



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103375; File No. SR-MEMX-2025-19]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend and Restate the Exchange's Second Amended and Restated Limited Liability Company Agreement as the Third Amended and Restated Limited Liability Company Agreement

July 2, 2025.

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 June 23, 2025, MEMX LLC (“MEMX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend and restate the Exchange’s Second Amended and Restated Limited Liability Company Agreement (the “Second Amended LLC Agreement”) as the Third Amended and Restated Limited Liability Company Agreement (the “Third Amended LLC Agreement”) to reflect certain amendments, as further described below. The text of the proposed rule change is provided in Exhibit 5 and is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

available on the Exchange's website at <https://info.memxtrading.com/regulation/rules-and-filings/>.

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 Exchange LLC Agreement to modify the requirements of who may serve as a Nominating Committee member, as discussed below.

Currently, the Exchange LLC Agreement provides that the Board shall be comprised of natural Persons (each such Person, a "Director") who shall be nominated on an annual basis by the Nominating Committee, and Section 8.7(a) provides that, among other requirements, all Nominating Committee members shall be Independent Directors. As set forth in Section 1.1, an "Independent Director" is defined as a Director who has no material relationship with the Company or any Affiliate of the Company, or any Exchange Member or any Affiliate of any such Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company or Holdco.⁵

The Exchange is proposing to modify this provision under 8.7(a) to state that all Nominating Committee members shall be Independent Committee Members. Also as set forth in

⁵ MEMX Holdings LLC (i.e. "Holdco") is the parent company of the Exchange and directly or indirectly owns all of the limited liability company membership interests in the Exchange.

Section 1.1, an “Independent Committee Member” is defined as a member of any Committee who has no material relationship with the Company or any Affiliate of the Company, or any Exchange Member or any Affiliate of any such Exchange Member, other than as member of such Committee. The term “Independent Committee Member” may but is not required to refer to an Independent Director who serves on a Committee; provided, however, that an individual who otherwise qualifies as an Independent Committee Member shall not be disqualified from serving in such capacity solely because such individual is an Independent Director of the Company or, if applicable, an independent director of Holdco.

The purpose of the proposed change is to provide the Exchange flexibility to allow individuals who meet the definition of Independent Committee Members, but not necessarily Independent Directors, to serve on the Nominating Committee. The Exchange notes that the definition of an Independent Committee Member may, but is not required to, refer to an Independent Director, and as such, the Nominating Committee may be comprised solely of Independent Directors under the language of the proposed change, however, the Exchange wishes to modify the language in order to expand the universe of individuals that may serve on the Nominating Committee to include Independent Committee Members, which may not be Directors. The Exchange notes that this modification would make the structure of the Nominating Committee consistent with that of its affiliate Exchange, MX2, LLC (“MX2”), pursuant to Section 8.7 of the First Amended and Restated Limited Liability Company Agreement of MX2.

The Exchange is not proposing to modify any other provisions of the Exchange LLC Agreement related to the composition of the Nominating Committee under Section 8.7(a)⁶ or the

⁶ Section 8.7(a) otherwise provides that the number of Non-Industry Committee Members on the Nominating Committee shall equal or exceed the number of Industry Committee or Panel Members on the Nominating Committee, and that a Nominating Committee member may simultaneously serve on the Nominating Committee and the Board.

process by which the Nominating Committee is elected,⁷ and as a practical matter, no changes to the current Nominating Committee are contemplated by this rule change.

Further, MEMX has reviewed the rules of other U.S. securities exchanges and noted that certain other exchanges do not require Nominating Committee members to be Directors.⁸

2. Statutory Basis

The Exchange believes that the proposed amendment to the Exchange LLC Agreement is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(1) of the Act,¹⁰ in particular, in that such amendment enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed amendment is consistent with Section 6(b)(5) of the Act,¹¹ which requires the rules of an exchange to be designed to promote just and equitable

⁷ Section 8.7(a) provides that the Nominating Committee and the Member Nominating Committee shall each be elected on an annual basis by vote of Holdco. Holdco shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of Section 7.3(b). In each subsequent year, each of the Nominating Committee and Member Nominating Committee, after completion of its respective duties for nominating Directors for election to the Board for that year, shall nominate candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable, such candidates to be elected by Holdco at the annual meeting of the Company Members (in case of any vacancy occurring on a Nominating Committee or Member Nominating Committee during a calendar year, the remaining members of the Nominating Committee or Member Nominating Committee, as applicable, shall nominate a candidate to fill such vacancy and such candidate shall be elected by Holdco in accordance with Section 6.4). Additional candidates for the Member Nominating Committee may be nominated and elected pursuant to the same process as provided for in Section 7.4.

⁸ See the By-Laws of BOX Exchange LLC, Section 4.06, which provides that "...Nominating Committee members need not be Directors." See also the Amended and Restated By-Laws of MIAX Pearl, LLC, Section 5.2, which provides that "... A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee. No more than one (1) member of the Nominating Committee shall be a current Director, and such Director shall be a Non-Industry Director." See also the By-Laws of Nasdaq PHLX, LLC, Section 5-3, which provides that "...no more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors."

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that amending which individuals may serve on the Nominating Committee is consistent with the Act as this will provide a broader base of potential candidates to serve on the Nominating Committee and aligns with the governance framework of the Exchange's affiliate, MX2. In other words, as MX2 does, allowing members of the Nominating Committee to be Independent Committee Members, rather than Independent Directors, allows both Directors and non-Directors to serve on the Nominating Committee. Thus, the Exchange does not believe this change will affect the Exchange's ability to be organized as to have the capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, promoting just and equitable principles of trade, removing impediments to and perfect the mechanism of a free and open market, and protecting investors and the public interest. Further, the Exchange believes the proposed change to the Exchange LLC Agreement is consistent with, and will not interfere with, the self-regulatory obligations of the Exchange. The Exchange notes that it is not proposing to amend any provisions within the Exchange LLC Agreement dealing with the availability or protection of information, books and records, undue influence, conflicts of interest, unfair control by an affiliate, or regulatory independence of the Exchange.

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 type of individuals that may serve on the Nominating Committee, 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹² of the Act and Rule 19b-4(f)(6) thereunder¹³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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

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 (<https://www.sec.gov/rules/sro.shtml>);
- or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2025-19 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-2025-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2025-19 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).

