

**File No. SR-Amex-2004-50
Amendment No. 2**

EXHIBIT B

**AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
AMERICAN STOCK EXCHANGE LLC**

Dated as of [_____,
2004]

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**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
AMERICAN STOCK EXCHANGE LLC**

This LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of AMERICAN STOCK EXCHANGE LLC, a Delaware limited liability company (“Amex”), is entered into as of [_____, 2004] (the “Effective Date”), by and between The Amex Membership Corporation, a New York Type A not-for-profit corporation (“MC”), and AMC Acquisition Sub, Inc., a Delaware corporation and a wholly owned subsidiary of MC (“MC Sub”), as Participants. The term “participant” as used in this Agreement shall mean “member” under Section 18-101 of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (as amended from time to time, the “Act”). Certain terms used in this Agreement are defined in Article XII.

WHEREAS, Amex was formed by the filing of the Certificate of Formation of Amex (as it may be amended from time to time, the “Certificate”) with the Secretary of State of the State of Delaware on April 6, 1998 and has operated pursuant to the terms of the Limited Liability Company Agreement of New Amex LLC dated as of October 30, 1998 (the “Previous Limited Liability Company Agreement”);

WHEREAS, simultaneously with the execution and delivery of this Agreement and pursuant to the Transaction Agreement, dated as of February 7, 2004, by and among the National Association of Securities Dealers, Inc. (“NASD”), New NASD Holding Corp. (“Holdco”), Amex and MC (the “Transaction Agreement”), MC has the right to acquire the Class B Interest from Holdco;

WHEREAS, MC has assigned to MC Sub all of its rights under the Transaction Agreement to acquire the Class B Interest from Holdco;

WHEREAS, simultaneously with the execution and delivery of this Agreement and the transactions contemplated by the Transaction Agreement, MC Sub shall become the holder of the Class B Interest (together with the other classes of limited liability company interests listed in Section 7.1, the “Participation Interests” and each, a “Participation Interest”); and

WHEREAS, MC and MC Sub, as participants of Amex (collectively, the “Participants” and each, a “Participant”), wish to amend and restate the Previous Limited Liability Company Agreement in its entirety in order to set forth their agreement with respect to the operation of Amex.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I. FORMATION

Section 1.1 Formation and Duration. Amex was formed upon the filing of the Certificate with the Office of the Secretary of State of the State of Delaware pursuant to the Act on April 6, 1998 and the term of Amex shall continue until dissolved and wound up pursuant to Sections 10.1 and 10.3. The existence of Amex as a separate legal entity shall continue until the cancellation of the Certificate as provided in the Act. This Agreement amends and restates the Previous Limited Liability Company Agreement in its entirety.

Section 1.2 Agreement. MC was admitted as a Participant of Amex on October 30, 1998, and shall continue to be a Participant of Amex. MC Sub shall be admitted as a Participant of Amex as of the date of this Agreement upon its execution and delivery of this Agreement or a counterpart signature page to this Agreement. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participants executing this Agreement hereby agree to the terms and conditions of this Agreement, as it may from time to time be amended. Except as otherwise expressly set forth herein and, except to the extent a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Treasury Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different from, the provisions of the Act or any other law or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be deemed to be amended to the least extent necessary to make this Agreement effective under the Act. If the Act is subsequently amended or interpreted in such a way as to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Participants hereby continue the existence and operation of Amex as a limited liability company under and pursuant to the provisions of the Act, and agree that the rights, duties and liabilities of the Participants shall be as provided in the Act, except as otherwise provided herein.

Section 1.3 Name. The name of Amex is American Stock Exchange LLC, and all business of Amex shall be conducted under that name.

Section 1.4 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Certificate. The Participants may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State of the State of Delaware. If the registered agent ceases to act as such for any reason or the registered office shall change, the Participants shall promptly designate a replacement registered agent or file a notice of change of address, as the case may be.

Section 1.5 Principal Office. The Principal Office of Amex shall be located at 86 Trinity Place, New York, New York, 10006. The Principal Office of Amex

may be changed by the Board of Governors of Amex (the “Board of Governors”) to another location within the New York metropolitan tri-state area.

Section 1.6 Purposes. The purposes of Amex shall be as set forth in the Constitution.

Section 1.7 Limitation of Liability. The liability of each Participant and each employee of Amex to third parties for obligations of Amex shall be limited to the fullest extent provided in the Act and other applicable law.

ARTICLE II. ACCOUNTING AND RECORDS

Section 2.1 Records to be Maintained. Amex shall maintain its books and records at the Principal Office or at other locations within the United States as may from time to time be designated by the Board of Governors, including the following:

- (a) a current list of the full name, set forth in alphabetical order, and last known mailing address of each Participant, together with the additional information set forth on Schedule I relating to each Participant’s respective Participation Interest;
- (b) a current list of the full name, set forth in alphabetical order, and last known mailing address of each holder of a Regular Trading Right, each holder of an Options Principal Trading Right, each holder of Limited Trading Permit and each holder of any additional Trading Right permitted to be issued by Amex;
- (c) a copy of the Certificate and all amendments thereto;
- (d) a copy of the Constitution and all amendments thereto;
- (e) a copy of the Rules and Regulations and all amendments thereto;
- (f) a copy of Amex’s federal, state and local income or information tax returns and reports for the three most recent Fiscal Years;
- (g) a copy of this Agreement, including all amendments hereto; and
- (h) Amex’s other books and records, including financial statements of Amex, which shall be open to inspections by the Participants or their agents for any purpose reasonably related to the Participant’s Participation Interest in Amex at reasonable times.

