

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-48764; File No. SR-NYSE-2003-34)

November 7, 2003

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Amendment and Restatement of the Constitution of the Exchange to Reform the Governance and Management Architecture of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (the “Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2003, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 amending and restating the Constitution of the Exchange. The changes to the Constitution will significantly reform the governance and management architecture of the Exchange.

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. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to amend and restate its Constitution to significantly change and enhance its governance structure. The amended and restated Constitution, marked to show changes from the Exchange's existing Constitution, is included in Exhibit A hereto.

The objectives of the new governance architecture are to

- (1) Place responsibility for governance, compensation and internal controls, as well as for supervision of regulation, in the hands of a Board of Directors that is independent both from NYSE management and from the members, member organizations and listed companies.
- (2) Separately preserve the existing engagement of the broker-dealer community and listed company community with the NYSE by creating a Board of Executives that will also include the executives of major public and private "buy-side" entities as well as lessor members of the Exchange.

Thus, the proposed rule change calls for a Board of Directors that is completely independent except for the CEO. Requiring independence from owner-constituents goes beyond what we expect of public companies, and it aligns the Exchange's Board with the interests of investors. It is the additional Board of Executives that is intended to ensure ongoing engagement with all of our constituents. Moreover, the Regulatory unit reports directly -- and not through the CEO -- to our independent Board of Directors, yet retains sufficient proximity to the marketplace

to assure the market sensitivity that the Exchange believes is fundamental to effective regulation of the capital markets.

The Exchange notes that its current investigation of specialist trading practices, and the Commission's parallel investigation regarding our surveillance for and enforcement of the affected rules, have caused commentators to call for changes that would end broker dealer self-regulation through exchanges as well as radically alter the auction market. The Exchange also notes that, while the preliminary findings of the internal review of its compensation practices and the preliminary findings of the Commission's inspection and investigation of our specialist regulation have informed our new architecture, neither of these processes are complete and, therefore, the Exchange cannot be certain that further changes in our architecture may not be warranted. In this regard, the Exchange notes that under the amended and restated Constitution the new Board will, for the first time, have authority concurrent with our member owners to change specific provisions pertaining to our governance architecture, which means that further changes can be effected in those provisions without another membership vote.

The Exchange believes that its new architecture empowers a Board of Directors with the independence to address issues objectively and the constituent input to address them intelligently. The Exchange believes that directors who have the degree of independence and experience that our governance architecture promises -- as evidenced by the quality of our nominees -- will assure that the Exchange's regulatory function is both independent and robust. Thus, the Exchange believes its architecture guarantees the independence of our regulatory function both from members and member organizations and from inappropriate linkage with our marketplace function, while assuring the function's sensitivity to the market.

Nevertheless, the Exchange notes that this proposed rule change does not ask the Commission to approve either the continuation of self-regulation in the United States or the continuation of the role of the specialist on the Exchange. Both issues should be addressed in the context of how well the new Board implements both the architecture and the programmatic changes that the Exchange has undertaken in response to the Commission (as well as other programmatic changes that the Board can be expected to initiate), all of which the Commission is carefully monitoring through the ongoing engagement of its market regulation, inspection and enforcement staffs with these matters.

Thus, while the Exchange does seek the Commission's approval of what it regards as a greatly improved architecture for self-regulation through the Exchange, and while the Exchange continues to believe that its specialist/auction market delivers high quality executions at low cost to investors, it does not at this time seek the Commission's premature decisions on this work-in-progress. Nor does the Exchange seek from the Commission at this time any action on the question of the separation of the trading rights from equity ownership, and thereby on the question of who should elect the Exchange Board over the longer term, which has far too many ramifications to be the subject of proposal by an interim chairman. That issue, and the other issues described in the proxy statement that go beyond board and management architecture, must be taken up by an unconflicted Board in a way that takes into account the many public policy and practical issues that such a separation implies.

All the Exchange seeks at this time is the Commission's approval of a transitional structure that allows it to move from the current situation to one in which a Board of independent, distinguished and experienced men and women can take on the formidable challenges facing the Exchange.

A complete explanation of the purposes and details of the new architecture, and the reasons why the Exchange is desirous of making these changes, is contained in the proxy statement and related materials which have been furnished to the Exchange's membership in connection with the upcoming membership vote on the proposal. All of these materials are contained in Exhibit B hereto. Also contained in the proxy statement are the names of the eight persons whom the members are being asked to vote to elect as the new Board of Directors of the Exchange.

Clarifying changes to certain Constitutional provisions which will be added by Board action promptly following member approval of the amended and restated Constitution and election of the new Board are described in a supplementary letter contained in Exhibit C hereto. Upon approval by the Board, the additional changes to the Constitution will be filed with the Commission for approval.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(1)³ that an exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act, the requirement under Section 6(b)(3)⁴ that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors, and

³ 15 U.S.C. 78f(b)(1).

⁴ 15 U.S.C. 78f(b)(3).

the requirement under Section 6(b)(5)⁵ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve the proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

⁵ 15 U.S.C. 78f(b)(5).

The amended and restated Constitution is subject to the approval of the members of the Exchange, and a vote is currently scheduled for November 18, 2003. The Exchange hereby consents to an extension of the period of time specified in Section 19(b)(2) of the Act⁶ until at least thirty-five days after the Exchange files an appropriate amendment to this filing setting forth the completion of all additional action required under the Certificate of Incorporation, Constitution and rules of the Exchange with respect to this proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions

⁶ 15 U.S.C. 78s(b)(2).

should refer to File No. SR-NYSE-2003-34 and should be submitted by December 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.⁷

Jonathan G. Katz
Secretary

⁷ 17 CFR 200.30 – 3(a)(12).

Text of the Proposed Rule Change
(Changes are underscored; deleted material is in brackets)

New York Stock Exchange, Inc.

CONSTITUTION

Article I

Title - Objects – Definitions

Sec. 1. *Title.* The title of the corporation is the “New York Stock Exchange, Inc.”

Sec. 2. *Objects and Purposes.* Its objects and purposes shall be:

(a) to furnish exchange rooms for the convenient transaction of their business by its members; to furnish other facilities for its members, allied members and member organizations; to maintain high standards of commercial honor and integrity among its members, allied members and member organizations; and to promote and inculcate just and equitable principles of trade and business;

(b) to conduct and carry on the functions of a “board of trade” within the meaning of that term in the New York Not-for-Profit Corporation Law;

(c) to conduct and carry on the functions of an “exchange” within the meaning of that term in the Act; and

(d) to conduct and carry on any and all activities incidental to the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the New York Not-for-Profit Corporation Law.

Sec. 3. *Definition of Terms.* Unless the context requires otherwise, the terms defined in this Section shall, for all purposes of this Constitution, have the meanings herein specified:

(a) The term “Act” means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as from time to time amended.

(b) The term “Exchange” means the New York Stock Exchange, Inc.

Membership

(c) The term “allied member” means:

(i) a general partner in a member firm, or an employee who controls a member firm, who is not a member of the Exchange and who has become an allied member as provided in the rules of the Exchange, or

(ii) an employee of a member corporation who is not a member of the Exchange, who has become an allied member as provided in the rules of the Exchange, and who is either:

-a principal executive officer of such corporation, or

-a person who controls such corporation.

(d) The term “approved person” means a person who is not a member or an allied member of the Exchange or an employee of a member organization, who has become an approved person as provided in the rules of the Exchange and who is either:

(i) a person who controls a member or member organization, or

(ii) a person engaged in a securities or kindred business who is controlled by or under common control with a member or member organization.

(e) The term “electronic access member” means one of the members who has the right to maintain electronic or telephonic access to the floor facilities of a member or member organization, the Designated Order Turnaround System of the Exchange and such other automated trading systems of the Exchange as the Board may determine.

(f) The term “lessee member” means a member who has become a member by leasing the membership of a regular member.

(g) The term “lessor member” means regular member who has leased his or her membership.

(h) The term “member” means a natural person who is a member of the Exchange. A member may be associated as a member with no more than one member organization.

(i) The term “member corporation” means a corporation or other limited liability entity, registered as a broker or dealer in securities under, unless exempted by, the Act, approved by the Board as a member corporation, at least one of whose officers or employees is a member of the Exchange, or which has the status of a member corporation by virtue of permission given to it pursuant to the rules of the Exchange.

(j) The term “member firm” means a partnership, registered as a broker or dealer in securities under, unless exempted by, the Act, approved by the Board as a member firm, at least one of whose general partners or employees is a member of the Exchange, or which has the status of a member firm by virtue of permission given to it pursuant to the rules of the Exchange.

(k) The term “member organization” includes “member firm” and “member corporation”.

(l) The term “membership” refers to the members of the Exchange.

(m) The term “physical access member” means one of the members who is not a regular member but has the right to enter physically upon the trading floor and to have facilities thereon for the execution of orders.

(n) The term “regular member” means one of the members who upon liquidation, dissolution or winding up of the affairs of the Exchange, has distributive rights in its assets.

Board and Board of Executives

(o) The term “Board” means the Board of Directors of the Exchange.

(p) The term “entire Board” means the total number of directors [which] that the [Exchange] Board would have if there were no vacancies, [other than any vacancy that may exist in the office of Executive Vice Chairman or President, or both] on the Board.

[(q) The term “industry director” means a director of the Exchange who is

(i) a member or allied member of the Exchange who is

-the chief executive officer, or a principal executive officer, and a director of a member corporation; or

-the general partner of a member firm who has primary executive responsibilities; or

(ii) a member of the Exchange who is not a holder of voting stock in any member corporation or a partner in any member firm; or

(iii) the chief executive officer, or a principal executive officer, and a director of a person which controls and has as its principal subsidiary a member corporation.]

(q) The term “Board of Executives” means the Board of Executives of the Exchange described in Article V of this Constitution.

[(r) The term “public director” means a director of the exchange who is a representative of the public, except that no person who is or is affiliated with a broker or dealer in securities shall be a public director. For the purposes of this definition, a person shall be considered to be affiliated with a broker or dealer in securities if such person is a partner, officer, employee or director of such broker or dealer, or controls such broker or dealer, or is an officer or employee of a person, one of the significant subsidiaries of which is such broker or dealer. No person who is an employee of an issuer of securities that are admitted to dealings upon the Exchange shall be a public director, unless such person is the chief executive officer or a principal executive officer of such issuer at the time of his or her first election to the Board as a public director.]

(r) The term “entire Board of Executives” means the total number of members that the Board of Executives would have if there were no vacancies on the Board of Executives.

Other terms used in this Constitution may be defined by rules adopted by the affirmative vote of a majority of the entire Board.

Article II

Membership

Sec. 1. *Regular Members, Electronic Access Members, Physical Access Members.* Subject to Section 2 of this Article, the membership of the Exchange shall consist of:

(a) 1366 regular members, each of whom shall, upon liquidation, dissolution, or winding up of the affairs of the Exchange, have distributive rights in its assets; and

(b) such number of physical access members, not to exceed twenty-four (24), each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders; and

(c) such number of electronic access members as the Board may from time to time determine, each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to maintain electronic or telephonic access to (i) the floor facilities of a member or member organization, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board may from time to time determine.

None of the members described in subsections (b) or (c) of this Section shall have any interest in or any right to share in any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange.

Sec. 2. *Lessee Members.* A regular member in good standing may lease his or her membership to a person approved by the Exchange subject to and in accordance with such rules as may be adopted from time to time by the Board. During the term of such lease, for the purposes of this Constitution and the rules hereunder, the lessee shall be considered to be, and the lessor shall not be considered to be, a member of the Exchange, except that the lessor, and not the lessee, shall be deemed to be the member for the purposes of the Gratuity Fund, and shall be entitled to receive, with respect to such membership, any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange. Under the lease agreement the lessor may retain the right to vote the leased membership or that right may pass to the lessee.

Sec. 3. *Approval of Members.* To become a member, or to be reinstated or readmitted as a member, a person must be approved by the Board.

Sec. 4. *Fee Payable by New Members.* Each person (hereinafter referred to as a “new member”), upon becoming a regular member, shall pay to the Exchange a fee which shall be determined as follows:

(a) in the event that the new member shall have purchased such membership through a membership auction facility furnished by the Exchange, then the fee shall be the lesser of \$7,500 or such amount as shall be equal to ten percent of the purchase price paid for the membership;

(b) in the event that:

(i) a regular member (hereinafter referred to as “outgoing member”) whose membership shall be transferred to a new member shall have had a contractual obligation to transfer the membership to such person as may be designated by the member organization of which the outgoing member then shall be a partner or an officer or employee, and

(ii) said contractual obligation shall have been entered into at the same time as the outgoing member shall have acquired said membership, and

(iii) the Exchange at the time said contractual obligation shall have been entered into shall have in writing approved or consented to the entering into of said obligation, and

(iv) the membership of the outgoing member shall in satisfaction of such obligation be transferred to the new member pursuant to such a designation, and the new member shall have substantially the same relationship to and financial interest in the member organization as the outgoing member had, and

(v) the new member shall have a contractual obligation to the same member organization to transfer the membership of the new member to such person as may be designated by the member organization, which obligation shall be upon substantially the same terms and conditions of said contractual obligation of the outgoing member to the member organization,

then the fee shall be lesser of \$7,500 or such amount as shall be equal to five percent of the purchase price at which the most recent contractual sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted; and

(c) in the event that the membership of a new member shall have been acquired in a manner other than as contemplated in either subsection (a) or subsection (b) of this Section, then the fee shall be the lesser of \$7,500 or such amount as shall be equal to ten percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted.

Notwithstanding the foregoing provisions of this Section, the Board may by rule eliminate the fee payable by a new member or reduce such fee below the minimum otherwise provided in this Section. The Board may also by rule require the payment of a fee upon the commencement or termination, or both, of any lease of membership referred to in Section 2 of this Article.

Sec. 5. *Signing Constitution.* No person admitted to membership shall be entitled to any privileges thereof until such member shall have signed the Constitution of the Exchange. By such signature such member pledges to abide by the same as the same has been or shall be from time to time amended, and by all rules adopted pursuant to this Constitution.

Sec. 6. *Use of Exchange Facilities.* The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.

Sec. 7. *Alternates on Floor.* The Board may, by the affirmative vote of a majority of the entire Board, extend to a member who [is a director, who is an officer of one of the affiliated companies of the Exchange] serves on the Board of Executives or who, in time of national emergency is on active duty in the armed forces of the United States or an ally of the United States or is engaged in public service incident to the national defense, the privilege of designating an alternate who shall have the power to transact in the place and stead of such member the usual business of such member on the floor of the Exchange, under such conditions and to such extent as the Board may prescribe, but only at such times as such [director or officer] member is prevented from transacting his or her usual business on the floor by the duties imposed by virtue of acting as such [director or officer] member of the Board of Executives or by the national emergency. If such member is a general partner or employee of a member firm, such member and the general partners of such firm may designate as such alternate a person approved by the Board. If such member is an officer or employee of a member corporation, such member and the directors of such member corporation may designate as such alternate a person approved by the Board. Every contract made on the floor by an alternate shall have the same force and effect as if it had been made by the member for whom such alternate is acting; and a member for whom an alternate is acting shall be liable to the same discipline and penalties for any act or omission of such alternate as for such member's own personal act or omission.

A majority of the entire Board may withdraw such privilege for any cause or without cause.

Sec. 8. *Options Trading Rights.* A regular member or lessor member may lease or transfer the right of entering physically upon the trading floor for the purpose of effecting transactions in options that are from time to time admitted to dealings on the Exchange (the "options trading right") to any person approved by the Exchange, provided that such lessor or transferor has not previously leased or transferred such right. The lessee or transferee of such right (the "options trading right holder") shall not, by virtue of such lease or transfer, be a member of the Exchange for any purpose of this Constitution or rules of the Board, but may maintain facilities on the trading floor for the execution of orders to buy and sell options that are from time to time admitted to dealings on the Exchange ("Exchange options").

An options trading right holder who has acquired an options trading right by transfer may lease or transfer such right to any person approved by the Exchange.

A regular member or lessor member who has leased or transferred the options trading right relating to his or her membership shall not, during the term of such lease or after such transfer, exercise such right. If a regular member transfers the options trading right relating to his or her membership and thereafter transfers such membership unaccompanied by an options trading right, the transferee shall not, as a result of such transfer, acquire an options trading right. A regular member who has transferred the options trading right relating to his or her membership, or who has acquired by transfer such a membership which does not include an options trading right, may, if approved by the Exchange, acquire an options trading right and may thereafter lease or transfer such right, either together with or apart from his or her membership.

Except as expressly provided in the lease agreement between a lessor member and a lessee member, the options trading right relating to such membership shall remain with the lessor member.

The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend and repeal such rules as it may deem necessary or proper relating to options trading right holders, the approval and disapproval thereof, the transfer or lease of options trading rights, the regulation of the activities and business associations of, and the conduct of business by, options trading right holders and brokers and dealers with which they are associated as partners, officers or employees, the imposition of charges with respect to, and the discipline of, options trading right holders and such brokers and dealers, and such other similar matters as the Board shall deem appropriate.

[*Sec. 9. Temporary Options Trading Rights.* The Board may at any time and from time to time and subject to such rules as the Board may from time to time adopt, issue options trading rights to any one or more or all persons that are members in good standing of any national securities exchange registered with the Securities and Exchange Commission or contract market designated as such by the Commodity Futures Trading Commission, which exchange or market is located in the United States of America; provided, however, that no such options trading right so issued to any person that is a member of the New York Futures Exchange, Inc. shall continue to confer any right beyond the third anniversary of the commencement of trading on the Exchange of any Exchange option and no other such options trading right so issued to any other person shall continue to confer any right beyond the first anniversary of such commencement. Any person to which any one or more options trading rights are issued pursuant to this Section shall be included within the term “options trading right holders” but no such options trading right so issued may be leased or transferred by the person to which issued. Notwithstanding the foregoing, any person to which any option trading right is issued pursuant to this Section, other than a natural person, may designate as the nominee of such person a natural person who is approved by the Exchange to exercise the right conferred by such option trading right and may change such designation from time to time, subject to the approval of the Exchange.]

