

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
OPTIONS PRICE REPORTING AUTHORITY, LLC  
a Delaware Limited Liability Company**

This limited liability company agreement (“Agreement”) dated as of the 1st day of January, 2010 is made and entered into by and among the registered national securities exchanges identified in Exhibit A (“Members”).

**RECITALS**

A. Prior to the formation of the limited liability company to which this Agreement pertains, in response to directives of the Securities and Exchange Commission (“Commission”) that provision be made for the consolidated reporting of transactions in eligible option contracts listed and traded on national securities exchanges and in response to the finding set forth in Section 11A (a)(1)(c)(iii) of the Securities Exchange Act of 1934, as amended (“Exchange Act”) that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, the Members developed and implemented a plan for these purposes. The term “Options Price Reporting Authority” refers to the national securities exchanges who were parties to that plan acting jointly pursuant to the plan, the term “Initial OPRA Plan” (or “Initial Plan”) refers to that plan as it was amended from time to time. The Initial OPRA Plan was filed with and approved by the Commission as a national market system plan in accordance with Section 11A(a)(3)(B) of the Exchange Act, which approval authorized and required the parties to the Initial Plan to act jointly with respect to matters as to which they share authority thereunder in planning, developing, operating or regulating the data processing and communications system established pursuant to the Initial Plan, provided that such joint action was limited to circumstances in which it is necessary in order to fulfill the functions and objectives of the Options Price Reporting Authority as stated in the Initial Plan, and provided further that each of the parties were required to take reasonable steps to insure that nonpublic business information specific to that Member remains segregated and confidential from the other parties, except for information that may be shared in connection with joint activities permitted under the Initial Plan.

B. The Members have now determined that it is advantageous and desirable to conduct in a limited liability company the activities they have heretofore conducted as parties to the Initial OPRA Plan, and have formed Options Price Reporting Authority, LLC (the “Company”) for this purpose. OPRA LLC, as successor to the Options Price Reporting Authority, is a registered securities information processor in accordance with Section 11A(b) of the Exchange Act, and this Agreement (sometimes referred to herein as the “OPRA Plan” or the “Plan”), which takes the place of the Initial OPRA Plan, is a National Market System Plan as defined in Rule 600(b)(43) of Regulation NMS under the Exchange Act.

**ARTICLE I**

**DEFINITIONS**

**Section 1.1. Definitions.** As used throughout this Agreement:

“BBO” (“Best Bid and Offer”) means at any time the highest bid and the lowest offer for a given options series that is then available in one or more of the options markets maintained by the Members, as determined and disseminated by OPRA in accordance with “BBO Guidelines” adopted by the Members and attached as Attachment A hereto. The BBO Guidelines may be amended from time to time by the affirmative vote of at least 75% of the Members, subject in all cases to being filed with and approved by the Commission.

“Capacity Guidelines” means the guidelines (attached as Attachment B hereto) to be followed by the ISCA in performing its capacity planning and allocation functions under Section 4.7 below. Except as otherwise provided therein, the Capacity Guidelines may be amended from time to time by the affirmative vote of at least 75% of the Members, subject in all cases to being filed with and approved by the Commission.

“Capital Account” has the meaning set forth in Section 6.1.

“Code” means the Internal Revenue Code of 1986, as from time to time amended, or any successor thereto.

“Company Interest” means the ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled under this Agreement and the Delaware Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement.

“Current” means Last Sale Reports or Quotation Information that has been transmitted by the Processor, by a Member or by OPRA within the immediately preceding 15 minutes.

“Delaware Act” means the Delaware Limited Liability Company Act, as amended.

“Eligible Securities” means each series of options contracts traded on or in the securities market maintained by a Member.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FCO Member” means a Member that provides a market in FCO Securities.

“FCO Securities” means those Eligible Securities consisting of foreign currency option contracts.

“Fiscal Year” means the fiscal year of the Company adopted pursuant to Section 8.1(a) of this Agreement.

“Independent System Capacity Advisor” or “ISCA” means the person, group of persons or organization selected by OPRA, pursuant to the affirmative vote of at least 75% of the Members, to perform the functions designated to be performed by such person, persons or organization in connection with OPRA’s capacity planning process in accordance with Section 4.7 below. The identity of the person, persons or organization selected to act as ISCA in accordance with the foregoing shall be filed with the Commission as an amendment to OPRA’s national market system plan pursuant to Rule 11Aa3-2 under the Exchange Act, eligible to be put into effect upon filing in accordance with paragraph (c)(3) of that Rule. Persons selected to act as the ISCA shall not be employed by any of the Members; shall maintain the confidentiality of information entrusted to them in accordance with the requirements of Section 4.7; and may be discharged by a vote of at least 75% of the Members.

“Index Option Member” means a Member that provides a market in Index Option Securities.

“Index Option Securities” means those Eligible Securities consisting of options on a group or index of equity securities.

“Last Sale Reports” means price, volume, or related information reflecting completed transactions in Eligible Securities.

“Managing Director” means the person designated by OPRA in accordance with Section 4.6 below to perform administrative functions on behalf of the OPRA as specified in the Plan and such other functions as may be delegated to the Managing Director by the Management Committee from time to time.

“Member” means any of the national securities exchanges identified on Exhibit A as the same may be amended to include any other national securities exchange that becomes a Member pursuant to the provisions of Section 3.2.

“OCC” means The Options Clearing Corporation.

“OPRA” means the Options Price Reporting Authority described in the Initial Plan prior to the date of this Agreement, and the Options Price Reporting Authority, LLC from and after the date of this Agreement.

“OPRA System” or “System” means all data processing equipment, communications facilities and other facilities utilized by OPRA or any data processing service organizations acting on its behalf in connection with the processing, consolidating and distribution of options Last Sale Reports and Quotation Information and related information pursuant to this Agreement.

“Options Information” means Last Sale Reports and Quotation Information and any other information transmitted over the information reporting system administered by OPRA.

“Processor” means one or more data processing service organizations selected by OPRA in accordance with Article V below, to perform specified functions on behalf of OPRA pertaining to the development, operation and maintenance of the OPRA System.

“Quotation Information” means bids, offers, or related information pertaining to quotations in Eligible Securities, including information consisting of the BBO for Eligible Securities.

“Subscriber” means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor for such person’s own use, other than in connection with such person’s activities as a Vendor, provided, however, that a member of a Member shall not be deemed to be a Subscriber solely because the member has access to consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of such Member at one or more of such Member’s business locations.