MC shall maintain and make available to Amex a current list of the full name, set forth in alphabetical order, and last known mailing address of each of its Regular Members and Options Principal Members.

Section 2.2 Reports to Participants. Within ninety (90) days after the close of each Fiscal Year, Amex shall prepare and make available to each Participant an annual report containing the following information as of the end of such Fiscal Year:

- (a) the Book Value of the assets and liabilities of Amex;
- (b) the Net Profit or Net Loss of Amex;
- (c) such Participant's Capital Account balance, and the manner of its calculation; and
- (d) certified financial statements of Amex prepared in accordance with GAAP.

Nothing contained in this Section 2.2 shall be construed to derogate from the rights of the Participants under Section 18-305 of the Act.

Section 2.3 Tax Information. Amex shall use its best efforts to supply to each Participant within ninety (90) days after the close of each Fiscal Year all information required by the Code and Treasury Regulations or otherwise necessary for the preparation of such Participant's federal, state and local income tax returns. If Amex is unable to supply all such information by this deadline, it shall supply an estimate of the taxable income or loss allocable to each Participant prior to the deadline and shall supply the complete information within two hundred and forty (240) days after the end of the Fiscal Year.

ARTICLE III. CERTAIN TAX MATTERS

Section 3.1 Tax Matters Partner. MC shall be the "tax matters partner" (as such term is defined in section 6231(a)(7) of the Code and in any similar capacity under applicable state or local tax law) of Amex ("Tax Matters Partner"), and shall not resign as the Tax Matters Partner unless, on the effective date of such resignation, Amex has designated another Participant as Tax Matters Partner and such Participant has given its consent in writing to its appointment as Tax Matters Partner.

Section 3.2 Authority of Tax Matters Partner. The Tax Matters Partner shall use its reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including the Regulations promulgated thereunder). Amex shall use its best efforts to assist the Tax Matters Partner in fulfilling its responsibilities as the Tax Matters Partner.

Section 3.3 Preparation of Tax Returns and Other Tax Forms. The Tax Matters Partner has designated Amex to prepare (or cause to be prepared) Amex's Tax Returns, and Amex shall pay any taxes due in respect of such Tax Returns. Amex shall prepare each such Tax Return in a manner consistent with past practice, except as otherwise required by law, and shall deliver any such tax returns to the Tax Matters

Partner at least ten (10) days prior to the date such Tax Return is required to be filed. The Tax Matters Partner shall timely file each such Tax Return. The Tax Matters Partner has designated Amex to prepare (or cause to be prepared) all other forms required to be submitted on behalf of Amex to a taxation authority.

Section 3.4 Classification as a Partnership. The parties hereto intend Amex to be classified as a partnership for Federal income tax purposes effective as of the date of this Agreement. Amex shall, for and on behalf of Amex, take all steps as may be required to maintain Amex's classification as a partnership for Federal income tax purposes, including, if necessary, affirmatively filing Internal Revenue Service Form 8832 no later than 75 days after the effective date of this Agreement. By executing this Agreement, each of the parties hereto consents to the authority of the Amex to make any such election and shall cooperate in the making of such election (including providing consents and other authorizations that may be required).

ARTICLE IV. CAPITAL CONTRIBUTIONS; OTHER FINANCING; INTERESTS IN AMEX

Section 4.1 [Reserved.]

Section 4.2 Capital Accounts. Amex shall maintain a separate capital account (a "Capital Account") for each Participant on the books of Amex. MC Sub's initial Capital Account shall be an amount equal to the amount of Holdco's Capital Account immediately prior to the Effective Date and MC's initial Capital Account shall be equal to the amount of MC's Capital Account immediately prior to the Effective Date.

- (a) The Capital Account for each Participant shall be increased subsequently by:
- (i) the amount of any money or the fair market value of any property contributed by the Participant to Amex;
 - (ii) the amount of any Net Profits allocated to the Participant pursuant to Section 4.5; and
 - (iii) the amount of any Amex liabilities assumed by such Participant or secured, in whole or in part, by any Amex assets that are distributed to such Participant.
- (b) The Capital Account for each Participant shall be decreased by:
- (i) the amount of any money or the fair market value of any property distributed to the Participant pursuant to Section 4.6 or Article X;
 - (ii) the amount of any Net Losses allocated to the Participant pursuant to Section 4.5; and

(iii) the amount of any Participant liabilities assumed by Amex or secured, in whole or in part, by any property of the Participant that is contributed to Amex.

(c) In the event any Person becomes a substituted Participant in accordance with the provisions of Article IX, such substituted Participant shall succeed to the Capital Account of the transferor Participant to the extent such Capital Account relates to the transferred interest (or portion thereof).

(d) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations.

Section 4.3 Withdrawal of Capital; Limitation on Distributions. No Participant shall be entitled to withdraw any part of its Capital Contributions to, or to receive any distributions from, Amex except as provided in Section 4.6 and Article X. No Participant shall be entitled to demand or receive (i) interest on its Capital Contributions or (ii) any Property from Amex other than cash.

Section 4.4 No Obligation to Restore Deficit Balance. No Participant shall be required to restore any deficit balance in its Capital Account.

