD Ameritrade")[9] resulting in Schwab directly or indirectly owning all of the equity interests in TD Ameritrade and such entities becoming Affiliates of each other (the "Schwab-TD Ameritrade Combination"). The Exchange proposes to amend certain provisions of the Holdco LLC Agreement to reflect governance changes that have

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

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

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

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

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

already occurred with respect to Holdco and the Exchange, which resulted from or were made in connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination. Each of these changes has already occurred by operation of the Holdco LLC Agreement and/or pursuant to authorization by the Holdco Board or action by a Class A Member, as applicable, in accordance with the Holdco LLC Agreement. Accordingly, the purpose of these proposed amendments is to update the Holdco LLC Agreement to reflect the current state of affairs with respect to the governance of Holdco and the Exchange and to make conforming changes to defined terms. Each of these proposed amendments is discussed below.

Amendment to the Definition of Exchange Director Nominating Member

The Holdco LLC Agreement currently defines the term Exchange Director Nominating Member[10] to mean each of E*Trade, TD Ameritrade, and Virtu,[11] as each of those entities had the right to nominate an Exchange Director as of the Fourth Amended LLC Agreement Effective Date. In connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination, (i) E*Trade transferred its right to nominate an Exchange Director to Morgan Stanley after such entities became

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

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

Affiliates, and (ii) TD Ameritrade transferred its right to nominate an Exchange Director to Schwab after such entities became Affiliates. Accordingly, the Exchange proposes to amend the definition of Exchange Director Nominating Member to replace the references to E*Trade and TD Ameritrade with references to Morgan Stanley and Schwab, respectively, to reflect that each of Morgan Stanley and Schwab now has the right to nominate an Exchange Director (in addition to Virtu, which remains as the third Exchange Director Nominating Member). The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement as it reflects governance changes with respect to the Exchange that have already occurred.

Amendment to Exhibit J Regarding the Exchange Director Nomination Rotation

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

Amendment to the Definition of Morgan Stanley

The Exchange proposes to amend the definition of Morgan Stanley in the Holdco LLC Agreement to reflect that such entity is now an Exchange Director Nominating Member, as E*Trade's right to nominate an Exchange Director was transferred to

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

Amendments to the Definition of Schwab

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

The Exchange also proposes to further amend the definition of Schwab to reflect that it is no longer a Nominating Class A Member.[14] In connection with the Schwab-TD

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

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

14 The term "Nominating Class A Member" refers to a Class A Member of Holdco which has the right to nominate a Director to the Holdco Board. See Section

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

Deletion of the Definition of E*Trade

The Holdco LLC Agreement currently defines E*Trade to include references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, E*Trade's right to nominate an Exchange Director was transferred to Morgan Stanley in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being an Exchange Director Nominating Member. Additionally, E*Trade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being a Nominating Class A Member.[16] Further, the Exchange is also proposing herein to delete all references to

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8.3(b) of the Holdco LLC Agreement.

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

16 See Section 8.17 of the Holdco LLC Agreement, which provides that if a Nominating Class A Member merges, consolidates or otherwise combines with, obtains control over, or becomes Affiliated with, another Nominating Class A Member (a "Combination"), the surviving Affiliated group shall (i) if both such Nominating Class A Members had nominated a Director that is serving on the Holdco Board at the time of the Combination, remove or cause the removal of one of such Directors effective upon the consummation of such Combination, and (ii) thereafter have the right to nominate only one Director and the number of

the term "E*Trade" contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member[17] (as described below), and there are no other references to the term "E*Trade" in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term "E*Trade" in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. The Exchange notes that the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

Deletion of the Definition of TD Ameritrade

The Holdco LLC Agreement currently defines TD Ameritrade to include references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, TD Ameritrade's right to nominate an

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Directors shall be reduced accordingly. In connection with the Morgan Stanley-E*Trade Combination, the surviving Affiliated group (consisting of Morgan Stanley and E*Trade) caused the removal of the Director nominated by E*Trade, resulting in Morgan Stanley retaining such Affiliated group's right to nominate a Director.

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

Exchange Director was transferred to Schwab in connection with the Schwab-TD Ameritrade Combination, resulting in TD Ameritrade no longer being an Exchange Director Nominating Member. Additionally, TD Ameritrade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Schwab- TD Ameritrade Combination, resulting in TD Ameritrade no longer being a Nominating Class A Member.[18] Further, the Exchange is also proposing herein to delete all references to the term "TD Ameritrade" contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member (as described below), and there are no other references to the term "TD Ameritrade" in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term "TD Ameritrade" in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. As noted above, the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

Amendment to the Definition of Retail Broker Class A Member

The Holdco LLC Agreement currently defines Retail Broker Class A Member to

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18 See Section 8.17 of the Holdco LLC Agreement. In connection with the Schwab-TD Ameritrade Combination, the surviving Affiliated group (consisting of Schwab and TD Ameritrade) caused the removal of the Director nominated by TD Ameritrade, resulting in Schwab retaining such Affiliated group's right to nominate a Director.

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

Amendments to Provisions Relating to a Quorum of the Holdco Board

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

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

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

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

Add "Buy Side Director" as a New Defined Term

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

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

Section 8.6(a)(i) of the Holdco LLC Agreement currently provides that a quorum for the transaction of business of the Holdco Board at a meeting of the Holdco Board shall constitute a number of Directors which both (A) represents the majority of the votes

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

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

22 Id.

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

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

Director (or his or her Alternate Director) *or at least one (1) Buy Side Director (or his or her Alternate Director)*, and (z) at least one (1) Bank Director (or his or her Alternate Director). The effect of this proposed amendment is to group Buy Side Directors (which would currently include only the Director nominated by BlackRock) together with Retail Broker Directors (which currently includes only the Director nominated by Fidelity) for purposes of establishing a quorum of the Holdco Board such that a Director of either of those categories would be required to be present to establish a quorum of the Holdco Board. The Exchange and the Holdco Board believe this proposed amendment would improve the governance of Holdco by no longer requiring the Director nominated by a single Class A Member to be present to establish a quorum of the Holdco Board at a meeting of the Holdco Board.

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

Amendments to the Definition of Bank Class A Member

The definition of Bank Class A Member currently provides that no Bank Class A Member shall be deemed a Market Maker Class A Member or a Retail Broker Class A Member, and no Market Maker Class A Member and no Retail Broker Class A Member shall be deemed a Bank Class A Member for the purposes of the Holdco LLC

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

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

Amendment to the definition of Market Maker Class A Member

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

Amendment to the definition of Retail Broker Class A Member

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

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

Section 8.18(i) of the Holdco LLC Agreement sets forth certain rights and requirements relating to the governance of certain subsidiaries of Holdco ("Holdco Subsidiaries"), including that, generally, each Market Maker Class A Member which is a Nominating Class A Member, each Retail Broker Class A Member which is a Nominating Class A Member, and each Bank Class A Member which is a Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary.[24] As of the Fourth

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

Amended LLC Agreement Effective Date, all of the Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members were Nominating Class A Members. Additionally, all such Class A Members as a group comprised all of the Nominating Class A Members of Holdco. Therefore, the references in Section 8.18(i) to each of the three categories of Class A Members (i.e., Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) were unnecessary, as the same effect would have been achieved by simply referencing "each Nominating Class A Member" without references to the three categories of Class A Members. It was in fact the intended effect for each Class A Member that was a Nominating Class A Member to have this right, which, as of the Fourth Amended LLC Agreement Effective Date, included each of the Class A Members in the three categories of Class A Members, although the references to the specific categories was not problematic.