“Vendor” means a person that receives consolidated Options Information provided by OPRA or provided by a Vendor in connection with such person's business of distributing, publishing, or otherwise furnishing such information to other persons; provided, however, that a Member who receives consolidated Options Information over interrogation, display or other communications devices maintained by or on behalf of the Member at any of its business locations shall not be deemed to be a Vendor solely because members of the Member have access to consolidated Options Information over such devices at such locations. If a Member makes consolidated Options Information available to its members or to any other persons (other than the Member’s own employees or agents) over any other devices or at any other locations, the Member shall be deemed to be a Vendor.

## ARTICLE II

### ORGANIZATION

**Section 2.1. Formation.** The Members have formed a limited liability company (“Company”) under the Delaware Act by filing a certificate of formation (the “Certificate”) with the Delaware Secretary of State.

**Section 2.2. Name.** The name of the Company is Options Price Reporting Authority, LLC, and all Company business shall be conducted in that name or such other names that comply with applicable law as the Management Committee may select from time to time.

**Section 2.3. Registered Office; Registered Agent; Principal Office; Other Offices.** The registered office of the Company required by the Delaware Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Management Committee may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Management Committee may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Management Committee may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain records there. The Company may have such other offices as the Management Committee may designate from time to time.

**Section 2.4. Purpose.** The purposes of the Company are (i) to provide for the collection, consolidation and dissemination of Last Sale Reports, Quotation Information, and other information concerning Eligible Securities as the Members shall agree as provided herein; (ii) to contract for the distribution or sale of such information; (iii) to contract for and maintain facilities to support any activities permitted in the Plan and guidelines adopted hereunder, including, without limitation, the operation of the System, (iv) to provide for those other matters set forth in the Plan and in all guidelines adopted hereunder, and (v) to engage in any other business or activity that now or hereafter may be necessary, incidental, proper, advisable or convenient to accomplish any of the foregoing purposes and that is not prohibited by the Delaware Act, the Exchange Act or the laws of the jurisdictions in which the Company engages in that business or activity.

**Section 2.5. Term.** The term of the Company commenced on the date the Certificate was filed with the office of the Secretary of State of Delaware, and shall be perpetual unless dissolved as provided in this Agreement.

## ARTICLE III

### MEMBERSHIP

**Section 3.1. Initial Members.** The initial Members of the Company shall consist of the national securities exchanges identified in Exhibit A hereto.

**Section 3.2. New Members.**

(a) Any other national securities exchange that maintains a market for the trading of standardized options in accordance with rules approved by the Commission may become a Member by submitting to OPRA a completed Membership Application on the form provided by OPRA. As a condition of becoming and continuing as a Member, said exchange shall: (i) execute a counterpart of this Agreement, at which time Exhibit A shall be amended to reflect the status of said exchange as a Member, and (ii) pay a Participation Fee to OPRA in an amount that has been determined by a vote of a majority of the Members as fairly and

reasonably compensating OPRA for costs it has incurred in developing and maintaining the OPRA system and for costs it will incur in providing for the new Member's participation. A Member to which the Fee applies shall not vote on the determination of the amount of the Fee to be paid by that Member. Participation Fees paid to OPRA shall be added to the general revenues of OPRA and shall be allocated as provided in Article VII, below.

(b) In determining the amount of the Participation Fee to be paid by any new Member, OPRA shall consider the following factors:

- the portion of costs previously paid by OPRA for the development, expansion and maintenance of OPRA's facilities which, under generally accepted accounting principles, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new Member;
- an assessment of costs incurred and to be incurred by OPRA for modifying the OPRA System or any part thereof to accommodate the new Member, which are not otherwise required to be paid or reimbursed by the new Member; and
- previous Participation Fees paid by other new Members.

In the event OPRA and a new Member do not agree on the amount of the Participation Fee, the amount of the Fee will be subject to review by the Commission pursuant to Section 11A(b)(5) of the Exchange Act.

(c) An applicant for membership may apply for limited access to OPRA for planning and testing purposes pending its becoming a Member by submitting to OPRA a completed Application for Limited Access to the OPRA System, accompanied by payment of a deposit in the amount established by OPRA, which shall be applied or refunded as described in the Application.

**Section 3.3. Transfer of Memberships.** Membership in the Company and the right of a Member to have consolidated Last Sale Reports and consolidated Quotation Information disseminated through the System shall not be transferable except to a national securities exchange that succeeds to the business of a Member as a result of a merger or consolidation with the Member or the transfer of substantially all of the assets of a Member.

**Section 3.4. Voluntary Resignation from Membership.** Any Member may voluntarily resign from OPRA and thereby withdraw from and terminate its membership at any time on not less than six months prior written notice of resignation to the Managing Director. A withdrawing Member shall have the rights and obligations provided in Section 3.5 below.

**Section 3.5 Termination of Membership.** The membership status of a Member shall terminate effective as of the earlier of (i) the last day of the calendar quarter in which the six month notice period provided for in Section 3.4 has elapsed in the case of a voluntary resignation, or (ii) the last day of the calendar quarter in which the Member has ceased maintaining a market for the trading of securities option contracts. In the event a Member becomes subject to one or more of the events of bankruptcy enumerated in Section 304 of the Delaware Act, that event by itself shall not cause the termination of the membership status of the Member so long as the Member continues to maintain a market for the trading of securities option contracts. From and after the effective date of termination of a Member's membership status, the terminated Member shall cease to have the right to have its Last Sale Reports or Quotation information or other information disseminated over the OPRA System, and profits and losses of the Company shall cease to be allocated to the Capital Account of the Member in accordance with Article VII below. A terminated Member shall be entitled to receive the balance in its Capital Account as of the effective date of termination adjusted for profits and losses through that date, payable within 90 days of the effective date of termination, and shall remain liable for its proportionate share of costs and expenses allocated to it pursuant to Section 4.7(c) and Article VII for the period during which it was a Member, for obligations under Section 3.6(c), and for its indemnification obligations pursuant to Section 5.2(d) in respect of matters pertaining to the period

during which it was a Member, but it shall have no further obligations under this Agreement or to any of the other Members following the effective date of termination.

**Section 3.6. Obligations and Liability of Members.**

(a) Except as otherwise provided in this Agreement, or except as may be determined by the unanimous vote of the Members or as may be required by applicable law, no Member shall be obligated to contribute capital or make loans to the Company, and the opening balance in the Capital Account of each Member that is established in accordance with Section 6.1(a) shall be zero.