Section 4.5 Allocation of Net Profits and Net Losses. Net Profits and Net Losses shall be allocated to the Capital Accounts of the Participants as follows:

(a) 99% of the Net Profits and Net Losses shall be allocated to the Class A Interestholder.

(b) 1% of the Net Profits and Net Losses shall be allocated to the Class B Interestholder.

Section 4.6 Distributions.

(a) Distributions shall be made to each Participant in such amounts, and at such times, sufficient to enable each Participant to pay any administrative or organizational costs or expenses required to be paid by it and any costs and expenses relating to any indemnification or reimbursement obligations under such Participant's organizational documents.

(b) A Tax Distribution shall be made to each Participant in an amount, and at times, sufficient (after taking into account any amounts withheld or required to be withheld in connection with such Tax Distribution) to enable such Participant to pay its federal, state and local tax liabilities.

(c) Other Distributions shall be made to the Participants at such times and in such amounts as are determined by the Board of Governors; provided,

however, that no Distribution shall include revenues received by the Exchange from regulatory fines, fees or penalties.

(d) Distributions to the Participants (other than Tax Distributions and Distributions made in accordance with Section 4.6(a)) shall be in apportioned in proportion to the Capital Accounts of the Participants.

(e) Notwithstanding any provision to the contrary contained in this Agreement, Amex, and the Board of Governors on behalf of Amex, shall not be required to make a distribution to any Participant on account of its interest in Amex if such distribution would violate Section 18-607 of the Act or other applicable law.

(f) Distributions in connection with the liquidation or winding up of Amex shall be made in accordance with Section 10.3.

Section 4.7 Book Value of Amex Property.

(a) Except as provided below in this Section 4.7, the Book Value of each item of Amex property shall be its federal income tax basis.

(b) Upon its contribution to Amex, the Book Value of an item of Property contributed to Amex shall be its fair market value.

(c) The Board of Governors may determine, from time to time, that the Book Value of items of Property of Amex be increased or decreased to their fair market values upon:

(i) A contribution to Amex by a new or existing Participant in consideration for an interest in Amex;

(ii) A liquidation and winding up of Amex or a Distribution to a Participant in redemption of an interest in Amex; or

(iii) Such other events as the Board of Governors may determine, from time to time, to be appropriate.

(d) When the Book Value of an item of Property of Amex differs from its basis for federal or other income tax purposes, solely for purposes of the relevant tax and not for purposes of computing Capital Account balances, Gross Income, gain, loss, Deduction and credit shall be allocated among the Participants under the traditional method without curative allocations under Treasury Regulation Section 1.704-3(b).

Section 4.8 Withholding Taxes.

(a) If requested by Amex, each Participant shall, if able to do so, deliver to Amex: (1) an affidavit in form satisfactory to Amex that the Participant

is not subject to withholding under the provisions of any federal, state, local, foreign or other law; (2) any certificate that Amex may reasonably request with respect to any such laws; and/or (3) any other form or instrument reasonably requested by Amex relating to any Participant's status under such law. In the event that a Participant fails or is unable to deliver to Amex an affidavit described in subclause (1) of this clause (a), Amex may withhold amounts from such Participant in accordance with Section 4.8(b).

(b) To the extent Amex is required by law to withhold or to make tax payments on behalf of or with respect to any Participant (e.g., backup withholding), Amex may withhold such amounts and make such tax payments as so required.

ARTICLE V. EXCULPATION OF PARTICIPANTS; PRIVATE OFFERING; CONFLICTS OF INTEREST; STANDARD OF CARE

Section 5.1 Liability of Participants. Except as otherwise provided by the Act, the debts, obligations and liabilities of Amex, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of Amex, and no Participant shall be obligated personally for any such debt, obligation or liability of Amex solely by reason of being a Participant.

Section 5.2 Representations and Warranties. Each Participant represents and warrants to Amex that:

(a) The Participant understands that the Participation Interests have not been registered under the Securities Act of 1933, as amended, nor qualified under any state securities laws, and that they are being offered and sold pursuant to an exemption from such registration and qualification based in part upon the representations and warranties of the Participant contained herein.

(b) The Participant is acquiring its Participation Interest solely for its own account for investment and not with a view toward the resale, Transfer, or distribution thereof, nor with any present intention of distributing such Participation Interest. No other Person has any right with respect to or interest in such Participation Interest to be purchased by the Participant, nor has the Participant agreed to give any Person any such interest or right in the future.

(c) The Participant has full power and legal right to execute and deliver this Agreement and to perform its obligations hereunder.

Section 5.3 Conflicts of Interest. A Participant does not violate a duty or obligation to Amex merely because the Participant's conduct furthers the Participant's own interest. A Participant may lend money to and transact other business with Amex. The rights and obligations of a Participant who lends money to or transacts business with Amex are, with respect to any such loan or business, the same as those of a person who is

not a Participant, subject to other applicable law. No transaction with Amex shall be voidable solely because a Participant has a direct or indirect interest in the transaction if the transaction is fair and reasonable to Amex.