Following the Fourth Amended LLC Agreement Effective Date, BlackRock was admitted as a Nominating Class A Member of Holdco. The Exchange now proposes to amend Section 8.18(i) to delete the references to the three specific categories of Class A Members (i.e., Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) so that Section 8.18(i) would provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary. The effect of this proposed amendment is for each of the Class A Members that currently has this right (i.e., each of the Nominating Class A Members as of the Fourth Amended LLC Agreement Effective Date) to retain this right (and the unnecessary references to the three categories of Class A Members be deleted), and for BlackRock, as a Nominating Class A

Member that was admitted as such after the Fourth Amended LLC Agreement Effective Date, to also have this right. The purpose of this proposed amendment is to delete unnecessary references to the three categories of Class A Members (since all such Class A Members are Nominating Class A Members) and to also include BlackRock in the group that has this right, which is consistent with the original intent for Section 8.18(i) that each Nominating Class A Member has this right. As noted above, this aspect of Section 8.18(i) does not apply to the governance of the Exchange and, therefore, this proposed amendment does not in any way affect the governance of the Exchange.

The Exchange also proposes to further amend Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have the right to nominate one member to the board of directors or an equivalent governing body of each Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote.[25] This is already true under the existing Supermajority Board Vote provisions in the Holdco LLC Agreement,[26] so the purpose of this proposed amendment is to simply add clarity in Section 8.18(i) regarding the Holdco Board's ability to approve a different governance

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

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

structure of a Holdco Subsidiary pursuant to a Supermajority Board Vote of the Holdco Board.

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

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

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

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

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

The effect of the proposed amendments to Section 4.7(e) is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) permit an email communication to be sent by any Officer (rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 4.7(e). The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Members' written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 4.7(e) and that expressly stating this in such email communications is unnecessary. Accordingly, these proposed amendments are intended to simplify and streamline the procedures for actions taken by the Members of Holdco without a meeting by broadening the group of Officers

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

that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 4.7(e) is particularly helpful to Holdco and the Members of Holdco in light of the COVID-19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Members of Holdco in writing via email communication.

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

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

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

Board's email with an unambiguous approval of such matter, and (iii) the CEO's or Chairman of the Board's email and all such responses are filed with the minutes of the meetings of Directors.

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

The effect of the proposed amendments to Section 8.7 is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) permit an email communication to be sent by any Officer (rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 8.7. The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Board's written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 8.7 and that expressly stating this in such email communications is unnecessary. Accordingly, these proposed amendments are intended to simplify and streamline the procedures for actions taken by the Holdco Board without

a meeting by broadening the group of Officers that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 8.7 is particularly helpful to Holdco and the Holdco Board in light of the COVID-19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Holdco Board in writing via email communication.

Clarifying, Conforming, and Other Non-Substantive Amendments

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

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

Section 8.3(b) of the Holdco LLC Agreement currently provides, in part, that the right of a Nominating Class A Member to nominate a Director may be eliminated or waived, as applicable, as set forth in Section 8.10 (which relates to the loss of the right to nominate a Director if a Nominating Class A Member ceases to own a specified amount of Class A Units) and Section 8.11 (which relates to a Nominating Class A Member's ability to waive its right to nominate a Director). The Exchange proposes to amend Section 8.3(b) to also include a reference that the right of a Nominating Class A Member to nominate a Director may be eliminated as set forth in Section 8.17 of the Holdco LLC Agreement. Section 8.17 sets forth the procedures with respect to Combinations of Nominating Class A Members, including that, if both such Nominating Class A Members

that involved in a Combination had nominated a Director that is serving on the Holdco Board at the time of the Combination, the surviving Affiliated group shall remove or cause the removal of one of such Directors effective upon the consummation of such Combination and thereafter have the right to nominate only one Director and the number of Directors shall be reduced accordingly. Thus, Section 8.17 already provides that the right to nominate a Director held by one Nominating Class A Member involved in such a Combination will be eliminated as a result of such Combination (since the surviving Affiliated group may retain only one of the Nominating Class A Members' rights to nominate a Director), however, Section 8.17 is not currently referenced in Section 8.3(b) as a section pursuant to which such right may be eliminated or waived. Accordingly, the proposed amendment to include a reference to Section 8.17 in Section 8.3(b) is intended to clarify that the right of a Nominating Class A Member to nominate a Director may be eliminated pursuant to Section 8.17 in connection with a Combination involving Nominating Class A Members.

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

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

Section 8.19 of the Holdco LLC Agreement contains provisions relating to the

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

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

Section 8.3(e) of the Holdco LLC Agreement currently provides that a copy of the Directors and Observers Schedule[29] as of the execution of this Agreement (referring to the Holdco LLC Agreement) is attached thereto as Exhibit B. The Exchange proposes to amend Section 8.3(e) to delete the phrase "as of the execution of this Agreement" so that the Directors and Observers Schedule may be maintained on an ongoing basis rather than remaining static as of a specific date. The Exchange and the Holdco Board believe that the proposed change would benefit the Members of Holdco and the public by providing up-to-date information with respect to Director, Alternate Director and Board Observer

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

changes as they occur, as the Exchange maintains a copy of the Holdco LLC Agreement on its public website and would update the Director and Observers Schedule as such changes occur. The Exchange believes this is a non-substantive amendment to the Holdco LLC Agreement as it relates solely to the administration and maintenance of the corporate documents of Holdco.

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

The Exchange proposes to delete Section 13.1(d) of the Holdco LLC Agreement in its entirety, as that provision is now outdated and obsolete, and it would therefore not be appropriate to leave in the Fifth Amended LLC Agreement. Specifically, Section 13.1(d) provides that Holdco shall be dissolved and its affairs wound up upon the occurrence of either of two events, each of which could only have occurred prior to the Commission's approval of the Exchange Application.[30] On May 4, 2020, the Commission approved[31] the Exchange Application and, therefore, the occurrence of either of these events of dissolution is no longer possible. Accordingly, the purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by deleting a provision that is now obsolete.

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

The Exchange proposes to amend Section 8.3(c) of the Holdco LLC Agreement to

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

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

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

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

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

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

The Exchange proposes to amend Section 3.3(b) of the Holdco LLC Agreement

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

Amendments to Reflect Updated Class A Member Entity Names

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

- **Definition and signature page of Fidelity:** The Exchange proposes to amend the definition of "Fidelity" to replace all references to Devonshire Investors (Delaware) LLC with references to FMR LLC, as the Class A Units held by Devonshire Investors (Delaware) LLC were transferred to its Affiliate, FMR LLC, and FMR LLC was admitted as a Class A Member of Holdco following the Fourth Amended LLC Agreement Effective Date. The Exchange also proposes to amend Fidelity's signature page to reflect this

change.