Sec. 9. (Reserved).

Sec. 10. Transfer and Lease of Regular Membership. A transfer of membership of a regular member and the lease (which shall not be considered a transfer) of such a membership may be made upon the approval of the transfer or lease by the Board. The membership of a

physical access member, electronic access member or lessee member shall not be transferable. The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend and repeal such rules as it may deem necessary or proper relating to the posting of notice of the proposed transfer or lease of a membership, the right of a member to make contracts on the Exchange after such posting, the procedures to be followed with respect to such transfer or lease, the status of open Exchange Contracts of a member who transfers or leases his or her membership and of his or her member organization, and other similar matters.

Sec. 11. *Distribution of Transfer Proceeds.* Upon any transfer of a membership, whether made by a member or his or her legal representative or by the Board, the proceeds thereof shall be applied by the Exchange to the following purposes and in the following order of priority, viz:

First. The payment of such sums as the Board shall determine are or may become due to the Exchange from the member whose membership is transferred or from a member organization with which such member is associated as a member.

Second. The payment of such sums as the Board shall determine are due by such member or such member organization to other members or member organizations as a result of losses arising directly from the closing out under this Constitution and rules adopted pursuant hereto (or, to the extent made applicable by such rules, under the rules of The Options Clearing Corporation) of contracts entered into in the ordinary course of business on the Exchange for the purchase, sale, borrowing or loaning of securities.

There shall not be allowed as entitled to priority in payment under this subsection any claim otherwise allowable under the foregoing paragraph, with respect to which the claimant, in the opinion of the Board, did not take promptly all other proper steps under this Constitution, the rules adopted pursuant hereto and practice of the Exchange to protect his or her rights and to enforce such claim when due.

No claim asserted under this subsection shall be considered by the Board nor shall any member or member organization asserting such a claim have any rights thereunder, unless a written statement of such claim shall have been filed with the Secretary of the Exchange prior to the transfer of the membership of the member against whom claim is being made.

If the proceeds of the transfer of a membership are insufficient to pay in full all claims allowed under this subsection, payment shall be made pro rata upon all such allowed claims.

Third. After provisions for the payment of sums payable under subsections *First* and *Second* hereof, there may, in the discretion of the Board, be deducted from the remaining proceeds, if any, and paid to the Exchange the amount of any unusual expenses incurred by the Exchange in connection with litigation involving the disposition of such proceeds, including counsel fees and disbursements and the cost of producing records pursuant to a court order or other legal process.

Fourth. The surplus, if any, of the proceeds of the transfer of a membership, after provision for the payment of sums payable under subsections *First*, *Second* and *Third* hereof, shall be paid directly to the person whose membership is transferred, or to his or her legal representative, upon the execution and delivery to the Exchange by him or her or such representative of a release or releases satisfactory to the Board, unless the Board, in its discretion, determines that such surplus should be paid to the member organization or former member organization with which such member is or was last associated as a member, in view of the fact that such member had expressly agreed, either in the partnership articles or in a writing filed with the Exchange, that such surplus shall be paid either directly by him or her or directly by the Exchange to such member organization. In the event the Board makes such determination, such surplus shall be paid to such member organization, upon the execution and delivery to the Exchange by such member or such member organization, or both, of a release or releases satisfactory to the Board.

No payment of such surplus under the provisions of this subsection shall be made to a member organization or former member organization with which such member is or had previously been associated as a member if such member organization, in the opinion of the Board, did not take promptly all proper steps to protect and enforce its rights, or if the Board, in its sole discretion, shall determine that an unreasonable time has elapsed between the date when he or she ceased to be such a member in such member organization and the date of the transfer.

Except as otherwise specifically provided for by this Constitution, no recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a member or his or her legal representatives which purports to transfer or assign such member's interest in his or her membership, or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such member; nor shall payment of such proceeds be made by the Exchange to any agent or attorney-in-fact of a member except as may be permitted by the rules adopted by the Board in those cases in which such agent or attorney-in-fact (a) is acting solely for and on behalf of such member and is neither directly nor indirectly acting in his or her own behalf or in behalf of any third person or (b) is a partner of the member firm or an officer in a member corporation with which such member is associated as a member.

If the amount of any sum payable under the provisions of this Section cannot for any reason be immediately ascertained and determined, the Board may, out of the proceeds of the membership, reserve and retain such amount as it may deem appropriate, pending determination of the amount so payable.

Sec. 12. *Disposition by Board.* When a regular member dies or is expelled, his or her membership may be disposed of by the Board.

Sec. 13. *Death of Sole Exchange Member.* If, upon the death of a regular member who, at the time of his or her death, was associated as a member with a member organization and was the only member so associated, the following conditions exist:

(1) the member organization continues in business, and

(2) the deceased member shall have agreed in a writing filed with the Exchange that such continuing member organization, if permitted by the Board to have the status of a member organization, shall be entitled to have the use of his or her membership from the date of his or her death until the termination of such status of such continuing organization or until a member of the Exchange becomes associated with such organization as a member and that, subject to this Constitution and the rules of the Exchange, the proceeds of his or her membership shall be an asset of the continuing member organization during such period, and

(3) such continuing member organization shall be permitted by the Board to have the status of a member organization,

then upon the transfer of the membership of such deceased member the proceeds thereof shall be applied to the same purposes and in the same order or priority as if such member had continued to be a member of the Exchange associated as such with such continuing member organization until the date of the termination of such status, or until a member of the Exchange becomes associated as a member with such continuing member organization, whichever event occurs first.

Sec. 14. *Rights Under Section 11.* The death, expulsion or suspension of a member or the transfer of his or her membership, or the suspension, retirement or dissolution of a member organization shall not affect the rights of creditors, or the rights of such member, his or her estate or such member organization under the provisions of Section 11 of this Article.

Article III

Meetings of Members

Sec. 1. *Annual Meeting.* A meeting of the members of the Exchange entitled to vote thereat shall be held annually for the election of directors and other elective positions, and for the transaction of any other proper business, at such time as the Board may select on the first Thursday in June in each year or, if the Exchange is not open for business on that day, on the next succeeding business day. At such annual election, there shall be elected by the membership by ballot:

[(a) A class of twelve directors to serve for a term of two years, six of whom shall be public directors and six of whom shall be industry directors, the members of which shall be qualified to serve under this Constitution,]

(a) all directors to be elected by members to serve for a term of one year;

[(b) A class of four members of the Nominating Committee to serve for a term of two years, two of whom shall be persons who would, were they directors, satisfy the definition of public director, and two of whom shall be persons who would, were they directors, satisfy the definition of industry director,]

(b) two Trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years; and

[(c) Two trustees of the Gratuity Fund who shall be regular members (and not lessor members), to serve for a term of three years,

(d) Qualified persons to fill any vacancies in the Board, the Nominating Committee, or the trustees of the Gratuity Fund.]

(c) qualified persons to fill any vacancies among the trustees of the Gratuity Fund.

The Board shall distribute its annual nominating report, which lists the nominees to serve in the elective positions, to each member not less than 60 days in advance of the annual meeting.

Nominees by Petition. Members of the Exchange may propose by petition nominees for the positions to be filled at the elections prescribed by this Constitution. Any such nominee must be endorsed by not less than forty members and no member shall endorse more than one nominee, provided, however, that not less than one hundred members may, by petition, propose an entire ticket or any portion thereof. Such petition shall contain for each such potential nominee to the Board a completed questionnaire used by the Board to gather information concerning its nominees (which form the Secretary of the Exchange shall provide upon the request of any member). The petitions shall be filed with the Secretary of the Exchange in sealed envelopes within two weeks after the date fixed for the publication of the Board's annual nominating report. The Secretary of the Exchange shall provide such petitions to the Board. The persons nominated by petition, if found eligible for election by the Board, consistent with the criteria articulated in Article IV, Section 2 of this Constitution, shall be deemed nominees for such offices or positions. The Board's determination of such eligibility shall be final and conclusive.

Prior to the annual meeting proxies shall be solicited for the election of directors and trustees of the Gratuity Fund and for action on such other business as may come before the meeting, in accordance with the further provisions of this Article, including sections 5 and 7 below.

The annual meeting shall be held in the Board room of the Exchange or at such other place as may be fixed in advance by the Board. At the annual meeting, the Board shall present a report for the preceding fiscal year as prescribed by law.

Sec. 2. Commencement of Term. The term of office of the persons elected at each annual election shall commence immediately after the annual meeting of members.

Sec. 3. Vote Required to Elect. In determining those nominees who have been successfully elected to serve [in any class of] as directors, [members of the Nominating Committee,] or trustees of the Gratuity Fund (including nominees to fill any vacancies), nominees [in each such class] receiving the highest number of votes shall be declared elected. [; provided, however, that in determining the results of an election in any class in which there are more nominees than there are offices or positions to be filled, the nominees whose election would result in the required composition of the class shall be declared elected in the order of the

highest number of votes received by such nominees in such class, to the exclusion of nominees whose election would not result in the required composition of such class.

For the purpose of determining the results of an election in which there are more nominees than there are offices to be filled in a class of directors, the Nominating Committee, prior to the time when the names of nominees are reported to the Exchange, shall advise the Secretary of the Exchange which of the nominees named by it for such class are:

(a) qualified to serve as public directors, and of these:

(i) which are associated with corporations that are not financial institutions and are the issuers of securities that are admitted to dealings upon the Exchange, and

(ii) which are associated with financial institutions that are significant investors in equity securities; or

(b) qualified to serve as industry directors, and of these:

(i) which are associated with member organizations that engage in a business involving substantial direct contact with securities customers,

(ii) which are registered as specialists and spend a substantial part of their time on the floor of the Exchange,

(iii) which is associated with a member organization that has its principal place of business in the metropolitan area of New York City, is not national in nature and is not engaged in activities as a specialist,

(iv) which spends a majority of his or her time on the floor of the Exchange, has as a substantial part of his or her business the execution of transactions on the floor of the Exchange for other than his or her own account or for the account of his or her member organization, but is not registered as a specialist, and

(v) which of those described in (i) above reside and have their principal places of business outside the metropolitan area of New York City.

The Board, prior to such time, shall determine which of the nominees named by petition for any class of directors fall within one or more of the categories specified above.] In the case of a tie vote, the names of the nominees involved shall be referred to the Board, which, by the affirmative vote of a majority of the entire Board, shall make a selection.

Sec. 4. Special Meetings of Members. Special meetings of the members may be called by the Chairman of the Board. The Chairman of the Board shall call[ed] a special meeting of members upon the direction of the Board or upon the written request of one hundred members.

Sec. 5. *Notice of Meetings of Members.* Notice of each meeting of members shall be written, shall state the date, time and place of the meeting, shall state the purpose or purposes for which the meeting is called and unless it is the annual meeting, indicate that it is being issued at the direction of the person or persons calling the meeting. The Secretary of the Exchange shall mail a copy of the notice not less than ten nor more than fifty days before the date of the meeting, to each person who on the date the notice is mailed, is a member who would be entitled to vote at such meeting, and shall deliver a copy to each person who becomes a member entitled to vote at such meeting thereafter and prior to the meeting or any adjournment thereof. If a member shall have filed with the Secretary a proxy authorizing another person or persons to act for such member at any meeting of members, the Secretary shall concurrently mail a copy of the notice of any meeting to the holder of such proxy. When a meeting is adjourned to another time or place, notice shall be given of the adjourned meeting and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. With the notice of annual meeting, the Secretary of the Exchange shall furnish a form of proxy, which shall designate [the] one or more members of the [Nominating Committee or any one or more of them,] Exchange as persons authorized to act thereunder at the annual meeting.

Sec. 6. *Quorum at Meetings of Members.* Members entitled to cast a majority of the total number of votes entitled to be cast at any meeting, present in person or by proxy, shall constitute a quorum of the members of the Exchange for the transaction of any business, but the members present and entitled to vote thereat may adjourn any meeting despite the absence of a quorum.

Sec. 7. *Proxies.* A member may authorize another person or persons to represent and act as attorney-in-fact for the member in voting on any and all matters at any annual or special meeting of members held during the term of the proxy, or in expressing consent or dissent without a meeting, and in any and all things incidental thereto, such as requesting the call of special meetings of members, proposing by petition nominees for offices or positions to be filled at elections, proposing amendments to this Constitution, or executing for and on behalf of the member waivers of notice. Any such proxy shall be in form satisfactory to the Exchange.

Sec. 8. *Presiding Officer.* At any meeting of the members of the Exchange, if neither the Chairman of the Board nor any person authorized to act for the Chairman under Section 5 of Article VI shall be present, the members present, in person or by proxy, shall elect a presiding officer for the meeting.

Sec. 9. *Vote of Members.* (a) Each regular member in good standing shall be entitled to one vote on each office or position to be filled at any election or upon any other matter at any meeting of the members of the Exchange, including:

(i) any sale, lease, exchange or other disposition of all, or substantially all, the assets of the Exchange,

(ii) any merger or consolidation in which the Exchange is to participate as a constituent corporation within the meaning of the New York Not-For-Profit Corporation Law, and

(iii) any dissolution or final liquidation of the Exchange.

(b) Each physical access member in good standing shall be entitled to one vote, and each electronic access member in good standing who became such prior to [the effective date referred to in subsection (c)] March 30, 1986 shall be entitled to one-half vote, on each office or position to be filled at any election or upon any other matter at any meeting of the members of the Exchange, provided, however, that such member shall not be entitled to vote on any of the following matters:

(i) any sale, lease, exchange or other disposition of all, or substantially all, the assets of the Exchange,

(ii) any merger or consolidation in which the Exchange is to participate as a constituent corporation within the meaning of the New York Not-For-Profit Corporation Law,

(iii) any dissolution or final liquidation of the Exchange,

(iv) any proposal to amend any of the rights and privileges or limitations thereon pertaining to such a member, or

(v) any election or amendment concerning the Gratuity Fund or the trustees of the Gratuity Fund.

(c) An electronic access member who becomes such on or after [the effective date] March 30, 1986 shall have no vote at any election or upon any other matter at any meeting of the members. [“Effective date” shall mean the date that is 30 days after the date on which this subsection becomes effective.]

(d) Whenever any corporate action, other than the election of a person to a position or office, is to be taken by vote of the members, it shall, except as otherwise required by law or by th[is]e Constitution, be authorized by a majority of the votes cast by the members entitled to vote thereon, in person or by proxy, at a meeting of the members.

Sec. 10. *Inspectors.* The Board shall, in advance of any meeting of members at which a vote is to be conducted, appoint an inspector to act at the meeting or any adjournment thereof. The person so appointed shall not be an officer or employee of the Exchange, a director of the Exchange, or a director, officer, partner or employee of a member organization.

Article IV

Board of Directors

Sec. 1. *Powers of Board.* The Board shall be vested with all powers necessary for the govern[man]ce[nt] of the Exchange, the regulation of the business conduct of members, allied members and member organizations of the Exchange and of approved persons in connection with their conduct of the business of member organizations and the promotion of the welfare, objects

and purposes of the Exchange and in the exercise of such powers may adopt such rules, issue such orders and directions and make such decisions as it may deem appropriate.

The Board may prescribe and impose penalties for the violation of rules adopted pursuant to this Constitution and for neglect or refusal to comply with orders, directions or decisions of the Board or for any offense against the Exchange, the penalty for which is not specifically prescribed by this Constitution. The Board shall have the power to hold meetings at such times and places as it deems advisable, to appoint the Board of Executives, to appoint committees, to appoint officers as provided herein, to employ necessary employees, to authorize proper operating expenditures and to take such other action as may be necessary or proper to carry out the purposes of the Exchange.

Each person elected to the Board, and each person serving as a member of the Board of Executives, who is not a member of the Exchange shall have the right to go upon the Floor of the Exchange but shall not have the right to transact business thereon.

[Sec. 2. *Composition of Board.* The Board shall consist of twenty-four directors elected by the members of the Exchange, a Chairman of the Board, the Executive Vice Chairman, if there be one, and the President, if there be one. The directors elected by the members shall consist of twelve public directors and twelve industry directors. Directors elected by the members of the Exchange shall be divided into two classes of twelve each (sometimes referred to as class A and class B) whose terms of office shall expire in alternate years. Each class shall consist of six public directors and six industry directors.(a) the public directors shall include the following:

(i) at least one of the public directors shall be associated with a corporation that is not a financial institution and is the issuer of securities that are admitted to dealings upon the Exchange, and

(ii) at least one of the public directors shall be associated with a financial institution that is a significant investor in equity securities.

(b) the industry directors shall include the following:

(i) two of the industry directors in class A and three of the industry directors in class B shall be associated with member organizations that engage in a business involving substantial direct contact with securities customers and shall reside and have their principal places of business within the metropolitan area of New York City, and(ii) one of the industry directors of each class shall be associated with a member organization that engages in a business involving substantial direct contact with securities customers and shall reside and have his or her principal place of business outside the metropolitan area of New York City, and

(iii) one of the industry directors in class A and two of the industry directors in class B shall be registered as specialists and shall spend a substantial part of their time on the floor of the Exchange, and

(iv) one of the industry directors in class A shall be associated with a member organization that has its principal place of business in the metropolitan area of New York City, is not national in nature and is not engaged in activities as a specialist, and

(v) one of the industry directors in class A shall spend a majority of his or her time on the floor of the Exchange, shall have as a substantial part of his or her business the execution of transactions on the floor of the Exchange for other than his or her own account or for the account of his or her member organization, but shall not be registered as a specialist.

No person who has been elected a director by the membership to three consecutive terms shall be eligible for election as a director except after an interval of at least two years. Each person who is not a member of the Exchange and is elected to the Board shall, by the acceptance of the position of director, be deemed to have agreed to uphold this Constitution.]