Section 5.4 Participant’s Standard of Care. Each Participant shall discharge its duties to Amex and the other Participants in good faith and with that degree of care that an ordinarily prudent person in a similar position would use under similar circumstances. In discharging its duties, a Participant shall be fully protected in relying in good faith upon the records of Amex and upon such information, opinions, reports or statements by any Person as to matters the Participant reasonably believes are within such other Person’s professional or expert competence and who has been selected with reasonable care by or on behalf of Amex, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of Amex or any other facts pertinent to the existence and amount of assets from which Distributions to Participants might properly be paid.

Section 5.5 Charges for Services. With the prior consent of Amex, services may be provided by the Participants, or their respective Affiliates, to Amex from time to time. Unless the Participants agree otherwise, Amex will be charged for such services an amount no greater than the Expense to the Participant, or such Participant’s Affiliate, as the case may be, to provide such service to the Exchange. As used in this Section 5.5, “Expense” means the fully distributable costs (including general and administrative overhead of Participant) using the then existing Participant inter-company allocation methods and procedures to the extent they are not inconsistent with GAAP, provided that such methods do not discriminate unfairly against Amex.

ARTICLE VI. MANAGEMENT

Section 6.1 Constitution. The Constitution, a copy of which is attached as Annex A, is hereby adopted for the governance of Amex and is incorporated by reference herein, as amended from, time to time by its terms. The Constitution, and any amendments thereto adopted after the date of this Agreement, shall provide that MC shall be eligible to hold Regular Memberships and Options Principal Memberships.

Section 6.2 Management by Board of Governors.

(a) Board of Governors. The members of the Board of Governors shall be the managers of Amex and, unless and except as far as this Agreement, the Constitution or the Act expressly require that a matter be submitted to the Participants for their approval or consent, the Board of Governors, acting collectively, shall be vested with all powers necessary to manage and oversee the governance of Amex in accordance with the Constitution. Each member of the Board of Governors is designated as a manager as such term is defined in Section 18-101 of the Act. Except as expressly set forth in this Agreement or the Constitution, an individual member of the Board of Governors acting without the authority of the Board of Governors shall not have the power or authority to act

for or bind Amex. Except as expressly set forth in the Act, this Agreement or the Constitution, no Participant shall have the power or authority to act for or to bind Amex.

(b) **Composition of the Board of Governors; Nomination of Certain Governors.** The Constitution, and any amendments thereto adopted after the date of this Agreement, shall provide for the composition, nomination and election of the Board of Governors, unless and except as far as the Act expressly requires otherwise.

(c) **Additional Powers of the Board of Governors.** Subject to the Constitution, in addition to any rights and powers that may be expressly provided for in this Agreement, the Board of Governors shall possess all the rights and powers of a board of directors of a business corporation formed under the Delaware General Corporation Law (8 Del. C. § 101, et seq.).

(d) **Initial Governors.** The Board of Governors as of the Effective Date (the “Initial Governors”) shall be as set forth on attached Schedule II.

(e) **Officers of Amex.** The officers of Amex shall be appointed from time to time as provided in the Constitution and shall be constituted and have the powers and duties prescribed by the Constitution.

Section 6.3 Indemnification.

(a) Amex shall, to the fullest extent permitted by law, indemnify any Person who is or was made, or threatened to be made, a party to any threatened, pending or completed, action, suit or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of Amex to procure a judgment in its favor (hereinafter a “Proceeding”), by reason of the fact that such Person, or a Person of whom such person is the legal representative, (i) is or was a Participant, Governor, officer, employee, committee member, floor official, arbitrator, member of a disciplinary panel or trustee of the Gratuity Fund of Amex, (ii) is or was a director, officer, or employee of a Participant, (iii) is or was a director, officer, employee, shareholder, interestholder or partner of Amex or a Participant or any other Person, in each case who is or was serving at the request of Amex as a director, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, or (iv) is or was any other Person acting on behalf or for the benefit of Amex as designated by a Participant at any time or from time to time (collectively, the “Indemnified Persons”) if any such Person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of Amex and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The plea of nolo contendere or its equivalent shall not, of itself, create a presumption that such Person did not act in good faith and in a manner which he

or she reasonably believed to be in or not opposed to the best interests of Amex, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Amex shall, from time to time, reimburse or advance to any Indemnified Person the funds necessary for payment of expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding, in advance of the final disposition of such Proceeding; provided, however, that the payment of expenses incurred by such Indemnified Person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that Indemnified Person to repay all amounts advanced if it should be ultimately determined that the Indemnified Person is not entitled to be indemnified under this Section or otherwise.

(c) The right to indemnification and advancement of expenses provided by, or granted pursuant to, this Section 6.3 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may have or hereafter be entitled under any law, agreement, vote of Participants, if any, or of disinterested Governors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(d) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 6.3 shall continue as to a Person who has ceased to serve in any capacity or hold any status described in Section 6.3(a) above, and shall inure to the benefit of the heirs, executors and administrators of such person.

(e) To secure payment of any obligation of indemnification or advancement of expenses provided by, or granted pursuant to, this Section 6.3, Amex may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to insure the payment of such sums as may become necessary to effect indemnification or advancement of expenses as provided herein.

(f) The provisions of this Section 6.3 shall be a contract between Amex, on the one hand, and each Indemnified Person, on the other hand, pursuant to which Amex and each such Indemnified Person intend to be legally bound. No repeal or modification of this Section 6.3 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any Proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

(g) Amex's obligation, if any, to indemnify or advance expenses to any Indemnified Person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such Indemnified Person may collect as indemnification or advancement from

such other corporation, partnership, limited liability company, joint venture, trust, enterprise, or non-profit entity.