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

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

As the Exchange is proposing to amend and restate the Holdco LLC Agreement,

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32 See supra note 6.

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

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

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

(b) Statutory Basis

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

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

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

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

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

The Exchange believes the proposed amendments to add "Buy Side Class A

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

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

Similarly, the Exchange believes the proposed amendments to Section 4.7(e) and Section 8.7 to permit email communications for purposes of those sections to be sent by any Officer (rather than just the CEO) and to no longer require that such email communications clearly state that an email response shall be deemed to be an email communication for purposes of those sections would improve the governance of Holdco,

as such amendments would simplify and streamline the procedures for actions taken by written consent of the Holdco Members and the Holdco Board via email communications by broadening the group of Officers that may send an email communication for these purposes and eliminating an unnecessary technical requirement. As noted above, simplification of these procedures is particularly helpful at this time as actions of the Holdco Members and the Holdco Board are more likely to be taken by written consent via email communications than at in-person meetings due to the COVID-19 pandemic.

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

The Exchange believes the proposed amendments to Section 8.18(i) to provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary (other than the Exchange[36]), are consistent with the Act, as such amendments update this section to reflect the admission of BlackRock as a Nominating Class A Member. As described above, the effect of these proposed amendments is to add BlackRock, which became a Nominating Class A Member following the Fourth Amended LLC Agreement Effective Date, to the group of Class A Members that holds this right in a manner

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36 See supra note 24.

consistent with the Holdco Members' original intent of granting this right to each Nominating Class A Member. The Exchange also believes that amending Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have this right with respect to a Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote, which is already the case under the Holdco LLC Agreement's Supermajority Board Vote provisions, as described above, is consistent with the Act, as it would clarify this result in Section 8.18(i). For the reasons described above, the Exchange believes that the proposed amendments to Section 8.18(i) would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

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

comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

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

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

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

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 proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[37] The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable to avoid potential applicability of the current requirement that the Director nominated by a single Class A Member (i.e., Fidelity) be present to establish a quorum for the transaction of business at upcoming meetings of the Holdco Board. As described above, the Exchange believes applicability of the current quorum requirements may be impractical for logistical reasons and could result in difficulty establishing a quorum, and thus conducting the business, of the Holdco Board. Further, the Exchange believes accelerated effectiveness is appropriate given the proposed rule change would provide for more streamlined procedures relating to actions taken by written consent of the Holdco Members and the Holdco Board without meetings in light of the ongoing COVID-19 pandemic, allow the Holdco LLC Agreement to reflect the current state of affairs with respect to the governance of Holdco and the Exchange, and bring greater clarity to the Holdco LLC Agreement, each as described above, in a timely manner, thereby creating more transparent, consistent, and clear standards for the administration and governance of the Exchange and its parent company. As noted above, the proposed rule change is not intended to address competitive issues but rather is concerned solely with the update and maintenance of Holdco's corporate documents and the governance, administration, and functioning of Holdco and certain Holdco Subsidiaries (other than the Exchange).

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

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37 15 U.S.C. 78s(b)(2).

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

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

Exhibit 5 – Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2021-04]
[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing 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 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 amend and restate the Fourth Amended and Restated Limited Liability Company Agreement (the "Fourth Amended LLC Agreement") of MEMX Holdings LLC ("Holdco") as the Fifth Amended and Restated Limited Liability Company Agreement of Holdco (the "Fifth Amended LLC Agreement") to reflect certain amendments, as further described below.[3] Holdco is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the

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

2 17 CFR 240.19b-4.

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

Exchange. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

1. Purpose

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

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

consent of the Holdco Members and the Holdco Board; and (v) various clarifying, conforming, and other non-substantive amendments. Each of these amendments is discussed below.

Amendments Resulting from or in Connection with Combination Transactions Involving Class A Members

In October 2020, an affiliate of Strategic Investments I, Inc. ("Morgan Stanley")[5] completed a combination transaction with E*TRADE Financial Corporation[6] resulting in Morgan Stanley and/or one of its affiliates directly or indirectly owning all of the equity interests in E*Trade and all such entities becoming Affiliates[7] of each other (the "Morgan Stanley-E*Trade Combination"). In that same month, The Charles Schwab Corporation ("Schwab")[8] completed a combination transaction with an affiliate of Datek Online Management Corp. ("TD Ameritrade")[9] resulting in Schwab directly or indirectly owning all of the equity interests in TD Ameritrade and such entities becoming Affiliates of each other (the "Schwab-TD Ameritrade Combination"). The Exchange proposes to amend

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

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

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

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

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

certain provisions of the Holdco LLC Agreement to reflect governance changes that have already occurred with respect to Holdco and the Exchange, which resulted from or were made in connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination. Each of these changes has already occurred by operation of the Holdco LLC Agreement and/or pursuant to authorization by the Holdco Board or action by a Class A Member, as applicable, in accordance with the Holdco LLC Agreement. Accordingly, the purpose of these proposed amendments is to update the Holdco LLC Agreement to reflect the current state of affairs with respect to the governance of Holdco and the Exchange and to make conforming changes to defined terms. Each of these proposed amendments is discussed below.

Amendment to the Definition of Exchange Director Nominating Member

The Holdco LLC Agreement currently defines the term Exchange Director Nominating Member[10] to mean each of E*Trade, TD Ameritrade, and Virtu,[11] as each of those entities had the right to nominate an Exchange Director as of the Fourth Amended LLC Agreement Effective Date. In connection with the Morgan Stanley-E*Trade Combination and the Schwab-TD Ameritrade Combination, (i) E*Trade transferred its

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

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

right to nominate an Exchange Director to Morgan Stanley after such entities became Affiliates, and (ii) TD Ameritrade transferred its right to nominate an Exchange Director to Schwab after such entities became Affiliates. Accordingly, the Exchange proposes to amend the definition of Exchange Director Nominating Member to replace the references to E*Trade and TD Ameritrade with references to Morgan Stanley and Schwab, respectively, to reflect that each of Morgan Stanley and Schwab now has the right to nominate an Exchange Director (in addition to Virtu, which remains as the third Exchange Director Nominating Member). The purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement as it reflects governance changes with respect to the Exchange that have already occurred.