(b) Except as provided in this Agreement and except as otherwise required by applicable law, no Member shall have any personal liability whatever in its capacity as a Member, whether to the Company, to any of the Members, to the creditors of the Company or to any other person, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company.

(c) In accordance with the Delaware Act, a member of a limited liability company may, under certain circumstances, be required to return amounts previously distributed to such member. It is the intent of the Members that no distribution to any Member pursuant to Article VII hereof shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or distribution of any such property to a Member shall be deemed to be a compromise within the meaning of the Delaware Act, and the Member receiving any such money or property shall not be required to return any such money or property to any person. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Management Committee.

(d) No Member (other than the Management Committee, a duly appointed officer of the Company or other Person duly authorized by the Management Committee) has the authority or power to represent, act for, sign for or bind the Company or to make any expenditures on behalf of the Company.

**ARTICLE IV**

**MANAGEMENT OF THE COMPANY**

**Section 4.1 OPRA Management Committee.** Except for situations in which the approval of the Members is required by this Agreement or by applicable law, OPRA and the OPRA System shall be managed by the Management Committee, which shall be constituted as provided in Section 4.2. Unless otherwise expressly provided to the contrary in this Agreement, no Member shall have authority to act for, or to assume any obligation or responsibility on behalf of, OPRA, without the prior approval of the Management Committee. Without limiting the generality of the foregoing, except as otherwise expressly provided in this Agreement, the Management Committee shall make all policy decisions on behalf of OPRA in furtherance of the functions and objectives of OPRA under the Exchange Act and under this Agreement, including but not limited to the following:

(a) determining the extent to which options Last Sale Reports, Quotation Information and other market information will be collected, consolidated and disseminated by OPRA to satisfy the requirements of the Exchange Act and the needs of investors and other participants in the options markets, and setting standards governing the method and format for reporting consolidated options market information by Members, the Processor and Vendors;

(b) making policy determinations pertaining to contracts with Vendors, Subscribers, purveyors of data processing services, and others, and prescribing the forms of contracts to be entered into with such persons;

- (c) setting standards to be applied in determining the qualifications of persons to receive options consolidated Last Sale Reports or consolidated Quotation Information in any capacity;
- (d) determining the level of fees to be paid to OPRA by Members, Vendors, Subscribers or other approved persons for access or other services related to consolidated options Last Sale Reports or consolidated Quotation Information;
- (e) planning for the projected capacity needs of the OPRA System and authorizing modifications to the System in accordance with determinations made by OPRA's Independent System Capacity Advisor as provided in Section 4.7;
- (f) determining policy questions relating to budgetary or financial matters; planning, discussing, and developing options quote message traffic mitigation approaches and strategies; and
- (g) implementing approaches and strategies filed with and approved by the Commission.

The Management Committee may delegate all or part of its administrative functions under the Plan, but not its policy making authority (except to the extent determinations in respect of capacity planning and allocation are delegated to the Independent System Capacity Advisor under Section 4.7), to one or more of the Members or to other persons, and any person to which administrative functions are so delegated shall perform the same as agent for OPRA, in the name of OPRA. Each person who performs administrative functions on behalf of OPRA (including OPRA's Managing Director and its other officers and the Processor) shall be required to agree that any nonpublic business information pertaining to any Member that becomes known to such person shall be held in confidence and not shared with the other Members, except for information that may be shared in connection with joint activities permitted under the Plan.

**Section 4.2. Composition and Selection of Management Committee.** The Management Committee shall consist of one voting member representing each Member and one alternate voting member representing each Member who shall have a right to vote only in the absence of that Member's voting member. Each of the voting and alternate voting members of the Management Committee shall be appointed by the Member that he or she represents, and shall serve at the will of the Member appointing such member.

**Section 4.3 Action of Management Committee.** Except as otherwise provided herein, each of the members of the Management Committee shall be authorized to cast one vote for each Member that he or she represents on all matters voted upon by the Management Committee, and action of the Management Committee shall be authorized by the affirmative vote of a majority of the total number of votes the members of the Management Committee are authorized to cast, subject to the approval of the Securities and Exchange Commission whenever such approval is required under applicable provisions of the Exchange Act, and the rules of the Commission adopted thereunder. Action of the Management Committee authorized in accordance with the Plan shall be without prejudice to the rights of any Member to present contrary views to any regulatory body or in any other appropriate forum.

**Section 4.4 Tie-breaking Voting Authority.** In the event that a matter subject to authorization by a majority vote of the members of the Management Committee under Section 4.3 above results in a tie vote, upon the motion of any member of the Management Committee the matter may be resubmitted to a vote of the Management Committee in accordance with the provisions of this Section 4.4. Action of the Management Committee taken under this Section 4.4 shall be authorized by the affirmative vote of members of the Management Committee representing not less than 66 2/3% of the total voting authority determined in accordance with this Section 4.4. The tie-breaking voting authority of each member of the Management Committee shall be initially determined on the date of this Agreement or on the

subsequent date when new Members become admitted, and it shall be redetermined as of March 1 of each year. In the event there are only two Members on any such March 1, tie-breaking voting authority shall be equally divided between the members of the Management Committee who represent those Members. In the event there are more than two Members on any such date, the tie-breaking voting authority of each member of the Management Committee shall be a percentage of the total voting authority determined by dividing (i) the number of compared trades reported by OCC as having been submitted by the Member (or Members) represented by that member of the Management Committee during the preceding twelve-calendar month period by (ii) the total number of all options transactions so reported as having been submitted by all Members during that same period. (Numbers of transactions shall be annualized for Members that have been such for less than the full twelve-month period.) Notwithstanding any other provision of this Section 4.4, no member of the Management Committee shall have tie-breaking voting authority greater than 50% for any one Member that he or she represents, and any tie-breaking voting authority in excess of 50% that a member of the Management Committee might otherwise have on behalf of any one Member shall be distributed pro rata to the other members of the Management Committee in proportion to their tie-breaking voting authority prior to such distribution. Members of the Management Committee representing Members admitted to OPRA during the period between the annual determination of tie-breaking voting authority as provided above shall be entitled to tie-breaking voting authority of 10% taken proportionally from the tie-breaking voting authority of members of the Management Committee representing the other organizations that have been Members since the immediately preceding March 1. If an organization should cease to be a Member, the tie-breaking voting authority of its representative on the Management Committee shall be allocated among the members of the Management Committee representing the remaining Members in proportion to the then tie-breaking voting authority of each such Member's representative on the Management Committee until the next succeeding date for redetermination of tie-breaking voting authority.