(h) The right to indemnification and reimbursement and advancement of expenses provided in this Section 6.3 shall be enforceable by any Person entitled to indemnification or advancement of expenses hereunder in any court of competent jurisdiction. The burden of proving that indemnification or reimbursement and advancement of expenses are not appropriate shall be on Amex. Neither the failure of Amex (including its Board of Governors, independent legal counsel or its Participants) to have made a determination prior to the commencement of such action that indemnification or advances are proper in the circumstances nor an actual determination by Amex (including its Board of Governors, independent legal counsel or its Participants) that such person is not entitled to indemnification or to the reimbursement or advancement of expenses, shall constitute a defense to the action or create a presumption that such Person is not so entitled. Such Person shall also be indemnified for any expenses incurred in connection with successfully establishing the right to indemnification or advances, in whole or in part, in any such Proceeding.

(i) If a claim for indemnification or advancement of expenses under this Section 6.3 is not paid in full within 60 days after a written claim therefore by an Indemnified Person has been received by Amex, the Indemnified Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, Amex shall have the burden of proving that the Indemnified Person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

(j) Any Person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Section 6.3 may elect to have the right to indemnification (or advancement of expenses) interpreted on the basis of the applicable law in effect at the time of the occurrence of the event or events giving rise to the applicable Proceeding, to the extent permitted by law, or on the basis of the applicable law in effect at the time indemnification is sought. Such election shall be made, by a notice in writing to Amex, at the time indemnification is sought; provided that if no such notice is given, the right to indemnification shall be determined by the law in effect at the time indemnification is sought.

Section 6.4 Indemnification Insurance. Amex shall have the power to purchase and maintain insurance on behalf of any Person who is or was a Participant or any Person who is or was a Governor, director, officer, committee member, employee, or agent of Amex or any Participant, or is or was serving at the request of Amex or any Participant as a director, officer, employee, or agent of another corporation, partnership, limited liability company, joint venture, trust, enterprise, or nonprofit entity against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as such, whether or not Amex would have the

power to indemnify such Person against such liability hereunder. For so long as MC and MC Sub are Participants, Amex shall cause their respective directors, officers, committee members, employees and agents, in their capacities as such, to be insured under Amex's insurance policies to the same extent as the Governors, officers, committee members, employees and agents of Amex; provided, that such insurance policies shall insure at least matters relating to or arising from the transactions pursuant to which MC Sub acquired the Class B Interest.

Section 6.5 Duties. To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to Amex or to any other Indemnified Person, an Indemnified Person acting under this Agreement shall not be liable to Amex or to any Participant for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

Section 6.6 Fiduciary Duty. Subject to Section 5.1, each officer and member of the Board of Governors shall be subject to the fiduciary duties of care and loyalty to the full extent that such duties would be imposed on, or applicable to, an officer or a director, respectively, of a corporation organized and existing pursuant to the General Corporation Law of the State of Delaware (including legislative history and judicial interpretations and applications thereof); provided, however, that no Covered Person (defined below) acting under this Agreement shall be liable to Amex or, with respect to any matter relating to Amex or its business, to any other Covered Person for such Person's good faith reliance on the provisions of this Agreement. The parties hereto agree that the provisions of this Agreement, to the extent that they restrict or modify the duties and liabilities of a Covered Person otherwise existing at law or in equity, replace such other duties and liabilities of such Covered Person. For purposes of this Section 6.6, a "Covered Person" shall mean a Participant, a member of the Board of Governors, any Affiliate of a Participant or a member of the Board of Governors, any officers, directors, stockholders, partners, members, employees, representatives or agents of a Participant, a member of the Board of Governors, Amex or their respective Affiliates, or any Person who was, at the time of the act or omission in question, such a Person. The personal liability of the Governors of Amex is hereby eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended. No amendment or repeal of this paragraph shall apply to or have any effect on the liability or alleged liability of any Governor of Amex for or with respect to any act or omission on the part of such Governor occurring prior to such amendment or repeal.

**ARTICLE VII.
LIMITED LIABILITY COMPANY INTERESTS**

Section 7.1 Classes of Members. Amex shall have two classes of Participation Interests: a Class A Interest and a Class B Interest. The initial Class A Interestholder shall be MC, and the initial Class B Interestholder shall be MC Sub.

Section 7.2 Rights and Obligations Incident to the Class A Interest. The Class A Interest shall entitle and bind the holder thereof to the rights and obligations specified in this Agreement and in the Constitution as being rights and obligations of the Class A Interest.

Section 7.3 Rights and Obligations Incident to the Class B Interest. The Class B Interest shall entitle and bind the holder thereof to the rights and obligations specified in this Agreement and in the Constitution as being rights and obligations of the Class B Interest.

ARTICLE VIII. TRADING RIGHTS

Section 8.1 Trading Rights. MC owns all rights to trade through the facilities of the Exchange, including, without limitation, the trading rights that are appurtenant to the Regular Memberships and the Options Principal Memberships on the Exchange, the trading rights that are appurtenant to the Limited Trading Permits and all future rights to trade through the facilities of the Exchange (the “Trading Rights”). Amex hereby recognizes the continuing, indefeasible and exclusive right of MC to make available, in accordance with, and subject to the requirements of, the Constitution, (a) to its Regular Members and their respective lessees, the Regular Trading Rights included in the Trading Rights, and (b) to its Options Principal Members and their respective lessees, the Options Principal Trading Rights included in the Trading Rights.