Amendment to Exhibit J Regarding the Exchange Director Nomination Rotation

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

Amendment to the Definition of Morgan Stanley

The Exchange proposes to amend the definition of Morgan Stanley in the Holdco LLC Agreement to reflect that such entity is now an Exchange Director Nominating

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

Amendments to the Definition of Schwab

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

The Exchange also proposes to further amend the definition of Schwab to reflect

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

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

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

Deletion of the Definition of E*Trade

The Holdco LLC Agreement currently defines E*Trade to include references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, E*Trade's right to nominate an Exchange Director was transferred to Morgan Stanley in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being an Exchange Director Nominating Member. Additionally, E*Trade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Morgan Stanley-E*Trade Combination, resulting in E*Trade no longer being a Nominating Class A Member.[16] Further, the Exchange is also proposing herein to delete all references to

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

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

16 See Section 8.17 of the Holdco LLC Agreement, which provides that if a Nominating Class A Member merges, consolidates or otherwise combines with, obtains control over, or becomes Affiliated with, another Nominating Class A Member (a "Combination"), the surviving Affiliated group shall (i) if both such

the term "E*Trade" contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member[17] (as described below), and there are no other references to the term "E*Trade" in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term "E*Trade" in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. The Exchange notes that the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

Deletion of the Definition of TD Ameritrade

The Holdco LLC Agreement currently defines TD Ameritrade to include

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Nominating Class A Members had nominated a Director that is serving on the Holdco Board at the time of the Combination, remove or cause the removal of one of such Directors effective upon the consummation of such Combination, and (ii) thereafter have the right to nominate only one Director and the number of Directors shall be reduced accordingly. In connection with the Morgan Stanley-E*Trade Combination, the surviving Affiliated group (consisting of Morgan Stanley and E*Trade) caused the removal of the Director nominated by E*Trade, resulting in Morgan Stanley retaining such Affiliated group's right to nominate a Director.

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

references that such entity is a Nominating Class A Member and an Exchange Director Nominating Member. As described above, TD Ameritrade's right to nominate an Exchange Director was transferred to Schwab in connection with the Schwab-TD Ameritrade Combination, resulting in TD Ameritrade no longer being an Exchange Director Nominating Member. Additionally, TD Ameritrade's right to nominate a Director was eliminated by operation of Section 8.17 of the Holdco LLC Agreement in connection with the Schwab- TD Ameritrade Combination, resulting in TD Ameritrade no longer being a Nominating Class A Member.[18] Further, the Exchange is also proposing herein to delete all references to the term "TD Ameritrade" contained in the definition of Exchange Director Nominating Member (as described above), in Exhibit J (as described above), and in the definition of Retail Broker Class A Member (as described below), and there are no other references to the term "TD Ameritrade" in the Holdco LLC Agreement. Accordingly, the Exchange proposes to delete the definition of the term "TD Ameritrade" in its entirety. This proposed amendment is intended to add clarity to the Holdco LLC Agreement as it deletes a defined term that would otherwise not be used in the Holdco LLC Agreement, and would thus be obsolete, after giving effect to the proposed amendments described herein. As noted above, the absence of a definition for a Class A Member that is neither a Nominating Class A Member nor an Exchange Director Nominating Member is consistent with the current Holdco LLC Agreement, which omits definitions for certain of such Class A Members.

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18 See Section 8.17 of the Holdco LLC Agreement. In connection with the Schwab-TD Ameritrade Combination, the surviving Affiliated group (consisting of Schwab and TD Ameritrade) caused the removal of the Director nominated by TD Ameritrade, resulting in Schwab retaining such Affiliated group's right to nominate a Director.

Amendment to the Definition of Retail Broker Class A Member

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

Amendments to Provisions Relating to a Quorum of the Holdco Board

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

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

proposed amendment. Each of these proposed amendments is discussed below.

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

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

Add "Buy Side Director" as a New Defined Term

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

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

Section 8.6(a)(i) of the Holdco LLC Agreement currently provides that a quorum

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

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

22 Id.

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

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

the Directors serving on the Holdco Board, and (B) includes (x) at least one (1) Market Maker Director (or his or her Alternate Director), (y) at least one (1) Retail Broker Director (or his or her Alternate Director) *or at least one (1) Buy Side Director (or his or her Alternate Director)*, and (z) at least one (1) Bank Director (or his or her Alternate Director). The effect of this proposed amendment is to group Buy Side Directors (which would currently include only the Director nominated by BlackRock) together with Retail Broker Directors (which currently includes only the Director nominated by Fidelity) for purposes of establishing a quorum of the Holdco Board such that a Director of either of those categories would be required to be present to establish a quorum of the Holdco Board. The Exchange and the Holdco Board believe this proposed amendment would improve the governance of Holdco by no longer requiring the Director nominated by a single Class A Member to be present to establish a quorum of the Holdco Board at a meeting of the Holdco Board.

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

Amendments to the Definition of Bank Class A Member

The definition of Bank Class A Member currently provides that no Bank Class A Member shall be deemed a Market Maker Class A Member or a Retail Broker Class A

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

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

Amendment to the definition of Market Maker Class A Member

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

described above.

Amendment to the definition of Retail Broker Class A Member

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

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

Section 8.18(i) of the Holdco LLC Agreement sets forth certain rights and requirements relating to the governance of certain subsidiaries of Holdco ("Holdco Subsidiaries"), including that, generally, each Market Maker Class A Member which is a Nominating Class A Member, each Retail Broker Class A Member which is a Nominating Class A Member, and each Bank Class A Member which is a Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary.[24] As of the Fourth

[24] Section 8.18(i) contains an exception to this general requirement for the governance of the Exchange, which provides that the Exchange shall be governed by the Exchange Board (which shall be constituted as set forth in the limited

Amended LLC Agreement Effective Date, all of the Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members were Nominating Class A Members. Additionally, all such Class A Members as a group comprised all of the Nominating Class A Members of Holdco. Therefore, the references in Section 8.18(i) to each of the three categories of Class A Members (i.e., Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) were unnecessary, as the same effect would have been achieved by simply referencing "each Nominating Class A Member" without references to the three categories of Class A Members. It was in fact the intended effect for each Class A Member that was a Nominating Class A Member to have this right, which, as of the Fourth Amended LLC Agreement Effective Date, included each of the Class A Members in the three categories of Class A Members, although the references to the specific categories was not problematic.

Following the Fourth Amended LLC Agreement Effective Date, BlackRock was admitted as a Nominating Class A Member of Holdco. The Exchange now proposes to amend Section 8.18(i) to delete the references to the three specific categories of Class A Members (i.e., Market Maker Class A Members, Retail Broker Class A Members, and Bank Class A Members) so that Section 8.18(i) would provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary. The effect of this proposed amendment is for each of the Class A Members that currently has this right (i.e., each of the Nominating Class A Members as of the Fourth Amended LLC

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liability company agreement of the Exchange). Accordingly, the proposed amendment to Section 8.18(i) does not in any way affect the governance of the Exchange.

Agreement Effective Date) to retain this right (and the unnecessary references to the three categories of Class A Members be deleted), and for BlackRock, as a Nominating Class A Member that was admitted as such after the Fourth Amended LLC Agreement Effective Date, to also have this right. The purpose of this proposed amendment is to delete unnecessary references to the three categories of Class A Members (since all such Class A Members are Nominating Class A Members) and to also include BlackRock in the group that has this right, which is consistent with the original intent for Section 8.18(i) that each Nominating Class A Member has this right. As noted above, this aspect of Section 8.18(i) does not apply to the governance of the Exchange and, therefore, this proposed amendment does not in any way affect the governance of the Exchange.