**Section 4.5**     **Meetings of the Management Committee.** Regular meetings of the Management Committee may be attended by each Member's voting representative or alternate voting representative and by one or more nonvoting representatives of the Members, by the Managing Director and other representatives of OPRA and the Processor, by representatives of the Commission, and by such other persons that the Committee may invite to attend; provided that the Committee may, where appropriate, determine to meet in Executive Session at which only voting members of the Management Committee and other representatives of the Members or of OPRA that the Management Committee may invite shall be present. Meetings of the Management Committee shall be held at such times as shall from time to time be determined by the Management Committee, on not less than 10 days notice. Special meetings of the Management Committee may be called upon the request of two or more Members on not less than two days' notice. The Managing Director of OPRA, or in his or her absence, one of the Member representatives designated by the Committee, shall preside as Chairman of each meeting of OPRA, and either the Chairman of the meeting or a person in attendance designated by the Chairman shall act as Secretary to record the minutes thereof. The location of the regular and special meetings of the Management Committee shall be fixed by the Committee, provided that in general the location of meetings shall be rotated among the locations of the principal offices of the Members. Members of the Management Committee may be present at a meeting by conference telephone or other electronic means that enables each of them to hear and be heard by all others present at the meeting, and action may be taken without a meeting if all of the members entitled to vote consent thereto in writing.

**Section 4.6.**     **Officers.** The Company shall have a Managing Director and such other officers as may be designated in a resolution duly adopted by the Management Committee, which shall prescribe the duties and authority of such officers. Each officer shall hold office until his successor is duly designated and or until the officer's death, disability, resignation or removal by the Management Committee, which may be effectuated at any time with or without cause. Removal shall be without prejudice to any express employment or contract rights of the officer so removed. A vacancy in any office because of the death, disability, resignation or removal of an officer may be filled by the Management Committee.

#### **Section 4.7      Capacity Planning; Allocation of System Capacity.**

(a) For purposes of determining how and when to modify the capacity of the OPRA System, each of the Members will from time to time independently project the amount of system capacity it needs and will submit requests for system capacity privately and in writing to the ISCA based on its projected needs, in accordance with procedures developed by the ISCA. The ISCA will maintain such information in confidence except as it may need to be shared with OPRA's Processor and other persons for operational or administrative purposes; provided that in no event will such information be shared with any of the other Members except in the form of aggregate capacity requests that do not identify the individual capacity requests of any of the Members, and provided further that such information will not be used by the ISCA in any of its other business activities in a manner that may result in its being made available to any of the other Members or that is otherwise inconsistent with the confidentiality of such information.

(b) Based on such information and subject to the Capacity Guidelines, the ISCA will consider how and when to modify the OPRA System in order to provide the system capacity requested by the Members, and how the costs of such expansion should fairly be allocated among the Members to the extent such costs come within the authority of the ISCA under Section 7.1(a)(iii) of this Agreement and the Capacity Guidelines to allocate the total costs of OPRA in excess of a specified ceiling. The ISCA shall communicate its conclusions in writing to OPRA, which, to the extent and subject to the conditions set forth in the Capacity Guidelines, shall be obligated to authorize and fund the modification of the OPRA System in accordance with the ISCA's determinations. Once the capacity of the OPRA System has been modified so as to be able to provide to a Member the capacity it has requested, that Member's allocated share of OPRA System capacity shall not exceed its requested capacity unless the Member is able to acquire another Member's unused capacity in accordance with Section 4.8 below.

(c) To the extent and subject to the conditions and limitations set forth in the Capacity Guidelines, under circumstances when the capacity of the System is unable to meet the aggregate requests for capacity that have been submitted to and approved by the ISCA, the ISCA shall be authorized to allocate available System capacity among the Members. In addition, the Capacity Guidelines shall provide for the utilization of a "dynamic throttle" that is capable of automatically and instantaneously making available to a Member with an immediate need for additional capacity, on a short-term interruptible basis, any unused capacity, subject to the conditions that the Member receiving such unused capacity must pay for it at a rate that is determined by the ISCA to be greater than the fully allocated cost of such additional capacity to the extent provided in the Capacity Guidelines (except that during a temporary period ending September 10, 2004, no such payment shall be required to be made by a Member receiving unused capacity by operation of the dynamic throttle), and must relinquish such capacity to the Member or Members to which it had originally been allocated whenever such Member or Members need it. Amounts paid by a Member for the use of excess capacity made available to it by operation of the dynamic throttle shall be added to OPRA's general revenues.

**Section 4.8.      Transfer of System Capacity Between Members.** The following shall be the exclusive procedure to be used by the Members in seeking to acquire additional System capacity from, or in making excess System capacity available to, another Member. Any Member may at any time notify OPRA's Managing Director (or other person designated by OPRA for this purpose) of any need it may have for additional System capacity beyond the capacity allocated to it based on its prior requests, or of any portion of its previously allocated System capacity that it is not using and may be willing to make available to other Members on specified terms. OPRA's Managing Director (or other designated person) shall act as an intermediary in matching any such requests for additional capacity with any unused capacity that may be available and in negotiating the terms for such transfer of System capacity, but in doing so it shall not communicate to any Member the identities of the Members who are either requesting or offering capacity.

#### **Section 4.9. Exculpation and Indemnification.**

(a) Except for the indemnification obligations of Members under Section 5.2(d), no Member, member of the Management Committee or officer of the Company shall be liable to the Company or to any other Member for any loss suffered by the Company or by such other Member unless such loss is caused by the fraud, gross negligence, willful misconduct or willful violation of law on the part of such Member, member of the Management Committee or officer, or material breach of this Agreement by such Member.

(b) Subject to the limitations and conditions as provided in this Section 4.9(b), the Company shall indemnify any member of the Management Committee and any officer of the Company (and may indemnify any employee or agent of the Company) who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative (hereinafter a “Proceeding”), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that such person is or was a member of the Management Committee, officer, employee or agent of the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, but not limited to, attorneys’ fees) actually incurred by such person in connection with such Proceeding, if and only if the person seeking indemnification acted in good faith and not in a manner that involved fraud, gross negligence or willful misconduct. Indemnification under this Section 4.9(b) shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. Reasonable expenses incurred by an indemnified person in connection with any such Proceeding shall be paid or reimbursed by the Company in advance of the final disposition of such Proceeding upon receipt by the Company of (i) written affirmation by the indemnified person of such person’s good faith belief that such person has met the standard of conduct necessary for such person to be entitled to indemnification by the Company, and (ii) a written undertaking by such person to repay such expenses if it shall ultimately be determined by a court of competent jurisdiction that such person has not met such standard of conduct or is otherwise not entitled to indemnification by the Company. The rights granted pursuant to this Section 4.9(b) shall be deemed contract rights, and no amendment, modification or repeal of this Section 4.9(b) shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Section 4.9(b) could involve indemnification for negligence or under theories of strict liability. For persons other than members of the Management Committee or officers of the Company, indemnification shall only be made upon the approval of the Management Committee.