ARTICLE IX. TRANSFER OF PARTICIPATION INTEREST

Section 9.1 Transfer of Participation. Upon any Transfer, Schedule I hereto shall be amended accordingly; provided, that the Class A Interest cannot be transferred separately from the Trading Rights.

Section 9.2 Dissolution, Bankruptcy or Incompetency of a Participant. The bankruptcy of a Participant shall not cause a Participant to cease to be a participant of Amex and, upon the occurrence of such an event, the business of Amex shall continue without dissolution. Upon the dissolution, adjudication of bankruptcy or adjudication of incompetency of a Participant, such Participant’s successor in interest shall have all rights of a Participant for the purpose of managing the disposition of such Participant’s Participation Interest.

Section 9.3 Limitation on Transfer. Any sale, issuance, transfer or other disposition in any single transaction or series of transactions of (A) any limited liability company interests or other equity security of Amex or any securities convertible into or exchangeable for, or options rights or warrants to acquire, any such equity

securities or (B) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any equity securities or containing profit participation features) (such securities described in clauses (A) and (B), collectively, “Equity Securities”) shall (i) be made only in compliance with the member vote procedures set forth in Section 7(a) of the Second Restated Certificate of Incorporation of MC; and (ii) be subject to prior approval by the Securities and Exchange Commission pursuant to the rule filing procedure under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. Any attempt to issue or transfer any Equity Securities or any rights thereunder in violation of the preceding sentence shall be null and void ab initio.

ARTICLE X. DISSOLUTION AND WINDING UP

Section 10.1 Dissolution. Amex shall be dissolved, and its affairs wound up, upon the first to occur of (a) determination of the Board of Governors, or (b) the entry of a decree of judicial dissolution pursuant to Section 18-802 of the Act.

Section 10.2 Effect of Dissolution. Upon dissolution, Amex shall not be terminated and shall continue until the winding up of the affairs of Amex is completed and after the winding up of Amex, a Certificate of Cancellation of the Certificate shall be filed with the Secretary of State of the State of Delaware.

Section 10.3 Winding up Affairs and Distribution of Assets.

(a) Upon the dissolution of Amex, the Board of Governors shall proceed to wind up the affairs of Amex, liquidate the remaining property and assets of Amex and wind-up and terminate the business of Amex. The Board of Governors shall cause a full accounting of the assets and liabilities of Amex to be taken and shall cause the assets to be liquidated and the business to be wound up as promptly as possible (but in a manner so as not to involve undue sacrifice) by selling Amex assets and distributing the net proceeds therefrom (after the payment, or the making of reasonable provisions for payment of, Amex liabilities) to the holders of Participation Interests in accordance with Section 10.3(b).

(b) If the Board of Governors shall liquidate, in whole or part, Amex pursuant to Section 10.3(a), then the proceeds of such liquidation shall be applied in the following order of priority: (i) first, to creditors of Amex (including any Participant or Affiliate of a Participant who is a creditor, to the extent of the liability), including the expenses, of liquidation and all contingent, conditional and unmatured liabilities of Amex (whether by payment or the making of reasonable provisions for payment thereof) (such reasonable reserves shall be set up for any contingent, conditional or unmatured liabilities of Amex to be disbursed at the discretion of the Board of Governors, by an escrow agent selected by the Board of Governors and at the expiration of such period as the Board of Governors may deem advisable), in satisfaction of liabilities of Amex; (ii) to the

Class A Interestholder and to the Class B Interestholder, in proportion to their Capital Accounts.

(c) In connection with the liquidation or winding up of Amex, the Participants severally, jointly, or in any combination upon which they may agree, shall have the first opportunity to make bids or tenders for all or any portion of the assets of Amex, and such assets shall not be sold to an outsider except only for a price higher than the highest and best bid of a single Participant, the Participants jointly, or a combination of Participants. Any bid made by a Participant or Participants for all or any portion of the assets shall be made, if at all, within thirty (30) days after the Participant shall have requested such bids. A copy of each bid shall be delivered to each Participant. Unless otherwise agreed by all Participants, no Participant shall be entitled to raise its bid after submission thereof, whether in response to a bid received by Amex from any other Participant or third party, or otherwise.

Section 10.4 Winding Up and Filing Certificate of Cancellation.

Upon the completion of the winding up of Amex, a Certificate of Cancellation of the Certificate shall be delivered by Amex to the Secretary of State of the State of Delaware for filing as required by the Act. The winding up of Amex shall be completed when all debts, liabilities, and obligations of Amex have been paid and discharged or reasonably adequate provision therefor has been made, and all the remaining Property of Amex has been distributed to the Participants.

**ARTICLE XI.
MISCELLANEOUS PROVISIONS**

Section 11.1 Further Assurances. Each Participant agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts or things, as may be required by law, or as may, in the opinion of the Board of Governors, be necessary or advisable to carry out the intents and purposes of this Agreement.