Sec. 2. Composition of the Board. The Board shall consist of the Chairman of the Board, the Chief Executive Officer (if such individual is not also the Chairman), and such number of directors elected by the members of the Exchange as is fixed from time to time by resolution of the Board, provided that such number shall not be less than six nor more than twelve. The directors elected by the members shall be independent of management of the Exchange, the members, and issuers of securities listed on the Exchange, and shall include directors who will enable the Exchange to comply with the requirements of Section 6(b)(3) of the Act. Among other things, no director elected by the members shall be (a) a member, allied member, lessor member or approved person; (b) an officer or employee of the Exchange; (c) a person employed by or affiliated, directly or indirectly, with a member organization, or with a broker or dealer that engages in a business involving substantial direct contact with securities customers; or (d) an executive officer of an issuer of securities that are listed on the Exchange. In addition, no director shall qualify as independent unless the Board affirmatively determines that the director has no material relationship with the Exchange. The Board shall adopt specific standards relating to such determination, comparable to the standards required of issuers listed on the Exchange, by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Candidates for the Board shall be selected in accordance with such further criteria as the Nominating & Governance Committee shall establish, as set forth in Section 12(a)(1) of this Article IV. The Nominating & Governance Committee shall recommend to the Board the candidates for Board membership; provided, however, that, in order to assure the Exchange is able to meet the requirements of Section 6(b)(3) of the Act concerning members of the Exchange, the Industry Members of the Board of Executives shall recommend to the Board candidates constituting 20% of the number of directors to be elected by the members of the Exchange, but in no event fewer than two directors.

When a single individual serves as both the Chairman and Chief Executive Officer, the Board shall designate a director elected by the members as a lead director to preside over executive sessions of the Board; the Chief Executive Officer shall not participate in executive

sessions of the Board. The Board shall also publicly disclose the lead director's name and a means by which interested parties may communicate with the lead director. Each person who is elected to the Board shall, by the acceptance of the position of director, be deemed to have agreed to uphold this Constitution.

[Sec. 3. Meetings of Board. Meetings of the Board shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board may from time to time determine or as shall be specified in the notice of any such meeting. The Board shall meet for the purpose of organization, the election of officers and the transaction of other business, on the same day the annual meeting of members is held. Notice of such meeting need not be given. Special meetings of the Board may be called by the Chairman of the Board or pursuant to the written request of four directors upon notice as below prescribed.]

Sec. 3. Term of Office. Directors shall serve for a term of one year (or until the end of the term of his or her predecessor if he or she shall have been elected to succeed a person who has not completed his or her one-year term).

Sec. 4. Resignation of Directors. Any director may resign at any time by giving written notice of resignation to the Board or the Chairman of the Board or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 5. Vacancies. Any Board vacancy shall be filled, after nomination by the Nominating & Governance Committee or the Industry Members of the Board of Executives, as the case may be, by the affirmative vote of a majority of the entire Board, unless the Board shall determine that the vacancy need not be filled until the next annual election. A director so elected shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office.

Sec. 6. Meetings.

(a) Frequency of Meetings. The Board shall have not less than four meetings each year. Special meetings of the directors may be called by the Chairman of the Board, or pursuant to the written request of not less than one-third of the directors then in office, in accordance with the provision of notice of meetings, except when in the judgment of the Chairman, emergency requires shorter notice.

(b) Place of Meetings. Meetings of the Board shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board may from time to time determine or as shall be specified in the notice of any such meeting.

(c) Notice of [Board] Meetings. Notice of a meeting of the Board shall be given by the Secretary of the Exchange or by a person calling the meeting to each director, other than any who have duly waived notice, by written notice mailed first class postage prepaid, not later than five business days before the meeting, or by electronic communication. Any notice shall be sufficient

if addressed to a director at his or her office or at such other address as he or she shall have requested the Secretary of the Exchange to direct notices.

[Sec. 5.](d) Quorum [at Board Meetings]; Action. A majority of the entire Board shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting. Participation in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence in person at a meeting. Except as otherwise expressly required by law or the certificate of incorporation of the Exchange or this Constitution, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum at any meeting of the Board, a majority of the directors present may adjourn such meeting from time to time until a quorum shall be present. Notice of any adjourned meeting shall be promptly given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board and the individual [D]directors shall have no power as such.

[Sec. 6. *Organization Meeting.*] (e) Annual Organizational Meeting. The Board shall hold its annual organizational meeting on the same day as the annual meeting of the members. Notice of the meeting need not be given. At its organizational meeting, the Board, by the affirmative vote of a majority of the entire Board, shall: (1) elect the Chairman of the Board-[and, from among the industry directors, one or more Vice Chairmen of the Board as the Board may deem appropriate, such Chairman and each such Vice Chairman to serve until the next organization meeting of the Board and until their successors have been elected and take office. At its organization meeting, the Board in its discretion may also], and such Chairman shall serve until his or her successor has been elected and takes office; (2) appoint the members of the Board of Executives; and (3) take such other organizational actions as may be appropriate, including the appointment of committees and the appointment or approval of the officers of the Exchange. The Board, at its organizational meeting, shall by the affirmative vote of a majority [of the entire Board, elect an Executive Vice Chairman of the Board to serve for such period as the Board shall determine. The Board, at its organization meeting, shall by the affirmative vote] of the entire Board, designate the person or persons to serve in the absence, inability to act or vacancy in the office of the Chairman of the Board.

[Sec. 7. *Resignation of Directors.* Any director may resign at any time by giving written notice of resignation to the Board or the Chairman of the Board or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 8. *Vacancies.* Any vacancy in the office of a director of any class elected by the membership shall be filled by the affirmative vote of a majority of the entire Board, unless the Board shall determine that the vacancy need not be filled until the next annual election. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy. Any person to be eligible to fill such vacancy must meet the qualifications for election in the class of directors in which the vacancy exists, so that upon his or her election the composition of that

class shall meet the requirements of this Article. A director so elected shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office.

Sec. 9. *Loss of Qualification.* If the Board shall determine by the affirmative vote of a majority of the entire Board that any director has lost any qualification needed for office, such person shall cease to be a director and his or her office shall become vacant.

Sec. 10.]

Sec. 7. Action by Written Consent. Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or the committee unanimously consent in writing to the adoption of a resolution authorizing the action.

Sec. [11.]8. Fees and Compensation. By the affirmative vote of a majority of the entire Board, the Board may fix the fees and compensation to be paid to the directors, members of [such committees as it may from time to time authorize] the Board of Executives, committee members, the Chairman of the Board, other officers of the Exchange, arbitrators and the trustees of the Gratuity Fund.

Sec. [12.] 9. Loss of Qualification. If a director ceases to meet the requirements for directors, such director shall be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Sec. 10. Failure to Discharge Duties. In the event of the refusal or failure of a director of the Exchange, or a trustee of the Gratuity Fund, to discharge his or her duties, or for any cause deemed sufficient by the Board, the Board may, by the affirmative vote of a majority of the entire Board, remove any such director or trustee and declare that office or position to be vacant.

Sec. [13.]11. Interpretation of Constitution and Rules. The Board shall have power to interpret this Constitution and all rules adopted pursuant hereto. Any interpretation made by it shall be final and conclusive.

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution.

(a) Committees Consisting Solely of Directors. The Standing Committees described in Section 12(a)(1)-(4) shall consist solely of directors, other than the Chief Executive Officer, and shall report to the Board. Such Standing Committees may be combined with any other such Standing Committee, be subdivided into one or more such Standing Committees, or the Board may constitute itself as a committee of the whole in respect of such a Standing Committee; provided, however, that if the Board constitutes itself as a committee of the whole with respect to the activities of the Nominating & Governance Committee, the Human Resources &

Compensation Committee, the Audit Committee or the Regulatory Oversight & Regulatory Budget Committee, the Chief Executive Officer shall be recused from such Board deliberations.

(1) *Nominating & Governance Committee.* The Nominating & Governance Committee shall be responsible for (i) recommending to the Board candidates for Board membership in accordance with Article IV, Section 2 and candidates for Trustees of the Gratuity Fund, (ii) recommending to the Board candidates for Board of Executives membership, (iii) conducting the Board's annual governance review, (iv) reviewing and recommending the Exchange's corporate governance guidelines, (v) establishing an appropriate process for, and overseeing implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments, (vi) recommending director compensation, and (vii) succession planning for the Chairman and Chief Executive Officer of the Exchange. In discharging its responsibilities under clause (i) of the immediately preceding sentence, the Nominating & Governance Committee shall propose persons as candidates for the Board who, in the opinion of the Committee, (a) are committed to serving the interests of the public and strengthening the Exchange as a public securities market; and (b) include among their number individuals at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors. In addition, the Nominating & Governance Committee shall establish procedures to solicit the input of investors in equity securities and members regarding Board candidates. The Nominating & Governance Committee shall also solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates to represent the groups referenced in clauses (ii), (iii) and (iv) of Article V, Section 2(b) put forward by the respective representatives of those groups shall be forwarded to the Board as the recommendations of the Nominating & Governance Committee unless and to the extent such Committee determines that a candidate does not qualify for the position.

(2) *Human Resources & Compensation Committee.* The Human Resources & Compensation Committee shall be responsible for (i) reviewing and approving corporate goals and objectives relevant to Chief Executive Officer compensation, evaluating the Chief Executive Officer's performance in light of those goals and objectives, and, together with the other directors elected by the members, determining and approving such compensation, (ii) reviewing and approving recommendations regarding compensation and personnel actions involving senior Exchange personnel, including such recommendations involving senior regulatory personnel received from the Regulatory Oversight & Regulatory Budget Committee, and (iii) reporting annually to the members and the public on the compensation of the five most highly compensated officers of the Exchange (as well as director compensation) and on the compensation philosophy and methodology used to award that compensation (including information relating to appropriate comparisons, benchmarks, performance measures and evaluation processes consistent with the mission of the Exchange).

(3) *Audit Committee.* The Audit Committee shall be responsible for assisting the board in its oversight of the integrity of the Exchange's financial statements, the Exchange's compliance with legal and regulatory requirements, and the independent auditor's qualifications and independence, including the direct responsibility for (i) the hiring, firing and compensation of the independent auditor, (ii) overseeing the independent auditor's engagement, (iii) meeting regularly in executive session with the auditor, (iv) reviewing the auditor's reports with respect to the Exchange's internal controls, (v) pre-approving all audit and non-audit services performed by the auditor and (vi) determining the budget and staffing for the Internal Audit Unit. The Audit Committee charter shall contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.

(4) *The Regulatory Oversight & Regulatory Budget Committee.* The Regulatory Oversight & Regulatory Budget Committee shall be responsible for (i) assuring the effectiveness, vigor and professionalism of the Exchange's regulatory program, (ii) determining the budget for the Regulatory Group, the Listings and Compliance Unit, the Hearing Board, the Arbitration Unit and the Regulatory Quality Review Unit and (iii) oversight of the Regulation, Enforcement & Listing Standards Committee and the Regulatory Quality Review Unit. This Committee shall determine the Exchange's regulatory plan, budget and staffing proposals annually and shall be responsible for assessing the Exchange's regulatory performance and recommending compensation and personnel actions involving senior regulatory personnel to the Board's Human Resources & Compensation Committee for action.

(b) *Joint Committees*

(1) The Regulation, Enforcement & Listing Standards Committee shall be composed of both directors (other than the Chief Executive Officer) and Board of Executives members (including at least one Industry Member of the Board of Executives) as selected by the Board; provided, however, that a majority of the members of such committees voting on a matter subject to a vote of such Committee shall be directors. Such committee shall report to the Regulatory Oversight & Regulatory Budget Committee and shall (i) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities, and (ii) hear appeals of disciplinary determinations and determinations to de-list a listed company.

(2) Additional joint committees may be appointed by the Board from time to time in its discretion; provided that each shall consist of at least one director (other than the Chief Executive Officer). All such committees shall report to the Board.

Sec. 13. *Special Committees, Advisory Committees, Etc.* Special committees, subcommittees, advisory committees, boards or councils may be appointed from time to time in the Board's discretion and may be comprised of individuals who are not directors or members of the Board of Executives.

Sec. 14. *Delegation.*

(a) *Delegation Authority.* The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of th[is]e Constitution and applicable law, to the Board of Executives, to such officers and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may from time to time authorize; provided, however, that[a], except as this Constitution otherwise provides, the Board may not delegate, and no committee may re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority either to adopt rules under Article VIII, Section 1 or Article IX, Section 1, or to act on any subject matter described in Article IV, Section 12(a) or (b)(1), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act. Any committee of directors to which authority is delegated to adopt rules under Article VIII, Section 1 or Article IX, Section 1 shall include thereon at least one director nominated by the Industry Members of the Board of Executives, as provided in Article IV, Section 2. The Board shall diligently oversee the activities of the Board of Executives, the officers and employees of the Exchange, and any committees to which the Board has delegated authority pursuant hereto.

(b) *Limitation of Delegation Authority.* A member, member organization, allied member or approved person affected by a decision of any officer, employee or committee acting under powers delegated by the Board may require a review by the Board of such decision, by filing with the Secretary of the Exchange a written demand therefore within 10 days after the decision has been rendered, except as otherwise provided in Article IX [or the rules thereunder.], Section 6. Any and all powers delegated by the Board may continue to be exercised by the Board notwithstanding such delegation, and the Board may exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it shall at any time determine.

Sec. 15. *Conflict of Interest.* No director shall participate in the deliberation or adjudication of any matter in which he or she is personally interested.

Article V
[Nominating Committee]

Sec. 1. *Composition, Organization Meeting and Eligibility.* The Nominating Committee shall be composed of:

(a) Four persons who would, were they directors, satisfy the definition of public director;
and

(b) Four persons who would, were they directors, satisfy the definition of industry director.

The members of the Nominating Committee shall be divided into two classes of four each whose terms of office shall expire in alternate years. Each class shall consist of two persons described in (a) above, and two persons described in (b) above.

On the first Monday after the annual election of the Exchange, or as soon thereafter as may be practicable, the members of the Nominating Committee, by the affirmative vote of a majority of such members, shall elect a chairman who shall be a member of the Nominating Committee and who shall serve until the next annual meeting of the Nominating Committee and until his or her successor is elected and takes office. The chairman of the Nominating Committee shall not succeed himself or herself as chairman and the office of chairman shall alternate from year to year between a member of the Nominating Committee described in (a) above and a member of the Nominating Committee described in (b) above.

No director shall be eligible to serve on the Nominating Committee. No member of the Nominating Committee who has served the full term for which he or she was elected by the membership shall be eligible for reelection to the Nominating Committee in the year during which such term expires. No member of the Nominating Committee who has been elected to fill a vacancy in the Nominating Committee shall be eligible for reelection to the Nominating Committee in the year during which the term of the member being replaced expires. Any vacancy in the Nominating Committee shall be filled by the remaining members thereof, who shall elect a person qualified to fill the vacancy who shall serve until the next annual election of the Exchange and until his or her successor is elected and takes office. The Board shall have no control over or power with respect to the Nominating Committee. Nothing in this Section is to be construed to prevent the Nominating Committee from soliciting the views of the Chairman or other members of the Board.

Sec. 2. Public Meetings. The Nominating Committee shall hold one or more meetings, to which all members and allied members shall be invited for the purpose of suggesting nominees for the offices and positions to be filled at the annual election of the Exchange. The Nominating Committee shall report to the Secretary of the Exchange, not later than the second Monday in March, nominees for such offices and positions. Each nominee shall be a person who, in the opinion of the Nominating Committee, is eligible for election to the office or position for which he or she is nominated. The Secretary of the Exchange shall, on receipt of the report of the Nominating Committee, notify the members of the Exchange of the names of such nominees. The Chairman of the Board shall serve in a consultative role to the Nominating Committee. In that capacity the Chairman of the Board shall meet with the Nominating Committee prior to March 1 of each year to report on the needs of the Board and to provide any other information relevant to the work of the Nominating Committee.

Sec. 3. Nominees by Petition. Members of the Exchange may propose by petition nominees for the offices or positions to be filled at the elections prescribed by this Constitution. Any such nominee must be endorsed by not less than forty members and no member shall endorse more than one nominee, provided, however, that one hundred members may, by petition, propose an entire ticket or any portion thereof. The petitions shall be filed with the Secretary of the Exchange in sealed envelopes within two weeks after the date fixed for the report of the Nominating Committee. The Nominating Committee and the Secretary of the Exchange shall open such envelopes and shall report to the Board the names of the persons nominated by petition who, if found eligible for election by the Board, shall be deemed nominees for such offices or positions.

Sec. 4. *Names of Nominees.* The names of all nominees shall be arranged on the ballot in alphabetical order for each class of office or position and shall be reported to the Exchange promptly after the Board shall have passed upon the eligibility of the persons nominated by petition. The names of the persons nominated by the Nominating Committee shall be identified by an appropriate legend or symbol.

Sec. 5. *Death, etc., of Nominee.* In case of the death, withdrawal, disqualification or failure to qualify, at any time in advance of the annual election, of any nominee for one of the offices or positions to be filled at such annual election, the election of a person to fill such office or position shall not be held at the annual meeting of the members of the Exchange, but this shall not delay the election of persons to fill all other offices or positions. The Board, by the affirmative vote of a majority of the entire Board, thereupon may declare such office or position vacant and if the election for such office or position was not contested may elect a person to fill the vacancy to hold office until the annual election of the Exchange in the succeeding year. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy. If such election was contested, the Board shall direct that such office or position be filled by vote of the members of the Exchange entitled to vote thereon at a special meeting of the members. If such special meeting shall be directed, the Board shall call the meeting and determine the procedure for nominations and voting by proxy at the meeting.

Sec. 6. *Selection of Nominees.* The Nominating Committee in seeking nominees for all offices and positions shall propose persons who, in the opinion of the Nominating Committee, are committed to serving the interests of the public and strengthening the Exchange as a public securities market.