### **ARTICLE V**

#### **FUNCTIONS AND ACTIVITIES OF OPRA**

**Section 5.1. Data Processing Functions.** OPRA may itself perform some or all of the data processing functions associated with the operation of the OPRA System, or it may enter into a contract (or contracts) with one or more data processing service organizations approved by the affirmative vote of at least 75% of the Members providing for such organization or organizations to act as OPRA’s Processor in performing, in accordance with procedures and guidelines established by OPRA, functions related to the receiving, processing, consolidating, preparing for distribution and distributing to Vendors and others information furnished by the Members concerning Last Sale Reports and Quotation Information for all purposes under the OPRA Plan, and such other functions as the Management Committee shall determine. Such contracts shall be in such form and shall include such provisions as may be agreed to by OPRA and the other party or parties thereto.

**Section 5.2. Collection and Dissemination of Options Last Sale Reports and Quotation Information.**

(a) Collection of Last Sale Reports. Each of the Members shall collect and promptly transmit to the OPRA System by means of its own facilities all Last Sale Reports relating to its respective market. For this purpose, each of the Members shall use its best efforts to transmit such reports to the OPRA System, properly sequenced, within two minutes of the time of execution. Such reports shall be sequenced and transmitted in the appropriate format conforming to the specifications prescribed by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA).

Except as otherwise provided by OPRA, such reports shall identify:

- (i) The options series;
- (ii) The number of contracts in each transaction;
- (iii) The price at which the contracts were sold;
- (iv) The market of execution; and
- (v) Through appropriate codes and messages, late or out of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, and similar matters.

If any Member becomes aware that one or more of its Last Sale Reports are delayed for a period of time significantly greater than the two minute interval referred to above, such report or reports will be identified as “late” by an accompanying code or administrative message. In the event the delay affects more than one report (for example, if the entire reporting system is running late), it will be sufficient to transmit a single administrative message describing the delay.

(b) Collection of Quotation Information. Each of the Members, during the time that it is open for trading, shall collect and promptly transmit to the OPRA System by means of its own facilities bids and offers at stated prices or limits with respect to individual Eligible Securities in which it provides a market, sufficient in number and timeliness to reflect the current state of the market in such security. Except as may be determined by OPRA, spread, straddle or combination quotations shall not be reported to the OPRA System; should OPRA subsequently determine to permit or require the reporting of such quotations, they shall be specifically identified. Bids and offers shall be so transmitted in the appropriate formats conforming to the specifications provided by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA). Except as otherwise provided by OPRA, Quotation Information shall identify:

- (i) The premium bid or offered;
- (ii) The number of contracts in each bid or offer;
- (iii) The options series;
- (iv) The market in which the quotation was entered;
- (v) Through appropriate codes and messages, cancels, corrections, trading halts and suspensions, market conditions, combination or other nonstandard quotations to the extent such quotations may be permitted or required to be reported, and similar matters.

Whenever a Member determines that the level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information as required above, or whenever there is a trading halt or suspension in an Eligible Security traded in its market, the Member shall promptly notify the Managing Director of such condition or event, and shall resume collecting and transmitting quotations as soon as it becomes practicable to do so.

(c) Dissemination of Last Sale Reports, Quotation Information and Other Information.

(i) The OPRA System shall provide for the uniform, nondiscriminatory dissemination of consolidated Options Information, on fair and reasonable terms over a network or networks to the Members, Vendors, Subscribers and other approved persons. Such information shall include consolidated Last Sale Reports and consolidated Quotation Information for all series of options for which the Members are required to provide current market information to OPRA in accordance with paragraphs (a) and (b) of this Section 5.2, and shall also include the BBO for all such series of options. OPRA may offer a complete options market data service consisting of the BBO combined with consolidated Last Sale Reports and Quotation Information, or OPRA may offer a limited service consisting of the BBO combined with consolidated Last Sale Reports only while separately continuing to offer Last Sale Reports and complete Quotation Information. Only such consolidated market information and related information, together with other information that satisfies the conditions of subparagraph (iv) of this paragraph (c) or is approved by OPRA, shall be disseminated through the System.

(ii) A Member may disseminate information pertaining to quotations and transactions in its market ("Proprietary Information") through a network separate from the OPRA System only if such dissemination meets the requirements of subparagraph (iii) of this paragraph (c).

(iii) A Member may disseminate its Proprietary Information pursuant to subparagraph (ii) of this paragraph (c) provided that:

(A) such dissemination is limited to other Members and to persons who also have equivalent access to consolidated Options Information disseminated by OPRA for the same classes or series of options that are included in the Proprietary Information. For purposes of this clause (A), "consolidated Options Information" means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA, and access to consolidated Options Information and access to Proprietary Information are deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station; and

(B) a Member may not disseminate its Proprietary Information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of Options Information.

(iv) Any one or more Members may utilize the OPRA System for the purpose of disseminating information in addition to Last Sale Reports and Quotation Information, but only if the following conditions are met:

(A) The Member so utilizing the OPRA System shall give each of the other Members and the Managing Director not less than five business days written notice describing the additional information and the manner in which it will be disseminated, and certifying that said Member has the legal right to disseminate such information;

(B) Such additional information must relate to the Member's market in one or more Eligible Securities;

(C) The Member so utilizing the OPRA System shall agree to pay directly to the Processor, and to reimburse OPRA, for all costs allocable to or occasioned by the dissemination of such additional information;

(D) The dissemination of such additional information shall be permitted only if and to the extent that it does not in any manner impair or interfere with the primary function of the OPRA System to disseminate Last Sale Reports and Quotation Information.

(d) Indemnification.

(i) Each Member agrees, severally and not jointly, to indemnify and hold harmless each other Member and each of its directors, officers, employees and agents (including OPRA and its officers, employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Last Sale Report, Quotation Information or other information reported to OPRA by such Member and disseminated by OPRA as so reported. This indemnity agreement shall be in addition to any liability which the indemnifying Member may otherwise have.