The Exchange also proposes to further amend Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have the right to nominate one member to the board of directors or an equivalent governing body of each Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote.[25] This is already true under the existing Supermajority Board Vote provisions in the Holdco LLC Agreement,[26] so the purpose of this proposed amendment is to simply add clarity in

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

26 Exhibit C of the Holdco LLC Agreement sets forth certain matters that may be accomplished by a Supermajority Board Vote, which include materially amending

Section 8.18(i) regarding the Holdco Board's ability to approve a different governance structure of a Holdco Subsidiary pursuant to a Supermajority Board Vote of the Holdco Board.

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

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

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

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the governing documents of a committee of the Holdco Board, or of the board of directors or a similar governing body of any Holdco Subsidiary. See Exhibit C (#25) of the Holdco LLC Agreement.

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

approval of such matter, and (iii) the CEO's email and all such responses are filed with the minutes of the meetings of Members.

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

The effect of the proposed amendments to Section 4.7(e) is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) permit an email communication to be sent by any Officer (rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 4.7(e). The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Members' written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 4.7(e) and that expressly stating this in such email communications is unnecessary. Accordingly, these

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

proposed amendments are intended to simplify and streamline the procedures for actions taken by the Members of Holdco without a meeting by broadening the group of Officers that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 4.7(e) is particularly helpful to Holdco and the Members of Holdco in light of the COVID-19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Members of Holdco in writing via email communication.

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

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

- Current language in Section 8.7 relating to email communication procedures:

  For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by the CEO or Chairman of the Board to all Directors entitled to vote on the matter at issue clearly specifying the action to be taken and clearly stating that an email response to such email shall be deemed to be an email communication

for purposes of this Section 8.7, (ii) the number of Directors required to approve the matter at issue respond to the CEO's or the Chairman of the Board's email with an unambiguous approval of such matter, and (iii) the CEO's or Chairman of the Board's email and all such responses are filed with the minutes of the meetings of Directors.

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

The effect of the proposed amendments to Section 8.7 is to modify the procedures for an action to be deemed to have been taken in writing via email communication for this purpose to: (i) permit an email communication to be sent by any Officer (rather than just the CEO) and (ii) no longer require that such email communication clearly state that an email response to such email shall be deemed to be an email communication for purposes of Section 8.7. The Exchange and the Holdco Board believe it is already clear from the context of email communications requesting the Holdco Board's written consent of a particular matter that such email communications should be deemed as email communications for purposes of Section 8.7 and that expressly stating this in such email

communications is unnecessary. Accordingly, these proposed amendments are intended to simplify and streamline the procedures for actions taken by the Holdco Board without a meeting by broadening the group of Officers that may send an email communication for this purpose and eliminating an unnecessary technical requirement. The Exchange and the Holdco Board believe that simplification of the procedures for an action to be deemed to have been taken in writing via email communication for purposes of Section 8.7 is particularly helpful to Holdco and the Holdco Board in light of the COVID-19 pandemic, which has resulted in less in-person meetings and more actions to be taken by the Holdco Board in writing via email communication.

Clarifying, Conforming, and Other Non-Substantive Amendments

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

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

Section 8.3(b) of the Holdco LLC Agreement currently provides, in part, that the right of a Nominating Class A Member to nominate a Director may be eliminated or waived, as applicable, as set forth in Section 8.10 (which relates to the loss of the right to nominate a Director if a Nominating Class A Member ceases to own a specified amount of Class A Units) and Section 8.11 (which relates to a Nominating Class A Member's ability to waive its right to nominate a Director). The Exchange proposes to amend Section 8.3(b) to also include a reference that the right of a Nominating Class A Member to nominate a Director may be eliminated as set forth in Section 8.17 of the Holdco LLC

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

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

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

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

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

Section 8.3(e) of the Holdco LLC Agreement currently provides that a copy of the Directors and Observers Schedule[29] as of the execution of this Agreement (referring to the Holdco LLC Agreement) is attached thereto as Exhibit B. The Exchange proposes to amend Section 8.3(e) to delete the phrase "as of the execution of this Agreement" so that the Directors and Observers Schedule may be maintained on an ongoing basis rather than remaining static as of a specific date. The Exchange and the Holdco Board believe that

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

the proposed change would benefit the Members of Holdco and the public by providing up-to-date information with respect to Director, Alternate Director and Board Observer changes as they occur, as the Exchange maintains a copy of the Holdco LLC Agreement on its public website and would update the Director and Observers Schedule as such changes occur. The Exchange believes this is a non-substantive amendment to the Holdco LLC Agreement as it relates solely to the administration and maintenance of the corporate documents of Holdco.

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

The Exchange proposes to delete Section 13.1(d) of the Holdco LLC Agreement in its entirety, as that provision is now outdated and obsolete, and it would therefore not be appropriate to leave in the Fifth Amended LLC Agreement. Specifically, Section 13.1(d) provides that Holdco shall be dissolved and its affairs wound up upon the occurrence of either of two events, each of which could only have occurred prior to the Commission's approval of the Exchange Application.[30] On May 4, 2020, the Commission approved[31] the Exchange Application and, therefore, the occurrence of either of these events of dissolution is no longer possible. Accordingly, the purpose of this proposed amendment is to add clarity to the Holdco LLC Agreement by deleting a provision that is now obsolete.

Amendment to Section 8.3(c) to Delete Obsolete Language Regarding the Current

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

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

CEO's Election to the Holdco Board

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

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

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

Amendment to Section 3.3(b) to Reflect Updated Amount of Class B Units

Available for Issuance

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

Amendments to Reflect Updated Class A Member Entity Names

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

- **Definition and signature page of Fidelity:** The Exchange proposes to amend the definition of "Fidelity" to replace all references to Devonshire Investors (Delaware) LLC with references to FMR LLC, as the Class A Units held by Devonshire Investors (Delaware) LLC were transferred to its Affiliate, FMR LLC, and FMR LLC was admitted as a Class A Member of

Holdco following the Fourth Amended LLC Agreement Effective Date. The Exchange also proposes to amend Fidelity's signature page to reflect this change.

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

Add "Fourth Amended LLC Agreement" and "Fourth Amended LLC Agreement

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32 See supra note 6.

Effective Date" as New Defined Terms and Make Conforming Changes

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

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

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

2. Statutory Basis

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

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

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

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,[35] which requires the rules of an exchange to be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

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

public interest.

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

Similarly, the Exchange believes the proposed amendments to Section 4.7(e) and Section 8.7 to permit email communications for purposes of those sections to be sent by any Officer (rather than just the CEO) and to no longer require that such email

communications clearly state that an email response shall be deemed to be an email communication for purposes of those sections would improve the governance of Holdco, as such amendments would simplify and streamline the procedures for actions taken by written consent of the Holdco Members and the Holdco Board via email communications by broadening the group of Officers that may send an email communication for these purposes and eliminating an unnecessary technical requirement. As noted above, simplification of these procedures is particularly helpful at this time as actions of the Holdco Members and the Holdco Board are more likely to be taken by written consent via email communications than at in-person meetings due to the COVID-19 pandemic.