In selecting nominees who are to be members of the Nominating Committee, the Nominating Committee should consider representatives from all Exchange constituencies, taking care to avoid having an undue concentration of such nominees from any one area or industry.

In seeking nominees who are to be public directors, the Nominating Committee should consider, among others, representatives of corporations, the securities of which are admitted to dealings upon the Exchange and representatives of financial institutions, such as investment companies, banks and trust companies, and insurance companies, which are significant investors in equity securities, care being taken to avoid having an undue concentration of such nominees from any one area or industry.]

Board of Executives

Sec. 1. *Powers and Authority of the Board of Executives.* The Board shall establish a Board of Executives. Subject to the Board's ultimate authority, review and oversight and except with respect to the responsibilities delegated to the Standing Committees, pursuant to Article IV, Section 12, the Board of Executives shall advise the Chief Executive Officer in his or her management of the operations of the Exchange. Copies of any materials, documents or reports

prepared or received by the Board of Executives shall be furnished to the Board of Directors. Industry Members of the Board of Executives (as defined in Section 2 of this Article) shall also be responsible for recommending to the Board candidates for Board membership in accordance with, and who meet the criteria provided for in, Article IV, Section 2 of this Constitution. In discharging this responsibility, the Industry Members of the Board of Executives shall propose persons who, in their opinion, (i) are committed to serving the interests of the public and strengthening the Exchange as a public market, and (ii) will allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning members of the Exchange.

Sec. 2. Composition of Board of Executives.

(a) The Board of Executives shall provide a reasonably balanced representation of the many communities that come together in the Exchange: listed companies, investors, members and member organizations, and lessor members.

(b) The Board of Executives shall consist of the Chairman of the Board (who shall be the Chairman of the Board of Executives), the Chief Executive Officer (if such individual is not also the Chairman), and at least 20 but no more than 25 members (“Board of Executives members”). The Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals who are either the chief executive or a principal executive officer of a specialist member organization, (iii) at least two individuals, each of whom spends a majority of his or her time on the Floor of the Exchange, and has as a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization, but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, as least one of whom shall be a fiduciary of a public pension fund; and (vi) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called “Industry Members of the Board of Executives”). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

Sec. 3. Term of Office. Board of Executives members shall serve for a term of one year (or until the end of the respective term of his or her predecessor if he or she shall have been appointed to succeed a person who has not completed his or her term).

Sec. 4. Resignation of Board of Executives Members. Any Board of Executives member may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 5. Vacancies. Any vacancy in the office of a Board of Executives member may be filled by the Board. A Board of Executives member so appointed shall serve until the next annual organizational meeting of the Board of Executives and until his or her successor is appointed by the Board and takes office.

Sec. 6. Meetings.

(a) Frequency of Meetings. The Board of Executives shall have not less than six meetings each year. Special meetings of the Board of Executives may be called by the Chairman of the Board, or pursuant to the written request of not less than one third of the Board of Executives members then in office, in accordance with the provision of notice of meetings, except that when in the judgment of the Chairman of the Board, emergency requires shorter notice.

(b) Place of Meetings. Meetings of the Board of Executives shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board of Executives may from time to time determine or as shall be specified in the notice of any such meeting.

(c) Notice of Meetings. Notice of a meeting of the Board of Executives shall be given by the Secretary of the Exchange or by a person calling the meeting to each Board of Executives member, other than any who have duly waived notice, by written notice mailed first class postage prepaid, not later than five business days before the meeting, or by electronic communication. Any notice shall be sufficient if addressed to a Board of Executives member at his or her office or at such other address as he or she shall have requested the Secretary of the Exchange to direct notices. Whenever any notice is required to be given under the provisions of the certificate of incorporation or the Constitution of the Exchange, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

(d) Quorum; Action. A majority of the entire Board of Executives shall be present in person at any meeting of the Board of Executives in order to constitute a quorum for the transaction of business at such meeting. Participation in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time shall constitute presence in person at a meeting. Except as otherwise expressly required by law or the certificate of incorporation of the Exchange or the Constitution, the act of a majority of the members of the Board of Executives present at any meeting at which a quorum is present shall be the act of the Board of Executives. In the absence of a quorum at any meeting of the Board of Executives, a majority of the members of the Board of Executives present may adjourn such meeting from time to time until a quorum shall be

present. Notice of any adjourned meeting shall be promptly given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The members of the Board of Executives shall act only as a Board of Executives and the individual members shall have no power as such.

(e) Annual Organizational Meeting. The Board of Executives shall hold its annual organizational meeting as soon following the organizational meeting of the Board of Directors as practical. Notice of such meeting need not be given.

Sec. 7. Action by Written Consent. Any action required or permitted to be taken by the Board of Executives or any committee thereof may be taken without a meeting if all members of the Board of Executives or the committee unanimously consent in writing to the adoption of a resolution authorizing the action.

Sec. 8. Loss of Qualification. If a Board of Executives member ceases to meet the requirements for members of the Board of Executives, such Board of Executives member shall be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Sec. 9. Failure to Discharge Duties. A member of the Board of Executives has under the New York Not-for-Profit Corporation Law the duties of an officer of the Exchange. In the event of the refusal or failure of a member of the Board of Executives to discharge his or her duties, or for any cause deemed sufficient by the Board of Executives or the Board of Directors, the Board of Executives or the Board of Directors may, by the affirmative vote of a majority of the entire Board or the entire Board of Executives, remove any such Board of Executives member and declare that office or position to be vacant.

Sec. 10. Conflict of Interest. No Board of Executives member shall participate in the deliberation or adjudication of any matter in which he or she is personally interested.

Sec. 11. Plenary Sessions of the Board and the Board of Executives. The Board and the Board of Executives shall meet jointly (a "Plenary Session") at least twice each year. The Chairman of the Board shall chair all Plenary Sessions.

Article VI

Officers

Sec. 1. [Titles]Officers. The officers of the Exchange shall include the Chairman of the Board, the Chief Executive [Vice Chairman, if there be one, one or more Vice Chairmen]Officer, the President, if there be one, the Chief Regulatory Officer, one or more Vice Presidents (one or more of whom may be designated as Executive Vice Presidents or as Senior Vice Presidents or by other designations), a Secretary, a Treasurer, a Controller and such other officers as the [Chairman]Chief Executive Officer may propose, subject to the approval of the Board. Any office may be occupied by more than one individual. An officer, [other than any Vice Chairman,] if a member of the Exchange at the time of election, shall promptly thereafter dispose of his or her membership by sale or lease, and if by lease, the power to vote must be disposed of

by the lease. The Board shall appoint the Chairman, the Chief Executive Officer, and the Chief Regulatory Officer. If the Chairman is neither the Chief Executive Officer nor chosen from among the directors elected by the members, he or she must satisfy the independence criteria for Board membership set forth in Article IV, Section 2 of this Constitution. The President and the officers of the Exchange, [other than the Executive Vice Chairman and the Vice Chairmen,] shall be appointed by the [Chairman] Chief Executive Officer, subject to approval of the Board. Each officer of the Exchange, by his or her acceptance of such office, shall be deemed to have agreed to uphold this Constitution. While no officer of the Exchange shall have any authority to recommend candidates for election to the Board or for appointment by the Board to any committee, the Board or the Nominating & Governance Committee may solicit the input of any Exchange officer at its own initiative and discretion.

[Sec. 2. *Chairman of the Board.* The Chairman of the Board shall be the chief executive officer of the Exchange, responsible for the management and administration of its affairs, and shall be the official representative of the Exchange in all public matters. The Chairman of the Board shall be the presiding officer of the Board and an *ex officio* member of all committees authorized by the Board. The Chairman of the Board may call special meetings of the Board and shall call special meetings of the Board upon the written request of four directors.

Sec. 3. *The Executive Vice Chairman, the President and Officers other than Vice Chairmen.* The Executive Vice Chairman, the President and other officers, other than Vice Chairmen, shall have such functions and responsibilities as the Chairman may from time to time assign, subject to the approval of the Board.]

Sec. 2. *The Chairman.* The Chairman shall preside at all meetings of the Board and of the Board of Executives and shall decide all questions of order, subject, however, to an appeal to the Board; provided, however, that if the Chairman is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board. If the Chairman is not the Chief Executive Officer, he or she shall act as liaison officer between the Board and the Chief Executive Officer. In addition to his or her usual duties, the Chairman shall make an Annual Report on the Exchange's activities to a Plenary Session.

Sec. 3. *The Chief Executive Officer.* Subject to the authority of the Board, the Chief Executive Officer of the Exchange shall be responsible for the management and administration of the affairs of the Exchange.

Sec. 4. [*The Vice Chairmen.* Each Vice Chairman of the Board] *Chief Regulatory Officer and Other Officers.*

(a) *Chief Regulatory Officer.* Subject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee, and to the administrative standards and policies established by the Chief Executive Officer made applicable to the Chief Regulatory Officer by the Regulatory Oversight & Regulatory Budget Committee, the Chief Regulatory Officer shall be responsible for the management and administration of the regulatory functions of the Exchange.

(b) Other Officers. The President and other officers shall have such functions and responsibilities as the [Board] Chief Executive Officer may from time to time assign[.], subject to the approval of the Board, and, in the case of senior regulatory personnel, subject to the specific oversight and control of the Regulatory Oversight & Regulatory Budget Committee.

Sec. 5. *Absence, Inability to Act or Vacancy in Office of the Chairman.* In case of the absence, inability to act or vacancy in office of the Chairman of the Board, such other person or persons as the Board, by the affirmative vote of a majority of the entire Board, may designate shall assume all the functions and discharge all the duties of the Chairman.

Sec. 6. *Removal.* Any officer of the Exchange [approved by the Board may be removed, either with or without cause, at any time by the Chairman subject to approval by the Board. The Chairman] may be removed, either with or without cause, by the affirmative vote of a majority of the entire Board.

Article VII

Exchange Contracts

Sec. 1. *Exchange Contracts.* All contracts of a member of the Exchange or a member organization with any member of the Exchange or with any member organization for the purchase, sale, borrowing, loaning or hypothecation of securities (other than option contracts issued or issuable by The Options Clearing Corporation), or for the borrowing, loaning or payment of money, whether occurring on the Exchange or elsewhere, shall be Exchange Contracts, unless made subject to the rules of another [E]xchange, or unless the parties thereto have expressly agreed that the same shall not be Exchange Contracts.

Sec. 2. *Constitution and Rules Part of Exchange Contracts.* The provisions of this Constitution and of the rules adopted pursuant hereto shall be a part of the terms and conditions of all Exchange Contracts and all such contracts shall be subject to the exercise by the Board of the powers with respect thereto vested in them by this Constitution and such rules.

Sec. 3. *Binding Nature of Floor Transactions.* Each contract entered into on the floor of the Exchange by any member who is associated as a member with any member organization shall be binding on such member organization in all respects and without limit and such member organization shall be fully responsible therefor. Each member organization shall execute and file with the Exchange such documentation as the Board by rule may require evidencing (a) the authority of any member who is an officer or employee of such member organization to transact business on the floor on behalf of such member organization, and (b) such member organization's responsibility and obligation with respect to any contract entered into on the floor by any such member.

Sec. 4. *Options Contracts.* All contracts for the purchase or sale or writing of options contracts issued or issuable by The Options Clearing Corporation, occurring on the Exchange, shall be made subject to the provisions of this Constitution and of the rules adopted pursuant hereto and of the by-laws and rules of The Options Clearing Corporation; and all such contracts shall be subject to the exercise by the Board and The Options Clearing Corporation of the powers

with respect thereto vested in them by this Constitution and the rules adopted pursuant hereto and by the by-laws and rules of The Options Clearing Corporation.

Article VIII

Regulation

Sec. 1. *Rulemaking.* The Board may, by the affirmative vote of a majority of the entire Board, adopt, amend or repeal such rules as it may deem necessary or proper, including rules with respect to (a) the making and settling of Exchange Contracts, (b) the access of members to and the conduct of members upon the floor of the Exchange and their use of floor facilities, (c) insolvency of members and member organizations, (d) the formation of member organizations, the continuance thereof and the interests of members, allied members and other persons therein, (e) the partners, officers, directors, stockholders and employees of members and member organizations, (f) the offices of members, allied members and member organizations, (g) the business conduct of members, allied members and member organizations, (h) the business connections of members, allied members and member organizations, and their association with or domination by or over corporations or other persons engaged in the securities business, (i) capital requirements for members and member organizations, (j) the procedure for arbitration, (k) transfers of memberships and disposition of the proceeds of such transfers, (l) types, terms, conditions and issuance of securities by member organizations and trading in such securities, (m) the conduct and procedure for disciplinary hearings and reviews therefrom, (n) the location and use on the floor of the Exchange of such facilities as may be approved by the Board to permit members to send orders from the floor to other markets and receive orders on the floor from other markets for the purchase or sale of securities traded on the Exchange, and (o) options trading rights and options trading right holders.

Sec. 2. *Supervision.* The Board shall have general supervision over members, allied members and member organizations and over approved persons in connection with their conduct of the business of member organizations. It may examine into the business conduct and financial condition of members, allied members, approved person and member organizations. It shall have supervision over partnership and corporate arrangements and over all offices of such members and organizations, whether foreign or domestic, and over all persons employed by such members and organizations, and may adopt such rules with respect to the employment, compensation and duties of such employees as it may deem appropriate. [The Board may require that transactions in securities admitted to dealings on the Exchange shall be executed on the Exchange.] It shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. It shall have the power to approve or disapprove of any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication. It may disapprove of any member acting as a specialist or odd-lot dealer.

Sec. 3. *Listing of Securities.* The Board may approve applications for the listing of securities and the admission of securities, including securities on a “when issued” or “when distributed” basis, to dealings on the Exchange, and may suspend dealings in such securities and may remove the same from listing.

[Sec. 4. *Corners*. Whenever in the opinion of the Board a corner has been created in a security admitted to dealings on the Exchange, or a single interest or group has acquired such control of a security so admitted that the same cannot be obtained for delivery on existing contracts except at prices and on terms arbitrarily dictated by such interest or group, the Board may postpone the time for deliveries on Exchange Contracts therein, and may from time to time further postpone such time or may postpone deliveries until further action by the Board, and may at any time by resolution declare that if such security is not delivered on any contract calling for delivery thereof at or before the time to which delivery has been postponed or which has been fixed by the Board for such delivery, such contract shall be settled by the payment to the party entitled to receive such security or by the credit to such party of a fair settlement price as agreed by the parties to the contract, or if the parties to any contract which is to be settled on the basis of such fair settlement price do not agree with respect thereto, such fair settlement price and the date for the payment of the same may be fixed by the Board. The Board before fixing the same shall give the parties to the contract which is to be settled on the basis thereof an opportunity to be heard either before the Board or before a committee authorized for the purpose. Any such committee shall report the testimony together with its conclusions thereon to the Board which may act upon such report without further hearing or may accord the parties a further hearing before acting thereon.]

Article IX

Disciplinary Proceedings

Sec. 1. *Disciplinary Rules*. The Board shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, allied members, approved persons, and registered and non-registered employees of members and member organizations for the violation of the Act, the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Board shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

Sec. 2. *Hearing Panel*. All proceedings relating to disciplinary matters, except as otherwise specifically set forth in the rules of the Exchange with respect to procedural and evidentiary matters, shall be conducted before a hearing panel consisting of at least three persons; a hearing officer, who shall be chairman of the panel, with the remainder of the panel being members of the hearing board.

Sec. 3. *Hearing Board*. The Chairman of the Board, subject to the approval of the Board, shall from time to time appoint a hearing board to be composed of such number of members and allied members of the Exchange who are not members of the Board, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board shall deem necessary. The members of the hearing board shall be appointed annually and serve at the pleasure of the Board. The Chairman of the Board, subject to the approval of the Board, shall also designate from among the officers and employees of the Exchange a chief hearing officer and one or more other hearing officers who shall have no Exchange duties or

functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as hearing officers at the pleasure of the Board.

Sec. 4. Composition of Hearing Panel. In any disciplinary proceeding involving as a respondent therein a member, member organization, allied member, or approved person, the members of the hearing board serving on the panel shall be members or allied members. In any such proceeding relating to activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a member active on the floor of the Exchange. In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.

In any disciplinary proceeding involving as a respondent therein a registered or non-registered employee of a member or member organization who is not a member or allied member, the members of the hearing board serving on the panel shall be registered employees or non-registered employees of members or member organizations who are not members or allied members. In any such proceeding relating to such employee's activities on the floor of the Exchange, at least one of the persons serving on the panel shall be a registered or non-registered employee of a member or member organization active on the floor of the Exchange who is not a member or allied member.

In any such proceeding relating to any other activities, at least one of the persons serving on the panel shall work in the office of a member or member organization which engages in a business involving substantial direct contact with securities customers.

In any disciplinary proceeding involving as joint respondents therein one or more members or member organizations, allied members or approved persons, together with one or more registered or non-registered employees of a member or member organization who are not members or allied members, at least one of the persons serving on the panel shall be a member or allied member and at least one other person serving on the panel shall be a registered or non-registered employee of a member or member organization who is not a member or allied member, and the functional qualifications required of hearing panel members as stated in this Section shall be satisfied.

The decision of a majority of the panel shall be the decision of the panel and shall be final and conclusive, unless a request to the Board for review is filed as provided in this Article and in the rules of the Exchange.

Sec. 5. Penalties [and Review]. If a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is adjudged guilty in any disciplinary proceeding, the hearing panel shall impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction. In any disciplinary proceeding, any sanction imposed may be remitted or reduced by the hearing panel on such terms and conditions as it shall

deem fair and equitable. In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, the hearing panel, in imposing a penalty, may impose the penalty agreed to or any penalty which is less severe than the stipulated penalty as it deems appropriate or the hearing panel may reject such consent.