Section 11.2 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when delivered personally to the recipient, (b) when sent to the recipient by facsimile (with receipt electronically confirmed by sender's facsimile machine) if during normal business hours of the recipient, otherwise on the next Business Day, (c) one Business Day after the date when sent to the recipient (three Business Days in the case of international delivery) by reputable express courier service (charges prepaid), or (d) seven Business Days after the date when mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent to the parties at the addresses indicated below:

(a) If to MC to:

The Amex Membership Corporation
86 Trinity Place
New York, New York 10006-1881
Attention: Secretary
Fax: (212) 306-5496

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Mark A. Underberg, Esq.
Fax: (212) 757-3990

(b) If to MC Sub to:

AMC Acquisition Sub, Inc.
c/o The Amex Membership Corporation
86 Trinity Place
New York, New York 10006-1881
Attention: Secretary
Fax: (212) 306-5496

with a copy to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Mark A. Underberg, Esq.
Fax: (212) 757-3990

or to such other address as either party hereto may, from time to time, designate in writing delivered pursuant to the terms of this Section.

Section 11.3 Amendments. The terms, provisions and conditions of this Agreement may not be changed, modified or amended in any manner except by an instrument in writing duly executed by the Class A Interests holder and the Class B Interests holder. Any amendment to or repeal of any provision of this Agreement shall not be effective until the same is filed with or filed with and approved by the United States Securities and Exchange Commission, under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder, as the case may be.

Section 11.4 Waiver. No waiver of any breach of any obligation, covenant, agreement or condition contained herein shall be effective unless such waiver is in writing and signed by the Participant against whom such waiver is claimed. No waiver or failure to insist upon strict compliance with such obligation, covenant,

agreement or condition shall operate as a waiver of, or estoppel with respect to, any other or subsequent breach.

Section 11.5 Assignment and Parties in Interest.

(a) Neither this Agreement nor any of the rights, duties, or obligations of any party hereunder may be assigned or delegated (by operation of law or otherwise) by any of the parties hereto without the prior written consent of the other parties hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any attempted or purported assignment in violation of this Section 11.5(a) shall be null and void.

(b) Except as provided in Section 6.3 of this Agreement, this Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto and their respective permitted successors and assigns.

Section 11.6 Descriptive Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 11.7 Counterparts. For the convenience of the parties, any number of counterparts of this Agreement may be executed by any one or more parties hereto, and each such executed counterpart shall be, and shall be deemed to be, an original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate but one and the same instrument.

Section 11.8 Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed therein, without giving effect to the principles of conflicts of law thereof.

Section 11.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any references to any federal, state, local or foreign statute or law will also refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless the context otherwise requires: (a) a term has the meaning assigned to it by this Agreement; (b) including means “including but not limited to”; (c) ”or” is disjunctive but not exclusive; (d) words in the singular include the plural, and in the plural include the singular; (e) provisions apply to successive events and transactions; and (f) “\$” means the currency of the United States of America.

Section 11.10 Severability. If any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not

affect any other provision of this Agreement or any other such instrument. Furthermore, in lieu of any such invalid, illegal or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid, legal and enforceable.

Section 11.11 Specific Performance. Without limiting or waiving in any respect any rights or remedies of the parties under this Agreement now or hereinafter existing at law or in equity or by statute, each of the parties hereto shall be entitled to seek specific performance of the obligations to be performed by the other in accordance with the provisions of this Agreement.

Section 11.12 References to Obsolete Provisions. References to obsolete or superseded provisions of the Code or other laws or rules shall include any respective successor provision(s).

ARTICLE XII. DEFINITIONS

Section 12.1 Definitions. In addition to the terms defined elsewhere herein, the terms defined in the introductory paragraph and the Recitals to this Agreement shall have the respective meanings specified therein, and the following terms shall have the meanings specified below when used herein with initial capital letters.

“Affiliate” means “affiliate” as defined in Rule 405 promulgated under the Securities Act of 1933, as amended.

“Agreement” means this Limited Liability Company Agreement including all amendments adopted in accordance with the Agreement and the Act.

“MC Charter” means the Second Amended and Restated Certificate of Incorporation of MC, as amended and restated on the Effective Date and as otherwise amended from time to time.

“Book Value” means the value for items of Property owned by Amex as initially determined under Section 4.7 and as adjusted for depreciation and amortization and for subsequent additions to federal income tax basis.

“Business Day” means a day, other than a Saturday or a Sunday, on which commercial banks are not required or authorized to close in the City of New York.

“Capital Contribution” means a contribution by a Participant to the capital of Amex pursuant to this Agreement.

“Class A Interest” means the voting limited liability company interest in Amex held by the Class A Interestholder pursuant to this Agreement.

“Class A Interestholder” means the holder of the Class A Interest.

“Class B Interest” means the non-voting limited liability company interest in Amex held by the Class B Interestholder pursuant to this Agreement.

“Class B Interestholder” means the holder of the Class B Interest.

“Code” means the Internal Revenue Code of 1986, as amended.

“Constitution” means the Constitution of Amex, as it may be amended from time to time. The Constitution shall be deemed incorporated into, and made a part of, this Agreement.

“Deductions” means the sum of the items of deduction and loss of Amex as determined by using the Book Value of its property in lieu of the federal income tax bases of such property and in accordance with the accounting methods followed by Amex for federal income tax purposes, including as items of deduction or loss items of expenditure described in, or under Treasury Regulations deemed described in, Code Section 705(a)(2)(B), treating as an item of loss any excess of the Book Value of distributed property over its fair market value and any decrease in the Book Value of Amex’s property pursuant to Section 4.7.