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

The Exchange believes the proposed amendments to Section 8.18(i) to provide that each Nominating Class A Member shall have the right to nominate one member to the board of directors or an equivalent governing body, if any, of each Holdco Subsidiary (other than the Exchange[36]), are consistent with the Act, as such amendments update this section to reflect the admission of BlackRock as a Nominating Class A Member. As described above, the effect of these proposed amendments is to add BlackRock, which

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36 See supra note 24.

became a Nominating Class A Member following the Fourth Amended LLC Agreement Effective Date, to the group of Class A Members that holds this right in a manner consistent with the Holdco Members' original intent of granting this right to each Nominating Class A Member. The Exchange also believes that amending Section 8.18(i) to clarify that the requirement for each Nominating Class A Member to have this right with respect to a Holdco Subsidiary is not applicable if the governance structure of such Holdco Subsidiary is otherwise approved by the Holdco Board by Supermajority Board Vote, which is already the case under the Holdco LLC Agreement's Supermajority Board Vote provisions, as described above, is consistent with the Act, as it would clarify this result in Section 8.18(i). For the reasons described above, the Exchange believes that the proposed amendments to Section 8.18(i) would remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest.

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

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

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

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

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

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

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

Paper comments:

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

All submissions should refer to File Number SR-MEMX-2021-04. 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-2021-04 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.[37]

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[37] 17 CFR 200.30-3(a)(12).

Exhibit 5

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

* * * * *

[FOURTH]FIFTH AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

MEMX HOLDINGS LLC

Dated as of [February 19, 2020]_____, 2021

[(conformed copy including August 2020 amendments)]

* * * * *

[FOURTH]FIFTH AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF MEMX HOLDINGS LLC

This [Fourth]Fifth Amended and Restated Limited Liability Company Agreement of MEMX Holdings LLC, a Delaware limited liability company (the "Company"), is entered into as of [February 19, 2020]_____, 2021 (the "Effective Date"), by and among the Company, the Members and each other Person who after the date hereof becomes a Member of the Company and becomes a party to this Agreement by executing an Adherence Agreement.

RECITALS

WHEREAS, (a) the Company was formed under the laws of the State of Delaware as MembersX Holdings LLC by the filing of a certificate of formation with the Secretary of State of the State of Delaware on September 6, 2018, (b) an amended and restated certificate of formation (the "Certificate of Formation") changing the name of the Company to MEMX Holdings LLC was filed with the Secretary of State of the State of Delaware on January 22, 2019, and (c) on September 17, 2018, the original members of the Company entered into a Limited Liability Company Agreement of the Company effective as of September 17, 2018 (the "Original LLC Agreement");

WHEREAS, the Original LLC Agreement was amended and restated as set forth in the First Amended and Restated Limited Liability Agreement of the Company dated December 14, 2018 (the "First Amended LLC Agreement"); and

WHEREAS, the First Amended LLC Agreement was amended and restated as set forth in the Second Amended and Restated LLC Agreement of the Company dated May 7, 2019 (the "Second Amended LLC Agreement"); and

WHEREAS, the Second Amended LLC Agreement was amended and restated as set forth in the Third Amended and Restated LLC Agreement of the Company dated September 5, 2019 (the "Third Amended LLC Agreement"), which became effective on October 31, 2019; and

WHEREAS, the Third Amended LLC Agreement was amended and restated as set forth in the Fourth Amended and Restated LLC Agreement of the Company dated February 19, 2020, which was subsequently amended by the Amendment No. 1 to the Fourth Amended and Restated LLC Agreement, which became effective on July 17, 2020 (as amended, the "Fourth Amended LLC Agreement"); and

WHEREAS, pursuant to Section 15.9(b) of the [Third]Fourth Amended LLC Agreement the Board (as defined below) desires to amend and restate the [Third]Fourth Amended LLC Agreement as of the Effective Date to, among other things, [provide for the reclassification of former Class A Units of the Company as the Class A-1 Units (as defined below) of the Company and the creation and issuance of Class A-2 Units (as defined below) of the Company]amend the quorum provision in Section 8.6, amend Exhibit J, and make certain other changes as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

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, a Buy Side Class A Member or a Retail Broker Class A Member, and no Market Maker Class A Member[and no], Buy Side Class A Member or Retail Broker Class A Member[Class A Member] shall be deemed a Bank Class A Member for the purposes of this Agreement.

* * * * *

"Buy Side Class A Member" means each of BlackRock and any other Member that is specifically designated as a Buy Side Class A Member, in each case, together with

each of their respective Affiliates. For the avoidance of doubt, no Buy Side Class A Member shall be deemed a Market Maker Class A Member, a Bank Class A Member or a Retail Broker Class A Member, and no Market Maker Class A Member, Bank Class A Member or Retail Broker Class A Member shall be deemed a Buy Side Class A Member for the purposes of this Agreement.

"Buy Side Director" means a Director nominated by a Buy Side Class A Member.

* * * * *

["E*Trade" means E*TRADE Financial Corporation, a Delaware corporation, together with its Affiliates that hold Units. For the sake of clarity, (a) E*TRADE Financial Corporation 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, one (1) Exchange Director Nominating Member, and one (1) holder of Units of each applicable type, class or series that E*TRADE Financial Corporation and/or its Affiliates hold, (b) E*TRADE Financial Corporation (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 E*TRADE Financial Corporation no longer holds any Units, E*TRADE Financial Corporation 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.]

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"Exchange Director Nominating Member" means each of [E*Trade, TD Ameritrade]Morgan Stanley, Schwab and Virtu.

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"Fidelity" means [Devonshire Investors (Delaware)]FMR LLC, a Delaware limited liability company, together with its Affiliates that hold Units. For the sake of clarity, (a) [Devonshire Investors (Delaware)]FMR 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 [Devonshire Investors (Delaware)]FMR LLC and/or its Affiliates hold, (b) [Devonshire Investors (Delaware)]FMR 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 [Devonshire Investors (Delaware)]FMR LLC no longer holds any Units, [Devonshire Investors (Delaware)]FMR 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.

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"Fourth Amended LLC Agreement" has the meaning set forth in the Recitals.

"Fourth Amended LLC Agreement Effective Date" means February 19, 2020.

* * * * *

"Market Maker Class A Member" means each of Citadel, Virtu, Jane Street and any other Member that is specifically designated as a Market Maker Class A Member, in each case, together with each of their respective Affiliates. For the avoidance of doubt, no Market Maker Class A Member shall be deemed a Bank Class A Member, a Buy Side Class A Member or a Retail Broker Class A Member, and no Bank Class A Member[and no], Buy Side Class A Member or Retail Broker Class A Member shall be deemed a Market Maker Class A Member for the purposes of this Agreement.

* * * * *

"Morgan Stanley" means Strategic Investments I, Inc., together with its Affiliates that hold Units. For the sake of clarity, (a) Strategic Investments I, Inc. 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, one (1) Exchange Director Nominating Member, and one (1) holder of Units of each applicable type, class or series that Strategic Investments I, Inc. and/or its Affiliates hold, (b) Strategic Investments I, 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 Strategic Investments I, Inc. no longer holds any Units, Strategic Investments I, 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.