Sec. 6. *Review [by Board]*. In a disciplinary proceeding not involving a written consent to the imposition of a specified penalty, any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, adjudged guilty of any charge, or the division or department of the Exchange which brought the charges, or any member of the Board or the Board of Executives, may, in accordance with procedures set forth in the rules of the Exchange, require a review by the Board, of any determination or penalty, or both, imposed by the hearing panel. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may sustain any determination or penalty imposed, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under this Article as it deems appropriate.

In a disciplinary proceeding involving a written consent to the imposition of a specified penalty, any member of the Board or the Board of Executives may require a review by the Board of any determination or penalty, or both, imposed by the hearing panel. In any such proceeding, the division or department which entered into the written consent, may require a review by the Board of any penalty, including any determination related thereto, imposed by the hearing panel, which is less severe than the stipulated penalty. The respondent or the division or department which entered into the written consent may require a review by the Board of any rejection of the written consent by the hearing panel. Any review provided in this paragraph shall be conducted in accordance with procedures set forth in the rules of the Exchange. Upon review, the Board, by the affirmative vote of a majority of the entire Board, may fix and impose the penalty agreed to in such written consent or any penalty which is less severe than the stipulated penalty, or remand the case for further proceedings.

Article X

Membership Fees

Sec. 1. *Amount fixed by Board*. (a) The membership fee payable by a regular or lessee member, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution and of contributions to the Gratuity Fund, shall be fixed by the Board from time to time and shall not exceed \$1,500 in any calendar year. Such membership fee shall be payable in advance on the first of each month.

(b) The membership fee payable by a physical access member, with respect to each year of such membership, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution, shall be the sum of (i) the average of the annual rentals payable under the bona fide leases of membership entered into during the six calendar months (or another period representative of the current lease market) prior to the beginning of such year, (ii) \$1,500, and (iii) with respect to the first year of such membership only, \$5,000; provided, however, that if at

any time the membership fee payable pursuant to Section 1(a) of this Article is in excess of, or less than, \$1,500 per year, the amount provided in clause (ii) above shall be correspondingly increased or reduced, and if the maximum amount payable by a new member described in Section 4(a) or (b) of Article II is in excess of, or less than, \$5,000, the amount provided in clause (iii) above shall be correspondingly increased or reduced. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member's membership.

(c) The membership fee payable by an electronic access member, exclusive of fines and of such other charges as may be imposed pursuant to th[is]e Constitution, shall be fixed by the Board from time to time, and shall be not less than \$13,500 annually. Such membership fee shall be paid in full prior to admission to membership, and prior to any renewal of such member's membership.

Sec. 2. Exemption to Members in Armed Forces. The Board may, on the request of a member who, in time of national emergency,

(a) is on active duty in the armed forces of the United States, or

(b) is on active duty in the armed forces of any nation or state which is then allied or associated with the United States,

and who, in the determination of the Board, is not able to obtain a qualified alternate, exempt such member from the payment of membership fees, under such terms and conditions and to such extent as the Board may prescribe.

Sec. 3. Allocation of Membership Fees. The membership fees payable by any regular or lessee member may be divided by the Board into two parts, one of which shall constitute the member's contribution to the current expenses of the Exchange for the quarter, as estimated by the Board, and the other of which shall constitute the member's contribution towards the capital investment of the Exchange, which shall include advances to its subsidiaries to cover capital expenditures.

Sec. 4. Charges on Floor Transactions. The Board may, from time to time, fix and impose a charge upon members and member organizations, measured by the number of, the value of, the number of shares, warrants, rights or bonds associated with, or the commissions or net commissions on, transactions effected on the Exchange. The total charges imposed on any member or member organization pursuant to this paragraph relating to purchases and sales of stocks and bonds on the Exchange during any calendar month shall not exceed two percent of the total of the net commissions of such member or member organization relating to such purchases and sales during such month. Such charge shall be payable at such times and shall be collected in such manner as may be determined by the Board.

The Board may, from time to time, fix and impose a charge upon members and member organizations measured by their respective odd-lot purchase and sales transactions as odd-lot dealers on the Exchange. The amount of such charge shall not exceed one quarter of one cent per

share on any odd-lot purchase or sale. Such charge shall be payable at such time and shall be collected in such manner as may be determined by the Board.

Sec. 5. Charges or Fees for Facilities or Services. The Board may, from time to time, fix and impose other charges or fees to be paid to the Exchange by members and member organizations for the use of equipment or facilities or for particular services or privileges granted.

Sec. 6. Penalty for Non-payment. (a) A regular or lessee member who shall not pay his or her membership fees, or any member who shall not pay a fine, or a contribution to the Gratuity Fund or any other sums due to the Exchange, within forty-five days after the same shall become payable shall be reported by the Treasurer to the Chairman of the Board and, after written notice mailed to him or her of such arrearages, may be suspended by the Board until payment is made.

(b) Whenever the Treasurer shall report to the Chairman of the Board that a member organization has neglected to pay a fine or any other sums due the Exchange within forty-five days after the same shall become payable, any member in such member organization, after written notice mailed to such member of such arrearages, may be suspended by the Board until payment is made.

(c) Whenever the Treasurer shall report to the Chairman of the Board that an allied member has neglected to pay a fine or any other sums due the Exchange within forty-five days after the same shall become payable, the allied membership of such allied member shall terminate, unless the Board shall have granted an extension of time to pay such fine.

(d) Should any payment referred to in this Section not be made within one year after payment is due, the membership of a delinquent regular or lessee member may be disposed of by the Board on at least ten days' written notice mailed to such member (and to the lessor of such membership, if any) at the address registered with the Exchange.

Sec. 7. Effect of Suspension. A member suspended under the provisions of this Article shall be deprived, during the period of his or her suspension, of all rights and privileges of membership, but such member may be proceeded against by the Exchange for any offense committed by such member either before or after such suspension. No such suspension shall operate to bar or affect the payments provided for by the Gratuity Fund in the event of the death of the suspended member.

The suspension of a member under the provisions of this Article shall create a vacancy in any office or position held by him or her.

Sec. 8. Liability for Fees and Contributions Until Transfer. Notwithstanding the death or expulsion of a regular or lessee member, the membership of such member until transferred shall continue liable for membership fees to the Exchange, as from time to time fixed by the Board, for contributions to the Gratuity Fund and for any other payments due the Exchange.

Sec. 9. Other Charges. In addition to the fees and charges provided for or authorized by Sections 1, 4 and 5 of this Article, the Board may from time to time fix and impose such other charge or charges upon members and member organizations as are authorized by this

Constitution; provided, however, that any such charge or charges imposed upon member organizations shall be measured by the number of, the value of, or the commissions or net commissions on, transactions effected on the floor of the Exchange or transactions in securities admitted to dealings on the Exchange regardless of the market in which such transactions are effected.

Article XI Arbitration

Sec. 1. *Controversies Arbitrated.* Any controversy between parties who are members, allied members or member organizations and any controversy between a member, allied member or member organization and any other person arising out of the business of such member, allied member or member organization, or the dissolution of a member organization, shall at the instance of any such party be submitted for arbitration in accordance with the provisions of this Constitution and such rules as the Board may from time to time adopt.

Sec. 2. *Arbitration Rules.* All arbitration proceedings shall be conducted in accordance with, and before arbitrators selected as provided by, such rules as the Board shall from time to time adopt.

Sec. 3. *Power to Decline Use of Arbitration Facilities.* The Board may decline in any case to permit the use of the arbitration facilities of the Exchange and may delegate such power.

Article XII Indemnification

Sec. 1. *Indemnification.* Any person made, or threatened to be made, a party to any action or proceeding, whether civil or criminal, by reason of the fact that he or she, his or her testator or intestate, is or was a director or officer of the Exchange or a member of the Board of Executives or serves or served any other corporation, or any partnership, joint venture, trust or other enterprise, in any capacity at the request of the Exchange, shall be indemnified by the Exchange, and the Exchange may advance his or her related expenses, to the full extent permitted by law.

Indemnification shall be accorded by the Exchange, and related expenses may be advanced, in respect of members of any committee authorized by this Constitution or by the Board, the members of the Board of Executives, floor officials, arbitrators, members of the hearing board, trustees of the Gratuity Fund, trustees of the Exchange's Special Trust Fund, employees of the Exchange and directors, officers and employees of any corporation a majority of the stock of which is held by the Exchange to the same extent as provided by law in respect of directors and officers. The foregoing right of indemnification shall not affect any rights to indemnification to which persons other than directors and officers of the Exchange may be entitled by contract or otherwise under law.

Article XIII (Reserved.)

[Management in an Emergency

Sec. 1. *Emergency Powers.* Whenever it shall appear to the Board that an emergency exists, other than as provided for in the following Sections of this Article, it may by resolution adopted by a majority of the entire Board delegate all of its powers which may lawfully be delegated, for such period as it may determine, to a special committee, to be composed of three or more directors, at least one-half of whom shall be industry directors. The Board by such resolution may designate one or more industry directors as alternates for the members of such committee who are industry directors of the Exchange and one or more other directors as alternates for the members of such committee who are public directors. Directors so designated may replace any absent member or members for whom they are alternates at any meeting of such committee.

Sec. 2. *Defense Emergency Act.* The provisions of the balance of this Article constitute emergency by-laws under Subdivision 17 of Section 12 of the New York State Defense Emergency Act, as amended. In the event that an attack as herein and therein defined occurs and the New York State Defense Council issues an order applicable to the Exchange authorizing or directing the effectiveness of emergency by-laws of New York corporations, then, notwithstanding any provisions of the certificate of incorporation of the Exchange or the provisions of any of the other Articles of this Constitution or of the rules thereunder, all the rights, powers and duties of the Board shall immediately vest in an emergency committee and continue to be so vested during the period of emergency.

The term “attack” for the purpose of this Article means and includes any attack, actual or imminent, or series of attacks by an enemy or a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shellfire, or nuclear, radiological, chemical, bacteriological, or biological means or other weapons or processes.

The term “emergency committee” for the purpose of this Article shall mean a committee of six members composed as provided in Section 3 of this Article.

The term “period of emergency” for the purpose of this Article shall mean the period commencing with the vesting of the powers of the Board in the emergency committee and ending on the date when the New York State Defense Council declares that the period of attack has ended or on such earlier date as may be fixed (a) by the Board in office at the inception of the emergency or (b) by a majority vote of the membership at a special meeting of the members called for the purpose or (c) by the emergency committee. On the date so declared or so fixed all of the committee’s powers shall revert to the Board.

If there are any vacancies in the Board on the date the emergency committee’s powers are to revert to the Board, the emergency committee may make such provisions as it deems advisable for the election, by the members of the Exchange, of persons to fill such vacancies and may, in connection therewith, fix the time, place and manner of nominating persons to fill such vacancies

and the time and place for a special meeting of the members of the Exchange for the purpose of such election.

Sec. 3. Composition of Emergency Committee. The emergency committee shall, at the inception of the period of emergency, be composed of the following six directors who are available and able to meet together-the Chairman of the Board, the Executive Vice Chairman, if one is then in office, each Vice Chairman of the Board then in office, the President, if one is then in office, and such number of the industry directors in order of seniority as are necessary to bring the committee up to its full complement of six. If any of the foregoing are not available or able to meet together, vacancies shall be filled from other members of the Board in order of their seniority. If there are not six members of the Board available and able to meet together, vacancies shall be filled in the order of their seniority, from the industry directors who retired from the Board at the last annual election. If all of the vacancies cannot be filled from such former directors, they shall be filled in order of seniority, from the industry directors who retired at the next to the last annual election, and so on until there are six such directors or former directors available and able to meet together.

The seniority of a director or former director for the purpose of this Article shall be determined by the length of time he or she has served as a director (including service as Chairman of the Board) whether or not his or her terms of service have been consecutive.

After the emergency committee has been initially constituted as above provided, the committee shall fill any vacancies which occur by appointing directors or former directors of the Exchange, may increase the number of such directors and former directors who constitute the committee, and thereafter may reduce such number, provided the number is not reduced below five. In filling vacancies and in adding members to the committee, seniority shall not control. The emergency committee may remove any member of the committee with or without cause.

In the event that at any time during the emergency there are less than three members of the committee available and able to meet together, the vacancies shall automatically be filled in the same manner as the committee was originally constituted.

Sec. 4. Meetings of Emergency Committee. Meetings of the emergency committee shall be held at such times and places as the committee may designate by resolution and special meetings of the committee shall be held on the call of any member of the committee. A member of the emergency committee calling a meeting shall attempt to give notice thereof by making such reasonable efforts as circumstances may permit to notify each committee member of the meeting. Such notification may be oral, written or by publication and specify the purposes thereof. Failure of any member of the committee to receive actual notice of a meeting of the committee shall not affect the power of the committee members present at such meeting to exercise the powers of the emergency committee.

Three members of the emergency committee shall be sufficient to constitute a quorum for any meeting of that committee, and any action taken pursuant to the vote of a majority of the members of the committee present at a meeting shall be deemed to be the action of the

committee, even though this Constitution requires a specified vote by the members of the Board had that action been taken by the Board.

Any action by an emergency committee shall be valid and binding as if taken by the Board if such committee certifies that it is the properly constituted emergency committee even though it may subsequently develop that at the time of such action the committee was not a duly qualified emergency committee.

If the emergency committee elects a person to an office which it believes to be vacant, the acts of such newly elected officer shall be valid and binding although it may subsequently develop that such office was not in fact vacant.]

Article XIV

[Amendment of the] Amendments to Constitution

Sec. 1. *Constitutional Amendments.* The provisions of Articles IV (except for Section 14(b)), V (except for Section 2(a)), VI and XII of the Constitution may be amended or repealed, and new provisions may be adopted, by the affirmative vote of a majority of the entire Board, or by the members of the Exchange who are entitled to vote thereon in accordance with the procedure specified in this Article; provided, however, that no Constitutional amendment that may be approved by the majority of the entire Board without the vote of members may take effect until the expiration of two weeks from the date the proposed Constitutional amendment is first furnished to the members. Notwithstanding the foregoing, the Board may make such changes to such proposed amendment as it may deem necessary or appropriate to carry out the intention of such proposed amendment or to make it conform to other provisions of this Constitution or any applicable federal or state law without the need for a further waiting period. The remaining provisions of this Constitution may be amended or repealed, and new provisions may be adopted, only by the members of the Exchange who are entitled to vote thereon in accordance with the procedure specified in this Article. To the extent any amendment requires amendment of a definition included in Article I, Section 3, such definition as used in the amended section, may be amended in the same manner as the substantive provision containing such definition.

Sec. 2. *Proposing Amendments.* Any member of the Board may propose an amendment to this Constitution. Amendments may also be proposed by the signed petition of not less than one hundred and seventy-five members of the Exchange (who would be entitled to vote on the proposed amendment) setting forth the proposed amendment and filing the same with the Secretary of the Exchange who shall present it to the Board at its next regular meeting. Any [such] proposed amendment to this Constitution must be presented in writing at a regular meeting of the Board or at a special meeting expressly called for the purpose of receiving it. Upon presentation, every [proposed] amendment proposed by the members shall be laid upon the table for at least two weeks and the Secretary of the Exchange shall promptly cause a copy thereof to be delivered to each director.

After any amendment proposed by the petition of members shall have lain upon the table for two weeks the Board shall, at the next regular meeting of the Board, or at a special meeting called for the purpose, and in any event within seven weeks after the proposed amendment has

been presented to the Board, direct that it be submitted, with or without the approval of the Board, to the members entitled to vote thereon (or to all members if required by law) at a special meeting of the members called for the purpose.

In the event that any amendment proposed by one or more directors, [is] and approved by the affirmative vote of a majority of the entire Board, requires the vote of the members, the Board shall direct that it be submitted to the membership for vote thereon (or to all members if required by law) at a special meeting of the members called for the purpose.

With the notice of special meeting, the Secretary of the Exchange shall furnish a form of proxy [designating not less than three] which shall designate one or more members of the Exchange [to serve as a proxy committee] as persons authorized to act [for the members] thereunder at the special meeting. Before submitting any proposed amendment, the Board may make such changes therein as it may deem necessary or appropriate to carry out the intention of such proposed amendment or to make it conform to other provisions of this Constitution or any applicable federal or state law.

Sec. 3. *Quorum.* If a quorum shall not be present, in person or by proxy, at the place and time fixed for a special meeting of the members called pursuant to this Article, the meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter or, if the Exchange is not open for business on that day, on the next succeeding business day. If a quorum shall not then be assembled, the meeting shall be dissolved and the proposed amendment shall not become effective. For the adoption of any proposed amendment it shall, except as otherwise required by law or by this Constitution, be authorized by a majority of the votes cast by the members entitled to vote thereon at the special meeting at which it is submitted, provided that a quorum is present, in person or by proxy.

Sec. 4. *Gratuity Fund Amendment.* Notwithstanding the foregoing provisions of this Article, no amendment to this Constitution shall ever be made which will impair in any essential particular, the obligation of each regular member and lessor member to contribute, not less than the sum of \$15, to the provision for the families of deceased members, unless such amendment shall be authorized by a unanimous vote, or by the written consent, of all such members of the Exchange.

Article XV

The Gratuity Fund

Sec. 1. *Initial Payment to Gratuity Fund.* Every person who shall become a regular member of the Exchange shall pay to the trustees of the Gratuity Fund the sum of seventy-five dollars before he or she shall be admitted to the privilege of membership. For the purpose of this Article the term member shall mean a regular member and a lessor member and shall not include a lessee member.

Sec. 2. *Contribution on Death of Member.* Each member of the Exchange, by signing this Constitution pledges himself or herself to make, upon the death of a member of the Exchange, a contribution to the family of such deceased member in the respective amount hereinafter set forth

according to the length of time that has elapsed between the date when the deceased became a member and the date of his or her death, namely

- \$15.00 if such elapsed time is less than one year,
- \$30.00 if such elapsed time is one year or more but less than two years,
- \$45.00 if such elapsed time is two years or more but less than three years,
- \$60.00 if such elapsed time is three years or more but less than four years,
- \$75.00 if such elapsed time is four years or more,

such sums to be paid by the member to the Exchange when assessed. The Treasurer of the Exchange shall pay over monthly to the Gratuity Fund all amounts collected from members under this Article during the preceding month.

