

thereunder, and the rules of the exchange.

The Commission believes that the proposed updates and clarifying changes reflected in the Sixth Amended Holdco LLC Agreement will not materially alter Holdco's governance with respect to the Exchange or adversely impact governance of the Exchange itself²³ and will continue to enable the Exchange to be organized 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.

In particular, the Sixth Amended Holdco LLC Agreement does not amend Section 3.5 (Limitations on Ownership), which imposes an ownership limit of "twenty percent (20%) of any class of Units" and a voting limit of "twenty percent (20%) of the voting power of the then issued and outstanding Units."²⁴ Though Holdco will have two new classes of shares and some LLC Members will make additional investments as part of the Transaction, the 20% ownership limit will apply to those new series, and the 20% voting limit will continue to apply to all issued and outstanding Units collectively. These limitations are designed to address the conflicts of interests that might result from a broker-dealer member of a national securities exchange owning interests in an entity that controls that exchange.²⁵ The

²³ The protections against any particular Holdco shareholder exerting undue influence over the affairs of Holdco—and indirectly the affairs of the Exchange—remain in place. See *supra* note 15 and accompanying text. See also note 11 and accompanying text.

²⁴ Section 3.5(a)(ii) provides that "[n]o Exchange Member, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, Units constituting more than twenty percent (20%) of any class of Units" and Section 2.5(a)(iii) provides that "[n]o Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than twenty percent (20%) of the voting power of the then issued and outstanding Units. . . ."

²⁵ As the Commission has previously explained, an exchange member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member. An exchange member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. See, e.g., Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (In the Matter of the Application of MEMX

Commission believes that these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Act. In addition, other provisions that recognize the unique and important regulatory nature of MEMX as a national securities exchange and self-regulatory organization under the Act similarly will not be substantively altered by the proposed amendments, including but not limited to Sections 15.12 (Submission to Jurisdiction), 15.9 (Amendments), 12.2 (Inspection Rights; Books and Records), and 8.18 (Governance of Company Subsidiaries; Certain Agreements Related to the Exchange Board). Rather, the proposed amendments accommodate the Transaction, facilitate LLC Members' continued compliance with requirements and restrictions under the BHCA regarding investments in nonbanking companies (*i.e.*, Holdco), and make non-substantive changes that do not alter the important protections that Holdco has adopted to protect MEMX's regulatory independence and ability to operate in a manner consistent with the Act as a registered national securities exchange.

III. Accelerated Approval of the Proposed Rule Change

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.²⁶ The Exchange states that approval of the proposed rule change on an accelerated basis will facilitate certain LLC Members' continued compliance with requirements and restrictions under the BHCA regarding investments in nonbanking companies. As discussed above, because the proposed changes do not impact Holdco's ownership of the Exchange, alter LLC Members' ownership and voting limits, or otherwise alter any existing provision that would adversely impact the Exchange, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁷ to approve the proposed rule change on an accelerated basis.

LLC for Registration as a National Securities Exchange).

²⁶ The 21-day comment period for this proposed rule change expired on November 24, 2021 (see Notice, *supra* note 3, 86 FR at 60693) and no comments were received.

²⁷ 15 U.S.C. 78s(b)(2).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-MEMX-2021-15), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,
Assistant Secretary.

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SMALL BUSINESS ADMINISTRATION

[Docket No. SBA-2021-0012]

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of change to the Nonmanufacturer Rule.

SUMMARY: In the interest of efficiency and transparency the U.S. Small Business Administration intends to eliminate the use of Product Service Codes (PSC) to determine whether an item falls within a class waiver.

DATES: This action is effective January 5, 2022.

FOR FURTHER INFORMATION CONTACT: Carol J. Hulme, Attorney Advisor, by telephone at (202) 205-6347 or by email at carol-ann.hulme@sba.gov.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations require that recipients of Federal supply contracts issued as a small business set-aside (except as stated below), service-disabled veteran-owned small business (SDVO SB) set-aside or sole source contract, Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract, WOSB (women-owned small business) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract, 8(a) set-aside or sole source contract, partial set-aside, or set aside of an order against a multiple award contract provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the

²⁸ *Id.*

²⁹ 17 CFR 200.30-3(a)(12).

Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Note that the NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold but continues to apply to socioeconomic categories above the micropurchase threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorizes SBA to waive the NMR for a class of products for which there are no small business manufacturers or processors available to participate in the Federal market. As defined in 13 CFR 121.1202(d), a “class of products” is an individual subdivision within a North American Industry Classification System (NAICS) Industry Number as established by the Office of Management and Budget in the NAICS Manual. SBA has previously identified class waivers using a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products.

To improve consistency in the application of class waivers SBA will no longer use PSCs to classify products covered by class waivers. Instead, as provided in its regulations, SBA will use the NAICS as its classification system to identify products covered by class waivers.

More information on the NMR and Class Waivers can be found at <https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers>.

David Wm. Loines,

Director, Office of Government Contracting,

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SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2021–0012]

Small Business Size Standards: Termination of Nonmanufacturer Rule Class Waiver

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to terminate the class waiver to the Nonmanufacturer Rule.

SUMMARY: The U.S. Small Business Administration (SBA) is considering terminating a class waiver of the Nonmanufacturer Rule (NMR) for Furniture Frames and Parts, Metal, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics,

Manufacturing under NAICS code 33725 and PSC 7195; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (e.g., hospital beds, operating room furniture) Manufacturing under NAICS code 339113 and PSC 7195; and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables) Manufacturing under NAICS code 339113 and PSC 7195.

DATES: Comments and source information must be submitted on or before January 14, 2022.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at <https://www.regulations.gov> under Docket ID SBA–2021–0012. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Program Analyst, by telephone at 202–205–6347; or by email at Carol-Ann.Hulme@sba.gov.

SUPPLEMENTARY INFORMATION: On October 6, 2019, SBA received a request to terminate the current class waiver of the NMR for the products identified above. According to the request, there are small business manufacturers available to participate in the Federal marketplace for these products. According to the information the requester provided to the SBA, several small manufacturers have provided these products to the Federal agencies within the past 24 months.

Based on this information, the SBA is seeking comment on the termination of the class waiver for Furniture Frames and Parts, Metal, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Frames, Wood, Manufacturing under NAICS code 337215 and PSC 7195; Furniture Parts, Finished Plastics, Manufacturing under NAICS code 33725 and PSC 7195; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing under NAICS code 337127 and PSC 7110; Furniture, Hospital (e.g., hospital beds, operating room furniture) Manufacturing under NAICS code

339113 and PSC 7195; and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables) Manufacturing under NAICS code 339113 and PSC 7195. An awardee of a Federal small business set-aside contract valued over \$250,000.00, service-disabled veteran-owned small business contract, HUBZone contract, women-owned small business contract, or 8(a) contract must provide its own product or that of a small business manufacturer unless a waiver is in place. If the above-identified class waiver is terminated, small businesses will no longer be authorized to provide the product of any manufacturer regardless of size on the identified items, unless a Federal Contracting Officer obtains an individual waiver to the NMR.

Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657, and SBA’s implementing regulations require that recipients of Federal supply contracts (except those valued between \$3,500 and \$250,000) set aside for small business, service-disabled veteran-owned small business (SDVOSB), women-owned small business (WOSB), economically disadvantaged women-owned small business (EDWOSB), or participants in the SBA’s 8(a) Business Development (BD) program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a “class of products” for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA’s regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

In accordance with the SBA’s regulations at 13 CFR 121.1204(a)(7), SBA will periodically review existing class waivers to the NMR to determine whether small business manufacturers or processors have become available to participate in the Federal market. Upon receipt of information that such a small business manufacturer or processor exists, the SBA will announce its intent to terminate the NMR waiver for a class of products. 13 CFR 121.1204(a)(7)(ii). Unless public comment reveals no small