(ii) Promptly after receipt by an indemnified Member under subparagraph (i) of this paragraph (d) of notice of the commencement of any action, such indemnified Member will, if a claim in respect thereof is to be made against an indemnifying Member under such subparagraph, notify the indemnifying Member in writing of the commencement thereof; but the omission so to notify the indemnifying Member will not relieve it from any liability which it may have to any indemnified Member otherwise than under such subparagraph. In case any such action is brought against any indemnified Member and it promptly notifies an indemnifying Member of the commencement thereof, the indemnifying Member will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Member similarly notified, to assume and control the defense thereof, with counsel chosen by it, and after notice from the indemnifying Member of its election so to assume the defense thereof, the indemnifying Member will not be liable to such indemnified Member under such subparagraph for any legal or other expenses subsequently incurred by such indemnified Member in connection with the defense thereof other than reasonable costs of investigation, but the indemnified Member may, at its own expense, participate in such defense by counsel chosen by it, without, however, impairing the indemnifying Member's control of the defense. The indemnifying Member may negotiate a compromise or settlement of any such action provided that such compromise or settlement does not require a contribution by the indemnified Member.

**Section 5.3. Hours of Operation of OPRA System.** The regular hours of operation of the OPRA System shall be from 7:30 A.M. to 6:00 P.M. Eastern Time on any regular trading day of trading of two or more Members. At the request of any Member or Members, the OPRA System shall also operate at other times, in which event the incremental costs of operating the System during such times shall be allocated in accordance with Section 7.1(e).

**Section 5.4. Vendors, Subscribers and Other Approved Persons.**

(a) Approval Required. Consolidated Options Information shall be disseminated through the OPRA System only to the Members, Vendors, Subscribers and other categories of persons that have been approved by OPRA and have entered into agreements with or for the benefit of OPRA and are in full compliance therewith. OPRA may, in its discretion, require that Vendors, Subscribers or other approved persons be separately approved to receive consolidated Last Sale Reports and/or consolidated Quotation Information relating to each of FCO Securities, Index Option Securities or other categories of Eligible Securities. Any Vendor, Subscriber, or other

approved person may be disapproved or its previous approval may be terminated upon a determination by OPRA that such action is necessary or appropriate in the public interest or for the protection of investors, or in the event such person violates any provision of any contract or agreement pursuant to which such person receives consolidated Last Sale Reports, consolidated Quotation Information or other Options Information. Any person adversely affected by final action of OPRA in disapproving or revoking prior approval of the privilege of receiving consolidated Last Sale Reports or consolidated Quotation Information shall be entitled to have such action reviewed in accordance with the applicable rules and regulations of the Commission.

(b) Agreements.

(i) Agreements for the furnishing of Options Information shall be designed to insure that such information is disseminated in an orderly, reliable and timely fashion, and that it is available only to approved Vendors, Subscribers and other approved persons. Such agreements may impose reasonable and nondiscriminatory charges for the privilege of receiving such information. OPRA may, in its discretion, contract separately for the dissemination of consolidated Last Sale Reports and consolidated Quotation Information, or it may offer consolidated Last Sale Reports and consolidated Quotation Information together in a single contract. As provided in Section 5.2(c), upon the availability of a BBO through the OPRA System, OPRA may contract separately for Last Sale Reports combined with the BBO, or it may offer Last Sale Reports, Quotation Information and the BBO together in a single contract. OPRA may also contract separately for access to information and facilities pertaining to FCO Securities or Index Option Securities.

(ii) Agreements with Vendors shall provide that consolidated Last Sale Reports and consolidated Quotation Information may be received by Vendors only for the purpose of (A) developing a data base that enables the Vendor to respond to inquiries from interrogation devices or other devices located in the office of approved Subscribers that are capable of displaying Last Sale Reports of transactions in, and/or quotations for, Eligible Securities as they occur; (B) reporting changes in Last Sale Reports and Quotation Information through display devices located in the office of approved Subscribers; and (C) providing consolidated Last Sale Reports and/or consolidated Quotation Information to approved Subscribers and to such other persons and in such other forms as OPRA may approve. In furtherance of the foregoing purposes, Vendor agreements shall include provisions relating to the following:

(A) There shall be uniform specifications governing the manner in which consolidated Last Sale Reports and consolidated Quotation Information are transmitted by or on behalf of OPRA to Vendors. Such specifications may be different for different categories of Eligible Securities;

(B) There shall be standards governing the services provided by Vendors to Subscribers which shall require that such services facilitate dissemination of consolidated Last Sale Reports and consolidated Quotation Information in a manner that is consistent with applicable rules and regulations of the Securities and Exchange Commission and that is not discriminatory or contrary to the orderly operation and regulation of options markets;

(C) Vendors shall be permitted to provide unconsolidated Proprietary Information furnished by one or more Members in accordance with subparagraph (c)(iii) of Section 5.2, but only if the conditions set forth in said subparagraph are satisfied. In providing consolidated Options Information, Vendors shall not exclude reports or otherwise discriminate on the basis of the market in which a transaction or quotation took place, and the equipment used in connection with the display or retrieval of Last Sale Reports or Quotation Information shall be capable of displaying all such reports or information

regardless of the market where a transaction or quotation took place, and, unless exempted, shall identify such market; provided, however, that agreements with Vendors may provide that the requirements of this subparagraph (b)(ii)(C) will be deemed to be satisfied if a Vendor's market data service includes Last Sale Reports together with the BBO, or Last Sale Reports together with all bids and offers furnished by OPRA, for each eligible security included in the service, notwithstanding that the service may also include additional unconsolidated information in respect of such security.

All agreements entered into between OPRA and persons receiving consolidated Last Sale Reports and/or consolidated Quotation Information shall provide that the respective reports and information covered thereunder remain the property of the respective Member on or in whose market the reported transaction or quotation took place.

(c) Direct Access to the OPRA System. No person shall be entitled to receive consolidated Last Sale Reports or consolidated Quotation Information directly from the OPRA System unless at the time of receipt thereof such person has entered into an appropriate agreement with OPRA, in the form approved by OPRA, providing for such direct access, and is in full compliance therewith. Such agreements may impose reasonable charges for access to facilities and services provided by OPRA, which charges may be in addition to applicable information fees.

(d) Fees and Charges.