Sec. 3. Payments on Death. The faith of the Exchange is hereby pledged to pay, within one year after the proof of death of any member, out of the money collected under the provisions of this Article, the respective amount hereinafter set forth according to the length of time that has elapsed between the date when the deceased became a member and the date of his or her death, namely

- \$20,000 if such elapsed time is less than one year,
- \$40,000 if such elapsed time is one year or more but less than two years,
- \$60,000 if such elapsed time is two years or more but less than three years,
- \$80,000 if such elapsed time is three years or more but less or more than four years,
- \$100,000 if such elapsed time is four years or more,

or so much thereof as may have been collected, to the persons named in the next Section as therein provided, which money shall be a contribution from the other members of the Exchange, free of all debts, charges or demands whatsoever. The elapsed time referred to in Sections 2 and 3 of this Article shall include any period not in excess of 90 days between the transfer of a membership by the deceased member and the acquisition of another membership by such deceased member and, for the purposes of said Sections 2 and 3, the deceased member shall be deemed to have continued to be a member throughout such period.

Sec. 4. To Whom Paid. Should the member die leaving a surviving spouse and no child or children and no issue of a deceased child or children, then the whole sum shall be paid to such surviving spouse for his or her own use.

Should the member die leaving a surviving spouse and a child or children or the issue of a deceased child or children, then one-half shall be paid to the surviving spouse for his or her separate use. The remaining one-half shall be paid to and divided among the child or children

and the issue of any deceased child or children, such issue to take per stirpes and not per capita. If any such child or issue shall be a minor, his or her share shall be paid to his or her duly appointed guardian of the property.

Should the member die leaving a child or children or the issue of a deceased child or children and no surviving spouse, then the whole sum shall be paid to the children and such issue as directed in the preceding paragraph to be done with the moiety.

Should the member die leaving neither surviving spouse, child nor issue of a child, then the whole sum shall be paid to the same persons who would, under the laws of the State of New York, take the same by reason of relationship to the deceased member had he or she owned the same at the time of his or her death; and if there be no such person, then the amount applicable under Section 3 of this Article in such case shall be held by the trustees of the Gratuity Fund for the general purposes of that Fund.

The words "child" and "children" where used in this Section shall, for the purposes of this Article, be deemed to include an adopted child or children of the deceased member, provided, however, that such adoption shall have been in such manner and form that it will be recognized as valid by the courts of the State of New York; the word "issue" where so used shall, for such purposes, be deemed not to include an adopted child or children.

In case any person entitled to any gratuity shall be under age and have no guardian entitled to receive payment at the maturity thereof, the trustees may, in their discretion, deposit such money with a bank or other financial institution as the property of, and in trust for, such minor; and in like manner if any person apparently entitled to any payment fails to claim it, or has disappeared or cannot be found after reasonable inquiry, the trustees may deposit the presumptive share of such person with a bank or trust company to the credit of the "trustees of the Gratuity Fund of the New York Stock Exchange, Inc., in trust," to the end that it may be paid to such person, if afterwards found, or otherwise to the parties who may subsequently establish their right thereto; a similar discretion shall apply in the case of any dispute between claimants for a gratuity or a portion thereof.

In all cases a certified copy of the proceedings before a Surrogate or Judge of Probate shall be accepted as proof of the rights of the claimants, shall be deemed ample authority to the Exchange to pay over the money, shall protect the Exchange in so doing, and shall release the Exchange forever from all further claims or liability whatsoever.

Sec. 5. Limited Liability. Nothing herein contained shall ever be taken or construed as a joint liability of the Exchange or its members for the payment of any sum whatever; the liability of each member, at law or equity, being limited to the payment of the dollar amount described in Section 2 of this Article only on the death of any other member, and the liability of the Exchange being limited to the payment of the dollar amount described in Section 3 of this Article, or such part thereof as may be collected, after it shall have been collected from the members, and not otherwise. Nevertheless, prior to the collection from the members of the amount of any gratuity payable under the provisions of this Article, the trustees may, in their discretion, advance out of the Gratuity Fund (either capital or accumulated income) to the person or persons entitled

thereto, the whole or any part of such gratuity; and, in every such case, the amount so advanced shall be repaid to the Gratuity Fund from the payments by the members when collected.

Sec. 6. *No Estate In Esse.* Nothing herein shall be construed as constituting any estate in esse which can be mortgaged or pledged for the payment of any debts; but it shall be construed as the solemn agreement of every member of the Exchange to make a contribution to the family of each deceased member, and of the Exchange, to the best of its ability, to collect and pay over to such family the said contribution.

Sec. 7. *Payments of Excess Net Worth.* As of the close of each quarter in each year, the trustees of the Gratuity Fund shall, provided the net worth of the Gratuity Fund has been determined (as hereinafter provided) to be in excess of the sum of one million five hundred thousand dollars, pay to the Treasurer of the Exchange out of the Gratuity Fund (either capital or accumulated income) a sum equal in amount to such portion, if any, of such excess as shall be the highest whole number multiple of \$102,375; if there shall be no whole number multiple of \$102,375 in such excess, no such sum shall be paid by the trustees of the Gratuity Fund to the Treasurer of the Exchange with respect to such quarter. As and when such sums are received by the Treasurer of the Exchange they shall be credited proportionately against the first amount then or thereafter payable by members pursuant to Section 2 of this Article.

The “net worth” of the Gratuity Fund shall be determined by the trustees at a meeting in the last month of each quarter and shall be that amount by which, as of the close of the month preceding, the total assets (including cash, accounts receivable and investments stated at their market values but exclusive of accrued interest and accrued dividends) exceeded all known liabilities.

Sec. 8. *Deceased, Expelled and Suspended Members.* The provisions of Sections 2, 3, 4, 5 and 6 of this Article shall not extend to the family of any deceased former member whose connection with the Exchange shall have been severed prior to his or her death by the transfer of his or her membership whether such transfer shall have been made by the member or his or her legal representatives or by the Board pursuant to this Constitution, or who has been expelled, but shall extend to the family of a deceased member who was suspended at the time of his or her death.

Sec. 9. *Management of Gratuity Fund.* The management and distribution of the Gratuity Fund shall be under the charge of a board of trustees, acting as agent for the Exchange, to be known as the “trustees of the Gratuity Fund,” and shall consist of six regular members of the Exchange who are not lessor members and are elected by the membership. In case of a vacancy among the trustees, the Board, at its next regular meeting thereafter, shall proceed to fill the same until the next annual election of the Exchange. Prior to filling such vacancy, the Board shall request the Nominating Committee to submit to the Board the name of the person recommended by the Nominating Committee to fill such vacancy.

Sec. 10. *Investments.* The Gratuity Fund may be retained by the trustees partially or wholly in the form of cash or, in the discretion of the trustees, may be invested in securities which are legal investments for trust funds under the laws of the State of New York. Any

securities held by the trustees which cease to be such legal investments may, nevertheless, in the discretion of the trustees, be retained by them.

Securities held by the trustees may be in coupon or registered form. Securities held in registered form shall be registered in the name of the “trustees of the Gratuity Fund of the New York Stock Exchange, Inc.”, but without specifying the individual names of such trustees, and may be disposed of and assigned by any four of such trustees.

Sec. 11. *Policies and Procedures of Trustees.* The trustees may adopt such policies and procedures and appoint such officers as they deem appropriate to the discharge of their duties. The trustees shall have power at their discretion to consult and employ legal counsel and they shall be authorized to make disbursements out of the Gratuity Fund to defray necessary and related expenses.

Sec. 12. *Inspection.* The Board shall, at all times, have the right to direct the production before it of the securities belonging to the Gratuity Fund, and all books and records relating to the Gratuity Fund.

Article XVI **2003-04 Transition**

The terms of this Article XVI shall apply during the period commencing on the date this amended and restated Constitution is approved by members and ending on the date of the next annual meeting (the “Transition Period”). Upon expiration of the Transition Period, this Article shall be of no further force or effect.

Sec. 1. *Initial Board.* The initial board elected concurrently with the approval by the members of this amended and restated Constitution shall be deemed duly nominated, qualified and elected for all purposes.

Sec. 2. *Term of Office.* The term of each director elected at the special meeting at which this amended and restated Constitution is approved by the members continues until the next annual meeting of members and until his or her successor is elected and qualified.

Sec. 3. *Organizational Meeting.* The Board shall hold its initial organizational meeting as soon as practicable following the special meeting at which this amended and restated Constitution is approved by the members. At its initial organizational meeting, or as soon thereafter as practicable, the Board, by the affirmative vote of a majority of the entire Board, shall, among such other organizational actions as may be appropriate, appoint the members of the Board of Executives and of the Committees. The terms of the members of the Board of Executives and of the Committees continues until their successors are appointed and qualified.

Sec. 4. *Committees.* To assure continuity, during the Transition Period, the Regulation, Enforcement & Listing Standards Committee may include prior members of the Committee for Review who are neither directors nor members of the Board of Executives. Such prior members shall be deemed to be members of the Board of Executives for the purpose of Committee voting. In addition, notwithstanding the provisions of Article IV, Section 12(a), the Standing

Committees described therein may include as a member the individual serving as Chairman and Chief Executive Officer on the date this amended and restated Constitution is approved by the members.

Sec. 5. Ratification. The extraordinary circumstances under which this restated and amended Constitution was proposed and the initial Board of Directors was constituted caused the Exchange to dispense, in whole or in part, with certain requirements, including (a) use of the Nominating Committee to nominate directors, (b) the opportunity for members to petition to nominate additional director candidates, and (c) approval of the proposed amendments by the Board of Directors in accordance with the prescribed time frames. All such requirements are hereby waived, and the actions taken in contravention of all such requirements are hereby ratified.

Exhibit B

November 4, 2003

Dear Member:

I am writing to ask your support in reforming the governance and management architecture of the New York Stock Exchange, Inc. This will require that you change the Constitution to achieve the following objectives:

- 1) Place responsibility for governance, compensation and internal controls, as well as for supervision of regulation, in the hands of a Board of Directors that is independent both from NYSE management and from the members, member organizations and listed companies.
- 2) Separately preserve the existing engagement of the broker-dealer community and listed company community with the NYSE by creating a Board of Executives that will also include the executives of major public and private “buy side” entities as well as lessor members.
- 3) Make transparent our governance process, its participants, their compensation, and our charitable donations and political contributions.

I also seek “fast track” authority from you to effect these changes and enable the new, independent Board to appoint the Board of Executives and to otherwise assume its responsibilities immediately following your vote.

Background

You know the background. The Exchange has evolved over many years, and its Board and management have had to deal with industry, issuer, operational and governance issues of increasing complexity. Recently, we have all been embarrassed by a set of problems that has hurt the Exchange and revealed the clear need to change our structure and processes at the top.

Proposal

I am asking that we reconstitute our Board. It will have between six and twelve members, all of whom will be independent, as well as a Chairman and a Chief Executive Officer (if he or she is not also the Chairman). The directors will be fiduciaries owing their loyalty to the NYSE. The proposed slate is as follows:

- 1) Madeleine K. Albright
- 2) Herbert M. Allison, Jr.
- 3) Euan D. Baird

- 4) Marshall N. Carter
- 5) Shirley Ann Jackson
- 6) James S. McDonald
- 7) Robert B. Shapiro
- 8) Sir Dennis Weatherstone

If you elect these individuals as your initial Board, they will serve until June 2004. Thereafter, the entire Board will stand for election in June of each year.

It is important that the role and responsibility of the Board be clear and that a mechanism for self-appraisal and continual improvement be in place. This letter and the attached proxy statement describe this for your information – in essence, the Board’s responsibilities are to supervise our regulatory function; monitor marketplace performance and competitive position; engage with and approve strategy; hire, fire and pay the management; ensure an appropriate management succession plan; and ensure appropriate behavior.

In order for the NYSE to function effectively and continue as a spokesperson for the industry, the Board and our management must engage with the member owners and with senior voices from our constituents – our listed companies, the buy side and sell side entities, and the trading Floor. To this end:

- 1) The Board of Directors will appoint a Board of Executives made up of approximately 20 constituent representatives, balanced among the major broker-dealers, the “Floor”, lessor members, institutional investors and large public funds, and listed companies. Members of the Board of Executives will have the same fiduciary duties to the NYSE as its officers have.
- 2) The Board of Executives will meet at least six times a year and will discuss Exchange performance, membership issues, listed company issues and public issues relating to market structure and performance.
- 3) The Board of Directors will meet with the Board of Executives in joint session several times during each year contemporaneous with its own meetings, and will receive reports of the deliberations of the Board of Executives. Members of the Board of Executives will serve on some of the Committees with members of the Board of Directors.
- 4) The Board of Directors will stay in touch with the membership in a variety of ways, including meeting separately at the end of each year with the lessor and Floor representatives on the Board of Executives.

In order to work effectively, the Board of Directors will need to appoint several Committees. Given the Board’s small size, it can also simply appoint Committee Chairmen and function as a Committee of the whole.

Each year following its election, the Board will organize itself. As of this writing, I anticipate that the Board will have:

- 1) An Audit Committee and a Regulatory Oversight & Regulatory Budget Committee to ensure proper controls and regulatory supervision are in place.
- 2) A Human Resources & Compensation Committee to ensure that we have good management that is paid appropriately.
- 3) A Nominating & Governance Committee to ensure that the Board of Directors and Board of Executives function well and that appropriate people are nominated for the Board and appointed to the Board of Executives.

The Board will also appoint some of its members to Committees (joint with Board of Executives members) dealing with the Quality of Markets, Market Structure and Strategy, Finance, and appeals of disciplinary actions and de-listings. The Board will create and combine committees as warranted.

Leadership of the Board and Management

The Board will choose a Chairman and a CEO annually in June. If the Board of Directors identifies a person able to lead both it and the Board of Executives and to discharge the functions of chief executive, it may combine the two roles. Otherwise, it will select a different person for each role. I will continue in both roles until the new Board of Directors chooses my successor(s), which I hope will be before the end of this year. I have indicated to the Board nominees my willingness to thereafter remain on the Board, if appropriate.

Transparency

The workings of the Board of Directors and its governance must be transparent. To that end:

- 1) Prior to the Annual Meeting, we will publish a proxy statement disclosing the Board Committee charters and the Committee reports on their activities for the year; membership on the Board, on the Board of Executives, and on the various standing and advisory Committees; the facts establishing each Board member's independence, including any non-director relationship between Board members and the NYSE itself and any material relationships among Board members; and Board compensation.
- 2) We will publicly disclose information regarding the means by which members and investors may communicate with the NYSE's non-management directors.
- 3) The annual report of the Human Resources & Compensation Committee will detail compensation decisions for the top five officers, the existence of any contracts for these individuals and the compensation for the top management team as a whole. The Committee will detail the competitive comparisons and performance judgments that guided their recommendations.

- 4) The Nominating & Governance Committee will explain its nominations and make public the procedures that are in place to ensure that appropriate potential nominees are found and considered.
- 5) The Board of Directors will detail the considerations that lead to membership on the Board of Executives, and the current membership. A report of the activities of the Board of Executives will be included in the proxy statement.
- 6) The various advisory committees of the NYSE will be identified and described, and their members listed in the proxy statement.
- 7) An annual report detailing the charitable activities of or on behalf of the Exchange, including the activities of the NYSE Foundation, will be included with the proxy statement.
- 8) A report disclosing NYSE political activities, including a list of political contributions made by any NYSE PAC, will be made available prior to the annual meeting.

Rationale

The logic supporting these proposed changes is straightforward.

- 1) The NYSE needs a competent, engaged Board without conflicts and dedicated to the NYSE's long-term interests.
- 2) The NYSE will not recover its voice and legitimacy as leader of the U.S. capital markets until it is seen as an example of good corporate governance and capable of properly managing its own affairs. An "insider board" is not acceptable — not in general and certainly not as a supervisor of our regulatory responsibilities.
- 3) The members of the Exchange need to be kept informed of Board decisions and have access to the Board through full disclosure, direct interaction, an annual meeting and an open election of the Board itself.
- 4) The NYSE has to be deeply engaged with listed companies and buy and sell side firms, as well as member owners, through substantive, focused interaction.

Engagement on the Proposals

This letter seeks to highlight some of the most important changes that I propose in your governance architecture and the reasons why I recommend them to you.

To assure that you understand my proposals and to afford you the opportunity to ask questions, I plan to hold several meetings in various locations. You are invited to attend any of the following meetings at the location of your choice:

Wednesday, November 5: Washington, DC

Friday, November 7: Boca Raton, Florida

Monday, November 10: Philadelphia, Pennsylvania and New York, New York

Wednesday, November 12: Cleveland, Ohio and Chicago, Illinois

Friday, November 14: Los Angeles, California

Saturday, November 15: San Francisco, California

Please call this toll free number if you plan to attend and we will give you the details: 1-888-410-7850. You may also contact us via email at governance@nyse.com.

Proxy Statement and Ballot

The matters to be acted upon are described more fully in the accompanying Proxy Statement. **I urge you to read it carefully and to vote in favor of the proposals.**

If I can have your support, we will have a solid and independent Board of Directors directly elected by the members, and a Board of Executives able to ensure our continued centrality to constituent concerns. This arrangement will serve you, the Exchange itself and most importantly, the investing public.

I ask for your vote.

Best,

/s/ John S. Reed

John S. Reed

[LOGO]

NEW YORK STOCK EXCHANGE, INC.

**11 Wall Street
New York, New York 10005**

**NOTICE OF SPECIAL MEETING
to be held November 18, 2003**

To the Members:

Proposal 1. Amend and Restate the Constitution in the form attached as Annex A.

Proposal 2. Election of eight (8) directors.

Only members of record and in good standing at the close of business on November 18, 2003 will be entitled to vote at this meeting or at any adjournments thereof.