* * * * *

"Retail Broker Class A Member" means each of [E*Trade,]Fidelity, Schwab[, TD Ameritrade], and any other Member that is specifically designated as a Retail Broker Class A Member and which, or an Affiliate of which, is a broker-dealer registered with the Financial Industry Regulatory Authority, Inc. which provides services to retail customers, in each case, together with each of their respective Affiliates. For the avoidance of doubt, no Retail Broker Class A Member shall be deemed a Bank Class A Member, a Buy Side Class A Member or a Market Maker Class A Member, and no Bank Class A Member, Buy Side Class A Member or Market Maker Class A Member shall be deemed a Retail Broker Class A Member for the purposes of this Agreement.

* * * * *

"Schwab" means The Charles Schwab Corporation, a Delaware corporation, together with its Affiliates that hold Units. For the sake of clarity, (a) The Charles Schwab Corporation 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]Exchange Director Nominating Member, and one (1) holder of Units of each applicable type, class or series that The Charles Schwab Corporation and/or its Affiliates hold, (b) The Charles Schwab Corporation (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 The Charles Schwab Corporation no longer holds any Units, The Charles Schwab Corporation 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.

* * * * *

["TD Ameritrade" means Datek Online Management Corp., a Delaware corporation, together with its Affiliates that hold Units. For the sake of clarity, (a) Datek Online Management Corp. 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, one (1) Exchange Director Nominating Member, and one (1) holder of Units of each applicable type, class or series that Datek Online Management Corp. and/or its Affiliates hold, (b) Datek Online Management Corp. (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 Datek Online Management Corp. no longer holds any Units, Datek Online Management Corp. 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.]

* * * * *

"Virtu" means Virtu[Getco] Investments, LLC, a Delaware limited liability company, together with its Affiliates that hold Units. For the sake of clarity, (a) Virtu[Getco] Investments, 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, one (1) Exchange Director Nominating Member, and one (1) holder of Units of each applicable type, class or series that Virtu[Getco] Investments, LLC and/or its Affiliates hold, (b) Virtu[Getco] Investments, 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 Virtu[Getco] Investments, LLC no longer holds any Units, Virtu[Getco] Investments, 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.

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ARTICLE II
ORGANIZATION

2.1 Formation; Agreement

(a) No change.

(b) This Agreement amends and restates the [Third]Fourth Amended LLC Agreement in its entirety. From and after the Effective Date, this Agreement constitutes the "limited liability company agreement" (as that term is used in the Delaware Act) of the Company. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the Delaware Act and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Delaware Act in the absence of such provision, this Agreement shall, to the extent permitted by the Delaware Act, control.

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ARTICLE III
UNITS; OWNERSHIP LIMITATIONS

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3.2 [Reclassification of Class A Units;]Authorization and Issuance of Class A Units.[All Units classified as Class A Units immediately prior to the Effective Date are hereby reclassified as Class A-1 Units as of the Effective Date.] Subject to compliance with Section 8.6(d), Section 9.1 and Section 10.1(b), the Company is hereby authorized to issue (a) a class of Units designated as Class A-1 Units and (b) a class of Units designated as Class A-2 Units.

(a) No change.

(b) No change.

3.3 Service Provider Equity Pool; Class B Units.

(a) No change.

(b) As of October 19, 2019, the Members have approved the Amended and Restated MEMX Holdings LLC 2018 Profits Interests Plan pursuant to which all Class B Units shall be granted in compliance with Rule 701 of the Securities Act or another applicable exemption (such plan as in effect from time to time, the "Incentive Plan"). The number of Class B Units available for issuance pursuant to such Incentive Plan shall not exceed [12,352,941]16,754,087 Class B Units (subject to adjustment in the event of any Unit split, Unit combination, reorganization, reclassification, recapitalization or the like) minus any Class B Units issued by the Company pursuant to the MembersX Holdings LLC 2018 Profits Interests Plan approved by the Members of the Company on December 14, 2018 and the Amended and Restated MEMX Holdings LLC 2018 Profits Interests Plan prior to the Effective Date. The Company is hereby authorized to negotiate agreements for the issuance of awards pursuant to the Incentive Plan, which shall include such terms, conditions, rights and obligations as may be determined by the Board, in its sole discretion, and shall be approved by the Board by Supermajority Board Vote, consistent with the terms herein.

(c) No change.

(d) No change.

(e) No change.

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ARTICLE IV
MEMBERS

* * * * *

4.7 Meetings.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) If any action is required by Applicable Law to be taken by the Members, such action to be taken at any meeting of Members may be taken without a meeting if the action is taken in writing (which may be via email communication) by consent of such number of Members as would otherwise be required to approve such action, and the writing or writings are filed with the minutes of the meeting of Members (or, where required by Applicable Law, a class thereof, as applicable). For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by [the CEO]an Officer to all Members entitled to vote on the matter at issue clearly specifying the action to be taken[and clearly stating that an email response to such email shall be deemed to be an email communication for purposes of this Section 4.7(e)], (ii) the number of Members required to approve the matter at issue respond to the [CEO's]Officer's email with an unambiguous approval of such matter, and (iii) the [CEO's]Officer's email and all such responses are filed with the minutes of the meetings of Members.

(f) No change.

(g) No change.

(h) No change.

* * * * *

ARTICLE VIII

MANAGEMENT

* * * * *

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 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 and Section 8.17. For the avoidance of doubt, a Class A Member shall not be a Nominating Class A Member for so long as such Class A Member's right to nominate a Director is eliminated or waived pursuant to the immediately preceding sentence.

(c) The individual serving as the chief executive officer of the Company (the "CEO") [as of the Effective Date shall be deemed to be elected to the Board as a Director as of the Effective Date. Thereafter, each individual serving as the CEO]shall be deemed elected to the Board as a Director at the time of his or her appointment as the CEO by the Board.

(d) No change.

(e) The Board shall maintain a schedule of all Directors, Alternate Directors and Board Observers (the "Directors and Observers Schedule"), and shall update the Directors and Observers Schedule upon the removal or replacement of any Director, Alternate Director or Board Observer in accordance with this Section 8.3, Section 8.4, Section 8.12, Section 8.13, or Section 8.17, as applicable. A copy of the Directors and Observers Schedule[as of the execution of this Agreement] is attached hereto as Exhibit B. Each Member that nominates a Director or Alternate Director, or designates a Board Observer, shall, concurrently with such nomination, provide the Company with the contact information for such person or persons.

* * * * *

8.6 Quorum; Manner of Acting.

(a) Quorum.

(i) A quorum for the transaction of business of the Board shall constitute a number of Directors which both (A) represents the majority of the votes of the Directors serving on the Board, and (B) includes (x) at least one (1) Market Maker Director (or his or her Alternate Director), (y) at least one (1) Retail Broker Director (or his or her Alternate Director) or at least one (1) Buy Side Director (or his or her Alternate Director), and (z) at least one (1) Bank Director (or his or her Alternate Director), provided, however, in each case, that if no such Director is then serving on the Board, such Director shall not be required for purposes of establishing a quorum; and provided, further, that if the sole purpose of a meeting of the Board is to address matters pertaining to the employment of the CEO, the CEO, in his or her capacity as a Director, shall not be counted for the purpose of establishing whether a quorum is present for the purposes of such meeting. At all times when the Board is conducting business at a meeting of the Board, a quorum of the Board must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the Directors present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If a quorum shall not be present at any meeting of the Board, the Directors (and, where applicable, Alternate Directors) present at such meeting may adjourn the meeting; provided, that such adjourned meeting shall be rescheduled with at least three (3) Business Days' prior written notice of such rescheduled meeting.