(i) General. OPRA may impose information fees and/or facilities charges upon all persons who have access to Options Information, including Members, Vendors, Subscribers or other approved persons. A schedule of OPRA's effective fees and charges is attached as Exhibit B hereto. Except as provided in subparagraphs (ii) and (iii) below, changes in these fees and charges may be made by the affirmative vote of not less than two-thirds of all of the Members. Upon approval in accordance with this Section 5.4(d) and, in the case of fees and charges subject to approval only by Members who provide a market in FCO Securities or Index Option Securities, upon not less than 30 days prior written notice to the other Members, changes in fees and charges may be put into effect upon OPRA's filing notice thereof with the Securities and Exchange Commission, subject to any required notice period in the agreements between OPRA and the persons subject to the fees or charges in question. Any change in a fee or charge that has taken effect as stated above may be summarily abrogated by the Securities and Exchange Commission within 60 days of the date of filing the same with the Commission if the Commission determines that it is appropriate in furtherance of the purposes of the Exchange Act that such change not be put into effect until it has been reviewed and approved by the Commission. The abrogation of a change in a fee or charge by the Commission shall not affect the validity of the revised fee or charge during the period it was in effect, except that if the Commission should ultimately disapprove the change, OPRA shall refund the excess of any fees or charges paid to it over the fees or charges as finally approved by the Commission.

(ii) FCO Securities. OPRA may impose separate fees and charges for access to or for the use of information and facilities pertaining solely to FCO Securities. Subject to subparagraph (v) below, the decision to impose separate fees and charges pertaining solely to FCO Securities, as well as the amount of and changes to such fees and charges, may be made by the affirmative vote of a weighted majority (as defined below) of those Members who provide a market in FCO Securities.

(iii) Index Option Securities. OPRA may impose separate fees and charges for access to or for the use of information and facilities pertaining solely to Index Option Securities. Subject to subparagraph (v) below, the decision to impose separate fees and charges pertaining solely to Index Option Securities, as well as the amount of and changes to such fees and charges, may be made by the affirmative vote of a weighted majority (as defined below) of those Members who provide a market in Index Option Securities; provided that at no time may fees or charges pertaining solely to Index Option Securities be established at a level that would exceed two-thirds of the then effective

comparable fee applicable to Eligible Securities other than FCO Securities or Index Option Securities, unless such fees or charges are approved by an unweighted majority vote of all of the Members.

(iv) Weighted Majority. For purposes of subparagraphs (ii) and (iii) above, a “weighted majority” vote of a specified number of Members shall mean a majority vote of those Members, with the vote of each Member being a percentage of the total voting authority of all Members eligible to vote on the matter determined by dividing (x) the number of compared trades in the category of Eligible Securities to which the vote relates reported by OCC as having been submitted by that Member during the preceding twelve calendar months by (y) the total number of all compared trades in that category of Eligible Securities so reported as having been submitted by all Members during that same period.

(v) Notwithstanding the foregoing, in the event OPRA is party to a contract with one or more third parties that sets a limit on the amount of a particular category of fees or charges that may be imposed by OPRA, or on changes in a particular category of such fees or charges, fees or charges of that category may be imposed or changed only by the affirmative vote of not less than two-thirds of all of the Members.

## ARTICLE VI

### CAPITAL ACCOUNTS

#### Section 6.1. Capital Accounts.

(a) A separate capital account (“Capital Account”) shall be established and maintained by the Company for each Member in accordance with section 704(b) of the Code and Treasury Regulation section 1.704-1 (b)(2)(iv). There shall be credited to each Member’s Capital Account the capital contributions (at fair market value in the case of contributed property) made by such Member (which shall be deemed to be zero for the initial Members), allocations of Company profits and gain (or items thereof) to such Member pursuant to Article VII (excluding those allocated in Section 7.3) and any recaptured tax credits, or portion thereof, to the extent such increase to the tax basis of a Member’s interest in the Company may be allowed pursuant to the Code. Each Member’s Capital Account shall be decreased by the amount of distributions (at fair market value in the case of property distributed in kind) to such Member, allocations of Company losses to such Member pursuant to Article VII hereof (including expenditures which can neither be capitalized nor deducted for tax purposes, organization and syndication expenses not subject to amortization and loss on sale or disposition of Company Property, whether or not disallowed under sections 267 or 707 of the Code) and any tax credits, or portion thereof, as may be required to be charged to the tax basis of a Member’s Company Interest pursuant to the Code. Capital Accounts shall not be adjusted to reflect a Member’s share of liabilities under section 752 of the Code.

(b) If, following the date hereof, money or property is contributed to the Company in other than a de minimis amount in exchange for an interest in the Company (which shall not include the Participation Fee paid by a new Member pursuant to Section 3.2, which is not treated as a contribution to capital), or money or property is distributed to a Member in exchange for an interest in the Company but the Company is not liquidated, the Capital Accounts of the Members shall be adjusted based on the fair market value of Company Property at the time of such contribution or distribution and the unrealized income, gain, loss, or deduction inherent in the Company Property which has not previously been reflected in the Capital Accounts shall be allocated among the Members as if there had been a taxable disposition of the Company Property at its fair market value on such date. The fair market value of contributed, distributed, or revalued property shall be agreed to among the Members or, if there is no such agreement, by an appraisal.

(c) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation section 1.704-1(b) promulgated under section 704(b) of the Code, and shall be interpreted and applied in a manner consistent with such Regulations.

**Section 6.2. Interest.** Except as otherwise provided herein, no Member shall be entitled to receive interest on amounts in its Capital Account.

## ARTICLE VII

### ALLOCATIONS OF INCOME AND LOSS

**Section 7.1. Periodic Allocations.** As of the end of each calendar quarter or such other period selected by the Management Committee, the net profit or net loss of the Company (and each item of income, gain, loss, deduction, and credit for federal income tax purposes) for the period shall be determined. Except as provided in Section 7.2 and Section 7.3, such net profit or net loss (and each item of income, gain, loss, deduction, and credit) shall be allocated among the Members as follows:

(a) **General.**

(i) The Company's expenses and revenues shall first be allocated among OPRA's accounting centers as provided in subparagraphs (iii) and (iv) of this Section 7.1(a), and shall then be further allocated to the Capital Accounts of the Members providing markets in the securities included within such accounting centers as provided in paragraphs (b), (c) and (d) of this Section 7.1. For purposes of this Section 7.1, OPRA shall consist of an FCO accounting center encompassing OPRA's revenues and expenses pertaining to Foreign Currency Options, an index option accounting center encompassing OPRA's revenues and expenses pertaining to Index Option Securities, and a basic accounting center encompassing revenues and expenses pertaining to OPRA's other activities.