By Order of the Interim Chairman of the Board,

/s/ Darla C. Stuckey

Darla C. Stuckey
Secretary

November 4, 2003

IMPORTANT: To ensure that you are represented at the Special Meeting, please vote in one of these ways:

- **USE THE TOLL-FREE NUMBER shown on your proxy card;**
- **VISIT THE WEBSITE noted on your proxy card to vote via the Internet;**
- **MARK, SIGN, DATE AND PROMPTLY RETURN the enclosed proxy card in the postage-paid express mail envelope to IVS Associates, Inc., 111 Continental Drive, Suite 210, Newark, Delaware 19713, or by FAX to 302-369-8486; OR**
- **VOTE IN PERSON by appearing at the Special Meeting and submitting a ballot at the meeting.**

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NEW YORK STOCK EXCHANGE, INC

The New York Stock Exchange, Inc. is the world's premier equities market. A broad spectrum of participants, including individual investors, institutional investors, listed companies, and members and member organizations, create the NYSE auction market. The NYSE is committed to serving the interests of public investors in equities by maintaining the most efficient, liquid, fair and orderly markets in the world.

The NYSE, founded in 1792, is a New York not-for-profit corporation which was first incorporated in 1971. The NYSE's executive offices are located at 11 Wall Street, New York, New York 10005; telephone: (212) 656-3000.

MEETING AND SOLICITATION

The Proposals

This Proxy Statement is being furnished to NYSE members in connection with the solicitation of proxies for use at a special meeting to be held on November 18, 2003, at 4:30 p.m. New York time, in the Board room at the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005 (the "Special Meeting"). The purpose of this Special Meeting is for you to consider and vote upon a proposal to approve an amended and restated Constitution, which provides for a number of significant changes to the governance of the NYSE, and to elect a new Board of Directors of the NYSE upon adoption of the amended Constitution. If elected, these directors will serve until the next annual meeting of members, scheduled for June 3, 2004.

The Interim Chairman of the Board recommends that you vote FOR the proposal to amend and restate the Constitution and FOR the election of the new Board of Directors. This Proxy Statement and the accompanying proxy card were first sent to members on November 4th, 2003.

Vote of Members; Notice; Quorum

Each regular member in good standing shall be entitled to one vote on the proposal to amend and restate the Constitution and on each position to be filled. Each physical access member in good standing shall be entitled to one vote, and each electronic access member in good standing who became such prior to March 30, 1986 shall be entitled to one-half vote. All members of record in good standing on the date of the mailing of notice are entitled to notice of the Special Meeting and those members in good standing as of the date of such meeting, or at any adjournment, are entitled to vote at the meeting. As of the date of this notice, there are 1365 regular members and 4 physical access members in good standing, and 2 electronic access members in good standing who became such prior to March 30, 1986 (one-half vote each).

The amended and restated Constitution shall be authorized by a majority of the votes cast by the members entitled to vote thereon, in person or by proxy, at the Special Meeting, if a quorum is present. Members entitled to cast a majority of the total number of votes entitled to be cast (1370), present in person or by proxy will constitute a quorum.

Proxies; Revocation

If you vote by signing a proxy, your votes at the Special Meeting will be cast as you indicate on your proxy card. If no instructions are indicated on your signed proxy card, your votes will be cast FOR the approval and adoption of the amended and restated Constitution and FOR the election of the new Board of Directors. If you cast your votes through the Internet or by telephone or fax, your votes will be cast at the Special Meeting as instructed.

You may revoke your proxy at any time before the proxy is voted at the Special Meeting. A proxy may be revoked prior to the vote at the Special Meeting in any of three ways:

- by submitting a written revocation dated after the date of the proxy that is being revoked to the Secretary of the New York Stock Exchange, Inc., 11 Wall Street, New York, NY 10005;
- by submitting a later-dated proxy by mail, telephone, fax or Internet; or
- by attending the Special Meeting and voting by paper ballot in person.

Attendance at the Special Meeting will not, in itself, constitute revocation of a previously granted proxy.

The NYSE will pay the costs associated with printing this Proxy Statement and soliciting proxies for the Special Meeting. Our officers and employees may solicit proxies by telephone, mail, the Internet or in person. We have retained MacKenzie Partners, Inc. to assist us in the solicitation of proxies, using the means referred to above, and will pay fees of up to \$15,000, plus reimbursement of out-of-pocket expenses.

Adjournments

If no quorum exists of members present or represented by proxy, the Special Meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter by members who are present or represented by proxy. If a quorum shall not then be assembled, the meeting shall be dissolved and the proposed amendment shall not become effective. At the adjourned meeting, if a quorum is present or represented by proxy, the members may transact any business that might have been transacted at the original meeting.

Confidential Voting

It is the Exchange's policy that all proxies, ballots, and voting tabulations, including telephone, Internet and fax voting, that identify members be kept confidential. The Exchange has engaged IVS Associates to count the votes represented by proxies, ballots and cast by phone. Creighton Dunlop and William Marsh, employees of IVS, will be appointed Inspectors. The Exchange will pay IVS a fee of \$5,500 plus reasonable out-of-pocket expenses for this service.

THE PROPOSALS

At the NYSE Special Meeting, NYSE members will be asked to vote upon a proposal to amend the Constitution to enhance the NYSE's corporate governance structure. To implement the proposed corporate governance reforms, members will also be asked to vote for the election of directors. Approval of the amendments to the NYSE Constitution is a condition to the election of the nominees for directors. Therefore, if NYSE members wish to approve the new slate of directors, they must also approve the amended and restated Constitution.

Background and Reasons for the Proposals

Recent events have demonstrated that the NYSE's corporate governance structure has not kept pace with either the best practices in corporate governance that have developed over the last three decades or the tremendous changes in the nature of the Exchange's constituents. Just as corporate America is re-examining and improving its own corporate governance in the context of a changing environment, so too must the NYSE.

In March 2003, Securities and Exchange Commission ("SEC" or "Commission") Chairman William H. Donaldson asked the New York Stock Exchange, Inc. and the other self-regulatory organizations to review their corporate governance in light of the broad review of governance practices throughout corporate America, to ensure that their governance structures and practices serve the public well. In April 2003, the NYSE Board created the Special Committee on Governance of the NYSE and charged it with reviewing the NYSE's governance with a view to making appropriate reforms. In June 2003, the Special Committee issued an Initial Report to the Board, which contained ten governance reforms that the Board put into effect immediately.

The Special Committee continued its work through the summer, reaching out to a broad range of individuals and organizations representing investors, listed companies and members. The Special Committee held five days of hearings in which it heard testimony from 32 groups and individuals. It received six additional written submissions from other interested parties. At the October 2, 2003 Board meeting, the Special Committee presented 33 recommendations for enhancing the NYSE's governance.

Interim Chairman Reed accepted his current position with the goal of revamping the Exchange's governance to resolve conflicts of interests and to increase transparency. He committed the NYSE to complying with the governance standards comparable to those to which its listed companies adhere, and to going beyond those standards in order to meet the special challenges of serving as both a marketplace and a self-regulatory organization.

Following further study, including extensive discussions with the NYSE's varied constituencies and the SEC, Interim Chairman Reed developed the governance structure that forms the basis of the Constitutional amendments: the engaged separation of the Board of Executives (constituent representatives) from the Board of Directors (independent fiduciaries). That approach departs from the approach espoused by the Special Committee, which struggled to retain independent directors and constituent representatives in the same governance body. However, the dual board approach otherwise extends the Special Committee's recommendations: except for five of them that cannot be addressed until the new Board is constituted, all of the Special Committee's

recommendations have been incorporated into the proposed amended and restated Constitution, either literally or in concept, or are otherwise reflected in this proxy statement.

Proposal to Amend and Restate the Constitution

The next several pages discuss in more detail than the cover letter many of the important changes that your vote will effect, and also provide collateral information. The amended and restated Constitution reflecting these changes is attached as Annex A to this proxy statement. In addition, attached as Annex B is the amended and restated Constitution marked to reflect the revisions from the existing Constitution. A diagram depicting the separate, but engaged, independent and constituent boards is attached as Annex C. While the cover letter and the discussions below seek to bring to your attention many of the important changes that your vote will effect, members are urged to carefully review the marked Constitution so they will see the specific language used to effect the new governance architecture.

Board Authority and Accountability

The Board of Directors, including its Chair, is ultimately responsible to the members of the Exchange (owners) and to the investing public for the performance of the NYSE. The Chair is specifically responsible for the proper functioning and the performance of the Board. To that end:

Operations

The Board will (a) overview the performance of the Exchange, its relationships with the investor, listed company and broker community and its role as a public voice, (b) overview the performance of the Exchange's responsibility as a regulator of the trading Floor, of the broker-dealer community and of listed companies and its relationship with other regulators, (c) overview management's assessment of the Exchange's exposure to risk, both in its regulatory and business functions, and (d) act as the final approval authority on the budget, with a separate process for the budget and staffing for the regulatory function, on major expenditures, technology spending and plans and rules or relationship changes. With regard to the above, the Board will understand management's plans and aspirations and will be kept current with regard to progress or problems related to them.

Strategy

The Board will be kept apprised of the strategic position of the Exchange and of the many currents impacting on the Exchange's evolution as a business and as a regulator. It will provide advice and counsel to the management and approve plans and decisions impacting this evolutionary pathway.

Behavior

The Board will assure appropriate behavior through the work of the Audit Committee and the Regulatory Oversight & Regulatory Budget Committee and through an annual assessment of management which takes into account both operational performance and its leadership behavior – emphasizing integrity, respect for the people and culture of the Exchange and its public role.

Management

The Board will assess management performance, create and oversee appropriate compensation and recognition practices, and hire/fire individuals in management positions as needed. The Board will ensure that appropriate management succession and development plans are in place and functioning.

Assessment

On an annual basis, in Executive session, the Board will discuss its own performance. It will at least ask each director to indicate (a) if the Board's responsibilities are clear, understood and appropriate, (b) if he/she feels that he/she has appropriate, timely and accurate information to reasonably meet his/her responsibilities, and (c) if the organization of the Board, its agendas, Board membership, time and discussions are appropriate to reasonably meet the Board's responsibilities. In each instance, if there is a negative view, ideas for improvement should be discussed, and, if appropriate, implemented. The process will be documented. Importantly, the Board will have the authority that boards of publicly-owned corporations have to amend its own governance by-laws to effect improvements, subject to a special provision for notice to members of proposed changes. Provided that a director is performing well, there is no need for him or her to face term limits and thereby sacrifice his or her familiarity with our unusual institution and institutional memory.

Board of Executives

Responsibilities

To engage with the senior management and the Board of Directors of the NYSE to review on an ongoing basis (a) Exchange performance, (b) membership issues, (c) listed company issues, and (d) public issues relating to overall market structure and performance.

Functioning

The Board of Executives will meet regularly (to start: six times per year), will populate committees jointly with the Board of Directors, and will engage in an annual self-appraisal to ensure continuing effectiveness comparable to that described above for the Board of Directors. The Board of Executives will be chaired by the NYSE Chair and include the CEO (if different).

Members

Approximately 20, appointed by the Board of Directors of the Exchange. It will be fairly balanced and include (a) executives of the major broker dealers, (b) representatives from the Floor, (c) lessor members, (d) executives of listed companies, and (e) executives of institutional investors and of large public funds. The Nominating & Governance Committee will solicit input from each constituent group for candidates to represent the group on the Board of Executives.

Governance and Management

The Board of Directors and its Chair are ultimately responsible for the performance of the Exchange, as seen by its owners, the public and its many professional constituencies.

The Chairman is specifically responsible for the proper functioning and performance of the Board.

The Board of Executives is an integral part of the governance process, advising NYSE senior management in both its operational responsibilities and its role as a public spokesperson. The composition, meetings and agenda of the Board of Executives are designed to ensure that the Exchange meets the operational performance requirements of its constituent parties: the Floor community, member organizations, the listed companies and investors, large and small . . . also to provide comment about the regulatory functions – working to ensure that these are tough, but practical and fair . . . and finally, to bring the constituents’ point of view to senior management’s role as a spokesperson for the U.S. capital markets.

The Board of Directors will meet at least quarterly, and the Board of Executives, at least six times a year. The Board of Directors will join with the Board of Executives on dates when their meetings overlap (probably two to three meetings) and then move to their own Committee and Board sessions.

There are three types of committees: those including directors only (Nominating & Governance, Audit, Regulatory Oversight, and Compensation); those drawn from both boards but with a voting majority of directors (Regulation, Enforcement & Listing Standards); and those drawn from both boards without designated composition (Market Structure & Strategy, Quality of Markets/Public Policy and Finance). All committees will report to the Board.

Each Board and, as appropriate, committee will define a self-assessment procedure which will be appropriately documented. Board processes are expected to improve in response to these assessments.

Below are discussed five areas of particular concern: regulatory function; hiring, firing, compensation and succession; nominations; the engagement of the Board of Directors with the Board of Executives; and engagement with the membership.

Regulatory Function

The proposed architecture provides for a strong, vigorous and independent regulatory function. The Board will hire a Chief Regulatory Officer whose line reporting relationship will be to the Board’s Regulatory Oversight & Regulatory Budget Committee. The Board Regulatory Oversight Committee will determine the Exchange’s regulatory plan, programs, budget and staffing proposals annually and will be responsible for assessing our regulatory performance and for recommending compensation and personnel actions involving senior regulatory personnel to the Board’s Compensation Committee. The CEO’s views on the regulatory function, its plans, programs, staffing and budget will be sought, but the Regulatory Oversight Committee’s views on regulatory performance will be recommended through the Compensation Committee to the full Board for approval.

Hiring, Firing, Compensation and Succession

The Board of Directors has the responsibility to hire/fire and compensate the NYSE’s senior management, and ensure that an appropriate succession plan is in place. The Board’s Human Resources & Compensation Committee will keep current on appropriate benchmarks that will inform compensation recommendations and will evaluate the NYSE’s performance and that of

key individuals and major units each year as a part of the annual review process. Performance will include “hard measures” such as market share, listing activities, revenues and expenses, but also “softer issues” such as the working environment, culture and morale of the various groups that make up the Exchange, progress that is being made in relationship with the ongoing discussions about market structure and performance, and the relationships of the NYSE with its many constituencies and the SEC. The CEO will interact with the Committee on both compensation and performance (other than his or her own), but the Committee’s ultimate decisions will be made in executive session without either management or staff present. The recommendations of the Committee and those that are forwarded from the Regulatory Oversight Committee will be reported to the full Board for its approval.

Nominations

A six to twelve person Board will be composed of individuals who are “independent” and owe their loyalty to the NYSE. The Board will set the size of its membership within these parameters and can change the size as appropriate between annual meetings. The Nominating & Governance Committee is responsible for proposing a slate of directors for election by the members, except that two or three nominees will be proposed by the Industry Members of the Board of Executives in order to comply with the requirements of the Securities Exchange Act of 1934 (the “Act”) regarding the fair representation of members. Nominees will be selected on the basis of their competence to fulfill the duties and responsibilities of a director – however, a special process will be created to solicit potential candidates who are both qualified and independent from the management and from regulated constituents. If such person is nominated and elected he/she becomes a director with all the attendant obligations and duties and in no way can represent any special interests.

Engagement of the Board of Directors with the Board of Executives

Outlined above are the duties, responsibilities and composition of the Board of Directors, of the Board of Executives, and of the Committees, including joint participation on membership and marketplace issues. As the keystone to the engagement between the two boards, the Board of Directors will meet with the Board of Executives from time to time but, in addition, the Board of Directors will always meet alone. Discussion of issues of importance to the industry involving NYSE operations, regulatory issues and listing functions (other than individual disciplinary or delisting cases) will be the subject of Board of Executives meetings, as will be discussions of market structure and performance. The operating (non-regulatory) budget of the NYSE and other financial issues will be the subject of discussion at meetings of the Finance Committee, which is joint, because the NYSE’s revenue comes from the constituents represented on the Board of Executives and they should have an appropriate forum to discuss revenues, expenses, and related financial issues (taxation and representation). However, specific proposals that are recommended by the Finance Committee must come to the Board of Directors for ultimate approval, just as recommendations of the Board of Executives about operating issues or strategic issues ultimately are advisory to the Board of Directors (though the weight of judgment and expertise on the Board of Executives will clearly be of importance). In areas where expertise is clearly at the Board of Executives, the Board of Directors may solicit the advice and expertise of the Board of Executives, but may not delegate ultimate responsibility.

Engagement with the Membership

The proposed architecture recognizes the need to engage fully and substantively with the membership through: (a) the direct election of directors, (b) the ability to propose nominations to the Board through their representatives on the Board of Executives and by direct petition, (c) the ability to require special votes by the membership (including for the recall of directors for cause), (d) their representation on the Board of Executives and on standing Committees, (e) the occasion to meet annually through their representatives with the Board of Directors to bring special concerns of the membership to the attention of the Board, and (f) the ability of members to come to the annual meeting and propose resolutions on that occasion.

Advisory Committees

The Board of Directors will maintain several advisory committees. The advisory committees will consist primarily of constituent representatives not serving on the Board of Executives. Like the Board of Executives, the advisory committees will be organized to represent a range of constituencies, helping the Board of Directors and management to hear regularly from all of the Exchange's constituencies and to maintain a broad perspective on the market and its participants.

By way of example, at present the Individual Investors Advisory Committee, the Institutional Traders Advisory Committee and the Pension Managers Advisory Committee represent various investor interests. The Listed Company Advisory Committee, which represents the views of the U.S. listed companies, has European, Latin American and Pacific Rim counterparts. In addition, a number of advisory committees represent diverse industry interests, such as the Exchange Traders Advisory Committee and the Upstairs Traders Advisory Committee. Finally, the Legal Advisory Committee draws practitioners from law firms and the legal staffs of institutional investors, member organizations and listed companies, as well as law professors.