(ii) If a Director and his or her Alternate Director (where applicable) fail to attend two (2) consecutively scheduled meetings (whether regular or special meetings) of the Board then until such Director or his or her Alternate Director attends a meeting of the Board:

(A) at all subsequent meetings of the Board a quorum shall not be found to be lacking for the sole reason that such Director and Alternate Director are not in attendance. In addition, if (I) such Director is a Market Maker Director, the presence of at least one (1) Market Maker Director shall not be required for a quorum to be present if such Director is then the sole Market Maker Director serving on the Board, (II) such Director is a Retail Broker Director or a Buy Side Director the presence of at least one (1) Retail Broker Director or Buy Side Director shall not be required for a quorum to be present if such Director is then the sole[Retail Broker] Director serving on the Board that was nominated by either a Retail Broker Class A Member or a Buy Side Class A Member, and (III) such Director is a Bank Director the presence of at least one (1) Bank Director shall not be required for a quorum to be present if such Director is then the sole Bank Director serving on the Board.

(B) No change.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

8.7 Action By Written Consent. Notwithstanding anything herein to the contrary, any action of the Board may be taken without a meeting if a written consent (including via email communication) of all of the Directors then constituting the Board approves such action. With respect to any Director, such written consent may be provided by such Director's Alternate Director. Such consent shall have the same force and effect as a vote at a meeting where a quorum was present and may be stated as such in any document or instrument filed with the Secretary of State of Delaware. For purposes of the foregoing, an action shall be deemed to have been taken in writing via email communication if (i) an email communication is sent by [the CEO]an Officer or the Chairman of the Board to all Directors entitled to vote on the matter at issue clearly specifying the action to be taken[and clearly stating that an email response to such email shall be deemed to be an email communication for purposes of this Section 8.7], (ii) the number of Directors required to approve the matter at issue respond to the [CEO's]Officer's or the Chairman of the Board's email with an unambiguous approval of such matter, and (iii) the [CEO's]Officer's or Chairman of the Board's email and all such responses are filed with the minutes of the meetings of Directors.

* * * * *

8.18 Governance of Company Subsidiaries; Certain Agreements Related to the Exchange Board.

(a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) No change.

(f) No change.

(g) No change.

(h) No change.

(i) The Company shall ensure that the governance of any Company Subsidiary, including, as appropriate, its constitutive documents, is conducted in a manner consistent, to the maximum extent possible and permitted by Applicable Law,

with the provisions of this Article VIII, including as applicable (i) the necessity for obtaining any Board approvals as set forth in this Agreement, and (ii) each [Market Maker Class A Member which is a Nominating Class A Member, each Retail Broker Class A Member which is a Nominating Class A Member and Bank Class A Member which is a]Nominating Class A Member having a right to nominate one (1) member to the board of directors or an equivalent governing body, if any, of each Company Subsidiary, unless otherwise approved by the Board by Supermajority Board Vote; provided that MEMX LLC shall be governed by the Exchange Board (which shall be constituted as set forth in the Restated MEMX LLC Agreement), as and when required pursuant to Section 8.18(a).

8.19 Industry Advisory Board.

(a) 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 (A) 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 (B) 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 [M]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) No change.

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ARTICLE X
TRANSFER

* * * * *

10.6 Regulatory Hardship Transfers; Surrender Right.

(a) If (i) a Class A Member receives a directive from any Governmental Authority to divest any Units, (ii) a Class A Member determines in good

faith and based on the advice of counsel (which may be in-house counsel) that (A) its continuing as a Member is legally impermissible, (B) it controls the Company for purposes of the BHCA, or the Home Owners' Loan Act of 1933, as amended, (C) as a result of a change in the business of the Company or any Company Subsidiary, it would be prohibited or materially restricted by Applicable Law from holding all or a portion of the Units, (D) its continuing as a Member would significantly and adversely affect its relationship with its applicable regulators or cause such Member significant reputational harm, or (E) the taking of any action by the Company or any Company Subsidiary would or could result in material legal consequences, material regulatory consequences or material reputational consequences to such Member or require such Member to file any application or notice for approval with its regulators or (iii) 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 Fourth Amended LLC Agreement Effective Date by a Class A Member (in the case of each of the foregoing clauses (i), (ii) and (iii), a "Regulatory Hardship Determination"), such Class A Member shall promptly (but no later than ten (10) Business Days following such determination) notify the Company of such Regulatory Hardship Determination.

(b) No change.

(c) No change.

* * * * *

ARTICLE XII
INFORMATION RIGHTS; ACCOUNTING; TAX MATTERS

* * * * *

12.4 Annual Budget.

(a) No change.

(b) No change.

(c) The Company shall, and shall cause the other Company Subsidiaries to, be managed in accordance with the Annual Budget (as in effect from time to time), and not take actions that are not consistent with the Annual Budget (as in effect from time to time) except as may be approved by the Board by the applicable vote required hereunder for such action. Notwithstanding the foregoing, until the third (3rd) anniversary of the Fourth Amended LLC Agreement Effective Date no approval of the Board shall be required for variances in the aggregate amount of the expenditures set forth in the Annual Budget of less than fifteen percent (15%); provided, that the CEO promptly notifies the Board of any such expenditures that constitute such a variance. Upon the expiration of such three (3)-year period, the Board shall determine, by

Supermajority Board Vote, what level of discretion the CEO shall have with respect to variances from the Annual Budget.

* * * * *

ARTICLE XIII
DISSOLUTION AND LIQUIDATION

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) The entry of a decree of judicial dissolution under § 18-802 of the Delaware Act[; or].

[(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) the SEC has not approved the application of MEMX LLC as a national securities exchange (the "Exchange Application") by March 5, 2021; or

(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 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.]

* * * * *

Class A Member:

Virtu[Getco] Investments, LLC

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

E*TRADE Financial [Corporation]Holdings, LLC

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

[Devonshire Investors (Delaware)]FMR LLC

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

Wells Fargo Central Pacific Holdings, Inc.

By: _____
Name: _____

Title: _____

* * * * *

Class A Member:

Flow Traders U.S. Holding LLC

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

BLK SMI, LLC

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

Manikay Global Opportunities 2, LP

By: _____
Name: _____
Title: _____

* * * * *

Class A Member:

Citicorp North America, Inc.

By: _____
Name: _____
Title: _____

* * * * *

Exhibit J – Exchange Director Nomination Rotation

Term	**Exchange Director Nominating Member**
Initial term (Stub Period and the first (1st annual term)	[E*Trade]Morgan Stanley
Initial term (Stub Period and the first (1st annual term)	[TD Ameritrade]Schwab
Second (2nd) annual term	[TD Ameritrade]Schwab
Second (2nd) annual term	Virtu
Third (3rd) annual term	Virtu
Third (3rd) annual term	[E*Trade]Morgan Stanley

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