“Distributions” means distributions made pursuant to Section 4.6 hereof.

“Exchange” means the Equity Market and the Options Market operated by Amex.

“Fiscal Year” means the fiscal year of Amex and shall be the same as its taxable year, which shall be the calendar year unless otherwise required by the Code. Each Fiscal Year shall commence on the day immediately following the last day of the immediately preceding Fiscal Year.

“GAAP” means generally accepted accounting principles in effect in the United States of America at the time of application thereof, applied on a consistent basis.

“Gross Income” means the sum of the items of gain and income of Amex.

“Limited Trading Permits” means trading permits issued by Amex in accordance with Article IV, Section 1(h) of the Amex Constitution.

“manager” has the meaning set forth in § 18-101 of the Act.

“Net Losses” means the excess of Deductions over Gross Income.

“Net Profits” means the excess of Gross Income over Deductions.

“Options Principal Members” and “Options Principal Membership” have the meanings set forth in the MC Charter.

“Options Principal Trading Rights” means all of the rights of every kind to trade on the Exchange that are appurtenant under the MC Charter to the 30 Options Principal Memberships outstanding on the Effective Date which will be equivalent to 30 Options Principal Trading Rights, and (ii) are created after the Effective Date and are equivalent to the rights described in clause (i) above.

“Person” means any individual, partnership, corporation, trust, association, limited liability company, Governmental Entity or other entity.

“Principal Office” means the Principal Office of Amex as set forth in Section 1.5.

“Property” means any property, real or personal, tangible or intangible, including money, and any legal or equitable interest in such property.

“Regular Members” and “Regular Membership” have the meanings set forth in the MC Charter.

“Regular Trading Rights” means all of the rights of every kind to trade on the Exchange that (i) are appurtenant under the MC Charter to the 834 Regular Memberships outstanding on the Effective Date which will be equivalent to 834 Regular Trading Rights, and (ii) are created after the Effective Date and are equivalent to the rights described in clause (i) above.

“Rules and Regulations” means the Constitution, the rules and requirements for the admission of members and member organizations and the Rules of the Board of Governors of Amex, including, without limitation the General and Floor Rules, the Office Rules, the Arbitration Rules, the rules regarding Contracts in Securities, the rules regarding Trading of Options Contracts, the rules regarding Trading of Certain Equity Derivatives, the rules regarding Trading of Stock Index and Currency Warrants, the Rules for. After-Hours Trading Facility and the Rules of Procedure in Disciplinary Proceedings, in each case, as amended in accordance therewith.

“Tax Distribution” means a distribution made by Amex to a Participant in an amount, and at times, sufficient to enable such Participant to pay its federal, state and local tax liabilities (including any such tax liabilities resulting from an allocation made pursuant to Section 4.2) that are associated with its Participation Interests.

“Tax Returns” means any and all reports, returns, declarations, claims for refund, elections, disclosures, estimates, information reports or returns or statements required to be supplied to a Governmental Authority in connection with Taxes, including any schedule or attachment thereto or amendment thereof.

“Transfer” means any direct or indirect sale, assignment, gift, hypothecation, pledge or other disposition, whether voluntary or by operation of law, by sale of stock or partnership interests, by merger or otherwise, of a Participation Interest or

of any entity which directly or indirectly through one or more intermediaries holds a Participation Interest.

“Treasury Regulations” means the regulations promulgated by the United States Department of the Treasury under the Code.

Section 12.2 Cross-References. The following terms shall have the meanings set forth in the corresponding section of this Agreement:

<u>Term</u>	<u>Section</u>
Act	Preamble
Agreement	Preamble
Amex	Preamble
Board of Governors	1.5
Capital Account	4.2
Certificate	Recitals
Covered Person	6.6
Effective Date	Preamble
Equity Securities	9.3
Expense	5.5
Holdco	Recitals
Indemnified Persons	6.3(a)
Initial Governors	6.2(d)
MC Sub	Preamble
MC	Preamble
NASD	Recitals
Participant	Recitals
Participants	Recitals
Participation Interest	Recitals
Participation Interests	Recitals
Previous Limited Liability Company Agreement	Recitals
Proceeding	6.3(a)
Tax Matters Partner	3.1
Trading Rights	8.1
Transaction Agreement	Recitals

Section 12.3 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

[Signature page follows on next page]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

THE AMEX MEMBERSHIP CORPORATION

By: _____
Name:
Title:

AMC ACQUISITION SUB, INC.

By: _____
Name:
Title:

ANNEX A

[THE CONSTITUTION OF AMEX]

Schedule I**Names, Addresses and Participation Interest**

<u>Name</u>	<u>Address</u>	<u>Participation Interest</u>
MC	86 Trinity Place New York, New York 10009	100% of the Class A Interest
MC Sub	86 Trinity Place New York, New York 10009	100% of the Class B Interest

Schedule II
Initial Governors

1. Salvatore F. Sodano
2. Anthony J. Boglioli
3. Peter Quick
4. Kenneth M. Duberstein
5. Phillip Frost, M.D.
6. Mario J. Gabelli
7. James R. Hyde
8. Eugene M. Isenberg
9. Donald J. Kirk
10. Ira S. Koondel
11. Philip R. Lochner, Jr.
12. Joseph Palmeri
13. Hal S. Scott
14. Thomas J. Sheridan