Other Governance Reforms

In addition to the governance reforms that require Constitutional amendments discussed above, the Exchange will implement other reforms that do not require Constitutional amendment. Certain of these reforms were implemented by the Board in June 2003, based on the recommendation of the Special Committee on Governance of the NYSE. Other reforms were recommended by the Special Committee at the October 2003 Board meeting. The reforms listed below, which meet, and when appropriate, exceed the disclosure requirements imposed on the Exchange's listed companies, are designed to further enhance the transparency and accountability of the Board.

Publication and Disclosure

In addition to the various transparency initiatives that the cover letter notes, the Exchange will:

- Adhere to the SEC's proposed rule regarding director nominating committee responsibilities, including, among other things, disclosure concerning the Exchange's policy regarding consideration of individuals recommended by the public as potential nominees to the Board; the procedures enabling the public to suggest nominees; and the

process for identifying and evaluating nominees and any differences in evaluation if the nominee is recommended by the public.

- Periodically update and post on the NYSE's web-site written governance principles and the Exchange's codes of business conduct and ethics.

Governance Procedures and Policy

In addition to the various detail on governance procedure and policy that the cover letter notes:

- The Finance Committee is expected to be responsible for recommending the non-regulatory budget of the Exchange to the Board for its review and approval, and fee changes to the Board of Directors, if appropriate. The Market Structure & Strategy Committee is expected to be responsible for examining issues of the Exchange's market structure and competitive position. Finally, the Quality of Markets Committee is expected to advise the Board on member and listed company rules and oversee the Market Performance Committee and the Allocation Committee.
- The Exchange will prohibit service by NYSE employees on the boards of directors of business corporations. The NYSE's Officers' and Employees' Statement of Business Conduct and Ethics already prohibits such service, but authorizes the Board to waive the provisions (subject to firewalls). Waivers are currently in effect until no later than Spring 2004 with respect to the service of the Presidents on the boards of two public companies.

Other Issues

During the several weeks preceding the mailing of this proxy statement, members have identified a variety of other important issues outside the scope of addressing our governance and process failures. These issues include, among others, proposals for changing the Gratuity Fund, for permitting the transfer of memberships to trusts and other juridical persons, for reducing the number of outstanding trading rights by eliminating the physical access membership or by the Exchange buying back regular memberships, and for separating the trading right from the equity ownership of the Exchange. In some cases, addressing these issues requires amending the Exchange's certificate of incorporation; others raise access issues as to which the SEC can be expected to have strong views. Some of the issues may also be controversial given the current 50/50 split between member owners affiliated with member organizations and those who are not. (The 688 of our 1366 regular members (1/2 is 683) who are not so affiliated are composed of 415 retired members, 35 widows and other relatives of deceased members, 86 estates and 152 members who themselves or their family members have never been so affiliated.)

Each of these issues requires thoughtful consideration by an unconflicted Board. Therefore, these important issues will be placed on the agenda of the new Board for its consideration in the coming months. The directors will report to you on these issues, among others, at the next annual meeting in June 2004.

Note in this connection that, under State law, the NYSE is required to have an annual meeting for the election of directors. While the fact that the entire new Board will stand for election a mere six months after taking office arguably makes elections premature, these elections will provide an

early check on the new Board's progress towards implementation of our ambitious restructuring of our governance, as well as its progress in addressing these issues.

“Fast Track” Issues

The extraordinary circumstances under which the restated and amended Constitution is being proposed and the initial Board of Directors is being constituted caused the Exchange to dispense, in whole or in part, with certain requirements under the current Constitution, including (a) use of the Nominating Committee to nominate directors, (b) the opportunity for members to petition to nominate additional director candidates, and (c) approval of the proposed amendments by the current Board of Directors in accordance with the prescribed time frames.

In light of these extraordinary circumstances, it is possible that other governance reforms may be appropriate, or that those included in the amended and restated Constitution or in this proxy statement may require modification. The Exchange will have several means of addressing such issues, if they arise, including: (a) amendment of the Constitution by the members, (b) amendment by the Board of those provisions of the Constitution that permit such amendment by the Board, subject to the requirement that the membership be notified in advance, and (c) to the extent consistent with the Constitution, adoption by the Board of appropriate rules, various charters and other ancillary documents.

Effectiveness of Constitutional Amendments

The NYSE is a self-regulatory organization and national securities exchange registered with the SEC pursuant to the Act. The NYSE is required to file with the SEC copies of any proposed rule change, including these Constitutional amendments. Under the Act, unless otherwise permitted, these Constitutional amendments will not take effect until approved by the SEC. The Act provides for public notice of these Constitutional amendments, for public comment, and for specific time periods for SEC action.

PROPOSAL 1 — Constitutional Amendments

The Interim Chairman of the Board recommends a vote FOR adoption of the following resolution, which will be presented at the meeting:

RESOLVED, that the recommendation by the Interim Chairman of the Board to amend and restate the Constitution in the form attached as Annex A to this Proxy Statement be and hereby is approved.

PROPOSAL 2 —Election of Directors

The Interim Chairman of the Board recommends a vote FOR the election of the following directors:

- 1) Madeleine K. Albright
- 2) Herbert M. Allison, Jr.
- 3) Euan D. Baird
- 4) Marshall N. Carter
- 5) Shirley Ann Jackson
- 6) James S. McDonald
- 7) Robert B. Shapiro
- 8) Sir Dennis Weatherstone

NOMINEES FOR ELECTION AS DIRECTORS

The number of directors to be elected is eight (8). The designated proxy holders of the Exchange intend, unless otherwise instructed, to vote all proxies for the election of the following eight nominees. If elected, they will hold office until the next annual meeting (June 2004), or until their successors are elected and qualified. Thereafter the Board will stand for election every year. The following provides information about each nominee as of November 4, 2003, including his or her business background.

Name, Principal Occupation and Certain Directorships **Age**

MADELEINE K. ALBRIGHT 66

Dr. Albright served as the 64th Secretary of State of the United States. She was the first female Secretary of State and is the highest-ranking woman in the history of the U.S. government. Her autobiography, *Madam Secretary: A Memoir*, was published in September 2003. Dr. Albright is the founder of The Albright Group LLC, a global strategy firm. Dr. Albright is the first Michael and Virginia Mortara Endowed Distinguished Professor in the Practice of Diplomacy at the Georgetown School of Foreign Service and the first Distinguished Scholar of the William Davidson Institute at the University of Michigan Business School. She is also the Chairman of The National Democratic Institute for International Affairs, Chair of The PEW Global Attitudes Project and President of the Truman Scholarship Foundation. From 1993–1997, Dr. Albright served as the United States Permanent Representative to the United Nations and as a member of the President’s Cabinet and National Security Council. In 1995, she led the U.S. delegation to the UN’s Fourth World Conference on Women in Beijing, China. Dr. Albright was the Director of Women in Foreign Service Programs and a Research Professor of International Affairs at Georgetown University during the decade prior to her return to public service. From 1989–1992, she was President of the Center for National Policy, a non-profit public policy organization based in Washington D.C. From 1978–81, Dr. Albright was a member of President Carter’s National Security Council and White House staff. From 1976–78, she served as Chief Legislative

Assistant to U.S. Senator Edmund S. Muskie. Dr. Albright received her B.A. with Honors from Wellesley College, Masters and Doctorate from Columbia University's Department of Public Law and Government, as well as a Certificate from the Russian Institute.

HERBERT M. ALLISON, JR. 60

Mr. Allison became chairman, president and chief executive officer of Teachers Insurance and Annuity Association and College Retirement Equities Fund (TIAA-CREF) on November 1, 2002. He joined TIAA-CREF after a 28-year career at Merrill Lynch & Co., where he last served as president and chief operating officer. After leaving Merrill Lynch in mid-1999, Mr. Allison served as national finance chairman for Senator John McCain's presidential campaign. Prior to his move to TIAA-CREF, he was president and chief executive officer of the Alliance for Lifelong Learning, a nonprofit venture of Oxford, Stanford and Yale universities. Mr. Allison is currently vice chairman of the United Negro College Fund and serves on the Yale Investment Committee, and on the Advisory Council of the Yale School of Management. President George W. Bush recently appointed him to the board of the Vietnam Education Foundation, a new federal agency, which he now chairs. Mr. Allison is a former board member of the National Association of Securities Dealers and Nasdaq and past chairman of the Stanford Business School Advisory Council. He graduated from Yale College and served as an officer in the U.S. Navy before earning an M.B.A. from Stanford.

EUAN D. BAIRD 66

Mr. Baird, a native of Aberdeen, Scotland, is the Chairman of Rolls-Royce plc, having been appointed in February 2003. He is also the retired Chairman, President and Chief Executive Officer of Schlumberger. Mr. Baird joined Schlumberger in 1960 as a field engineer and was elected Chairman of the Board, President and Chief Executive Officer in 1986. He retired from Schlumberger in 2003. Mr. Baird currently serves as Trustee of the Carnegie Institution of Washington since 1998; as Trustee of the Tocqueville Alexis Fund (formerly the Haven Fund) since 1994; as a member of the Prime Minister's Council of Science and Technology in the UK since 2000; as a member of the Advisory Committee of Banque de France since November 2001; and on the Boards of ScottishPower, Areva, and Société Générale since 2001; and on the Board of InterContinental Exchange since 2002. He attended Aberdeen University and Trinity College, Cambridge receiving an M.A. in Geophysics from Cambridge University in 1960. He also received a D.Sc. from Heriot-Watt University in 1999 and LL.D degrees from Aberdeen University in 1995 and Dundee University in 1998.

MARSHALL N. CARTER 63

Mr. Carter was the Chairman and Chief Executive Officer of the State Street Bank and Trust Company, and of its holding company, State Street Corporation, from 1992–2001. He joined State Street in July 1991, as President and Chief Operating Officer, became Chief Executive Officer in 1992 and Chairman in 1993. A former Marine Corps officer who was awarded the Navy Cross and Purple Heart during two years' service in Vietnam, Mr. Carter served from 1975–1976 as a White House Fellow at the State Department and Agency for International Development. Prior to joining State Street, Mr. Carter was with the Chase Manhattan Bank for 15 years. Mr. Carter is the Chairman of the Board of Trustees of the Boston Medical Center. He is also on the Board of Directors of Honeywell International, Inc. He has previously served on

the boards of CEDEL, Euroclear, and National Securities Clearing Corporation, and was the Co-chairman of the U.S. Working Group of Thirty between 1988 and 1995, which developed recommendations for revamping world securities clearance and settlement processes. He was also the Chair of the Massachusetts Governor’s Special Advisory Task Force on Logan Airport and Massport following the events of September 11th. Mr. Carter holds a B.S. in civil engineering from the U.S. Military Academy at West Point (1962), an M.S. in operations research and systems analysis from the U.S. Naval Postgraduate School, Monterey, California (1970), and an M.A. in Science, Technology and Public Policy from George Washington University (1976).

SHIRLEY ANN JACKSON 57

Dr. Jackson is the 18th President of Rensselaer Polytechnic Institute. In 2001, Dr. Jackson became the first African-American woman elected to the National Academy of Engineering. She is also a Fellow of the American Academy of Arts and Sciences and the American Physical Society, and a Life Member of the M.I.T. Corporation (Board of Trustees). She is President-Elect of the American Association for the Advancement of Sciences. Prior to becoming President of RPI in 1999, Dr. Jackson was Chairman of the U.S. Nuclear Regulatory Commission. Previously she was a Theoretical Physicist at the former AT&T Bell Laboratories and a professor at Rutgers University. Dr. Jackson serves on the Executive Committee of the Council on Competitiveness, the Council of the Government-University-Industry Research Roundtable, the U.S. Comptroller General’s Advisory Committee for the Government Accounting Office, and formerly served on the Advisory Council for the Department of Energy National Nuclear Security Administration. Dr. Jackson also serves on the Boards of Trustees of Pingry School, Emma Willard School, Rockefeller University, Georgetown University, MIT, Woodrow Wilson Foundation, Brookings Institution, Universities Research Association, and Argonne National Laboratory. Dr. Jackson is a director at Federal Express Corporation, Public Service Enterprise Group Incorporated, Sealed Air Corporation, Marathon Oil Corporation, United States Steel Corporation, Medtronic, Inc., and AT&T. Dr. Jackson holds a Ph.D. in theoretical physics from M.I.T., a B.S. in physics from M.I.T. and 18 honorary doctoral degrees.

JAMES S. MCDONALD 50

Mr. McDonald is the President and Chief Executive Officer of Rockefeller & Co., Inc. He is also a member of the Board of Directors of Rockefeller & Co., Inc. and Rockefeller Financial Services. Prior to joining Rockefeller & Co., Inc., from 1986 to 2000, Mr. McDonald was a senior officer and director of the Pell, Rudman organization. Among other positions, he served as President and Chief Executive Officer of that organization, now known as “Atlantic Trust/Pell Rudman.” Prior to joining Pell, Rudman, he was a partner with the Boston law firm of Choate, Hall & Stewart, which he joined in 1977. In addition, Mr. McDonald is a Trustee Emeritus of the Fessenden School, Newton, Massachusetts (President, 1993-1999), and a member of the Investment Committees of The United States Holocaust Memorial Museum, Washington, D.C., the Nightingale School, New York, N.Y., and the Japan Society of New York. He is a member of the Harvard University Committee on Asia Activities, and has been active in other community activities. He received a J.D. in 1977 from the University of Virginia and an A.B. from Harvard College in 1974.

ROBERT B. SHAPIRO 65

Mr. Shapiro is the former Chairman and Chief Executive Officer of Monsanto Company and the former Chairman of Pharmacia Corporation. He became Monsanto's President and Chief Operating Officer in 1993; Chairman and Chief Executive Officer in April 1995; and was appointed Chairman of Pharmacia Corporation in April 2000 following the merger of Monsanto Company and Pharmacia and Upjohn, a position he relinquished in February, 2001. Previously, he was Vice President, General Counsel for General Instrument Corporation and served as an attorney with the New York law firm of Poletti, Freidlin, Prashker, Feldman & Gartner. Mr. Shapiro served as Special Assistant to the General Counsel and later to the Undersecretary of the U.S. Department of Transportation. He has served under previous appointments on the President's Advisory Committee on Trade Policy under President Clinton; White House Domestic Policy Review of Industrial Innovation under President Carter; the Civil Aeronautics Board Advisory Committee on Procedure; and the Massachusetts Governor's Task Force on Transportation. Mr. Shapiro is a member of the American Society of Corporate Executives and The Business Council. Mr. Shapiro has received many awards including: the 1999 Emerging Markets CEO of the Year Award, the John R. Miller award as the Outstanding Corporate Marketing Executive in 1984, and the Special Citation for Outstanding Achievement from Sales and Management Magazine. Mr. Shapiro is a graduate of Harvard University and Columbia University School of Law.

SIR DENNIS WEATHERSTONE 72

Sir Dennis Weatherstone is past Chairman and Chief Executive Officer of J.P. Morgan & Co., having served in those roles from 1990–1994. From 1995–2001 he served as an independent member of the Board of Banking Supervision of the Bank of England (later the Financial Services Authority). He began his career in 1946 at the Guaranty Trust Company. Sir Dennis Weatherstone is an Associate of the Institute of Chartered Secretaries and Administrators and a Fellow of the Chartered Institute of Bankers. He is a Director of Air Liquide and previously General Motors Corporation and Merck & Co., Inc. Sir Dennis Weatherstone is a Director of the Institute for International Economics, a Trustee of the Alfred P. Sloan Foundation, Chairman of the Royal College of Surgeons Foundation in New York, and an Honorary Fellow of the Associate of Corporate Treasurers (London). He was recently elected a Trustee of the International Accounting Standards Committee Foundation.

OTHER MATTERS

The Exchange knows of no matters to be presented at the meeting other than those included in the Notice preceding this Proxy Statement. If other matters should come before the meeting which require a membership vote, it is intended that the proxy holders will use their own discretion in voting on such other matters.

Annex A & B are not included with this document as filed. The Amended Constitution, market for changes, is attached as Exhibit A to this filing.

The diagram in Annex C is available on the NYSE's website.

November 4, 2003

Dear Member:

After we “went to the printers” with the enclosed proxy statement, we discovered the need to clarify several points on the “fast track” authority and the independence of the regulatory function.

First, I neglected to subject to the SEC process my expectation that the new boards would begin operating immediately. While I will immediately begin to work with the new boards, their actions will have no legal effect under the federal securities laws until the SEC approves our new Constitution.

Second, my description in the proxy statement of the interaction of the CEO with the Regulatory Oversight Committee should read:

“The CEO’s views on the regulatory function, its plans, programs, staffing and budget may be sought, but the Regulatory Oversight Committee’s views on compensating regulatory personnel will be recommended through the Compensation Committee to the full Board for approval.”

Finally, the new Constitution includes provisions to assure the separation and independence of the regulatory function from the Exchange’s marketplace function and from inappropriate influence by members and member organizations. To further clarify and underscore this separation, we need to make some additional changes.

The new Constitution permits your new Board to amend four of its 16 articles. At its organizational meeting, I will present specific language for approval and filing with the SEC. Those further changes will:

- Codify the authority of the Audit Committee to hire its own counsel.
- Clarify that the CEO is recused from Board deliberations on the activities of the Standing Committees specified in Article IV, Section 12(a).

- Clarify that rulemaking on the subjects described in Article IV, Section 14(a) as normally confined to the Board or its committees may, if necessary, be authorized by an officer of the Exchange in between board meetings, subject to informing the Board at its next meeting, and to the approval of the Chief Regulatory Officer if on a regulatory matter.
- Clarify in Article VI, Section 1 that the President does not appoint regulatory officers, and in Section 3 that the CEO's responsibilities are subject to the specific provisions elsewhere in the Constitution regarding the separation of the regulatory functions.

I apologize for the need to supplement the proxy statement, but it is important to make clear to all the independence of our regulatory function under our proposed new architecture.

Best,

/s/John S. Reed

John S. Reed