(ii) Each Member shall be responsible for paying the full cost incurred by it in collecting and reporting to the Processor Last Sale Reports and Quotation Information related to Eligible Securities for dissemination through the OPRA System.

(iii) Except for (1) costs and expenses attributable to after-hours operation, which are allocated in accordance with paragraph (e) of this Section 7.1, and (2) total costs of OPRA (including the amortization of purchased hardware and software) accrued in a single calendar year above a specified ceiling, which are allocated in accordance with the Capacity Guidelines, all costs and expenses pertaining to the implementation, start-up, development, administration and operation of the Plan and the OPRA System, including costs incurred by any Member authorized to act on behalf of other Members, shall be allocated as follows:

(A) Except as otherwise provided below, costs and expenses directly attributable solely to the development, operation or administration of a single accounting center, including the costs of developing facilities necessary for receiving, processing and disseminating Last Sale Reports and Quotation Information pertaining to securities included within that accounting center, shall be allocated entirely to that accounting center.

(B) Costs and expenses of the Processor incurred in connection with the receipt, processing and distribution of Last Sale Reports and Quotation Information that are attributable to more than one accounting center shall be allocated among such accounting centers as determined by OPRA at the beginning of each fiscal year on the basis of the percentage of total message traffic (last sale, quotations, open interest, end of day summaries

and other product-specific messages) pertaining to Eligible Securities included within each respective accounting center that are reflected in the records of OPRA's Processor as having been processed by the Processor during the last three calendar months of the preceding fiscal year; provided, however, that at any time when OPRA does not charge separately for access to information and facilities pertaining to Index Option Securities or FCO Securities, such costs and expenses shall be allocated among the basic accounting center, the index accounting center and the FCO accounting center, as applicable, in the same proportion as revenues are allocated among these three centers pursuant to subparagraph (iv) of this Section 7.1(a).

(C) All administrative and general overhead costs and expenses, other than those governed by subparagraphs (A) or (B) above, including costs and expenses directly related to billing and collection of OPRA fees (exclusive of bad debt expense) shall be allocated among OPRA's accounting centers in a fair and reasonable manner as determined by the Management Committee.

(D) Bad debt expense shall be charged against an appropriate bad debt reserve established in respect of each accounting center.

(E) All costs and expenses associated with facilities development shall be allocated as determined by the Management Committee for the particular facility in question, or if no specific allocation is determined for a particular facility, such costs and expenses shall be allocated equally among the accounting centers that are expected to make use of that facility. The Management Committee shall determine the allocation of such costs and expenses prior to the commencement of each facilities development project.

(F) If an OPRA facility is used by one or more Eligible Securities included within an accounting center that was not allocated any of the development costs of that facility, such accounting center shall be allocated such share of the total development cost of the facility as shall be determined by the Management Committee, but only if such use commences within 24 months of the time the facility first became operational.

(iv) At any time when OPRA does not charge separately for access to information and facilities pertaining to Index Option Securities and FCO Securities, revenues derived from fees and charges imposed by OPRA shall be allocated among the basic accounting center and the other accounting centers on the basis of the relative number of compared trades in Eligible Securities included within each respective accounting center as reported by OCC for the preceding three calendar months. At any time when OPRA charges separately for access to information and facilities pertaining to Index Option Securities or FCO Securities, but not both, revenues derived from such separate fees and charges shall be allocated entirely to the applicable accounting center, and revenues derived from fees and charges exclusive of such separate fees and charges shall be allocated among the basic accounting center and the other accounting center as to which separate fees and charges do not apply on the basis of the relative number of compared trades in Eligible Securities included within each of those two accounting centers as reported by OCC for the preceding three calendar months. At any time when OPRA charges separately for access to information and facilities pertaining to both Index Option Securities and FCO Securities, revenues derived from such separate fees and charges shall be allocated entirely to the applicable accounting centers, and revenues derived from fees and charges exclusive of such separate fees and charges shall be allocated entirely to the basic accounting center.

(v) An independent audit shall be made yearly of all costs incurred and revenues realized by the Company, and the allocation of costs and revenues among the separate accounting centers and among the Capital Accounts of the Members.

(b) Basic Accounting Center Costs and Revenues

The provisions of this Section 7.1(b) shall apply to costs and revenues not allocated to the FCO or index option accounting centers, all of which shall be allocated to the basic accounting center.

(i) Subject to the provisions of paragraph (e) of this Section 7.1, each Member shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the basic accounting center, such costs to be allocated to the Capital Account of each Member at the end of each calendar quarter on the basis of the relative number of compared trades in Eligible Securities other than FCO Securities and Index Option Securities submitted by each Member for clearing to OCC during the preceding three calendar months.

(ii) Revenues allocated to the basic accounting center in excess of the aggregate costs and expenses allocated to the basic accounting center shall be credited to the Capital Account of each of the Members at the end of each calendar quarter on the same basis as provided in subparagraph (b)(i) above for the allocation of costs, except that revenues allocated to the basic accounting center derived from a Participation Fee paid to OPRA by a new Member pursuant to Section 3.2 shall be allocated to the Members other than the new Member, such allocation to be made on the basis provided in subparagraph (b)(i) above as applied to the Members other than the new Member.

(c) FCO Accounting Center Costs and Revenues

(i) Subject to the provisions of paragraph (e) of this Section 7.1, each FCO Member shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the FCO accounting center, such costs to be allocated to the Capital Account of each FCO Member at the end of each calendar quarter on the basis of the relative number of compared trades in FCO Securities reported by OCC as having been submitted by each FCO Member during the preceding three calendar months.

(ii) Revenues derived from fees and charges allocated to the FCO accounting center in excess of the aggregate costs and expenses allocated to the FCO accounting center shall be credited to the Capital Account of each of the FCO Members at the end of each calendar quarter on the same basis as provided in subparagraph (c)(i) above for the allocation of costs, except that revenues allocated to the FCO accounting center derived from a Participation Fee paid to OPRA by a new Member pursuant to Section 3.2 shall be allocated entirely to the FCO Members other than the new Member, such allocation to be made on the basis provided in subparagraph (c)(i) above as applied to the FCO Members other than the new Member.

(d) Index Option Accounting Center Costs and Revenues

(i) Subject to the provisions of paragraph (e) of this Section 7.1, each Index Option Member shall bear a proportional share of all start-up, development, administrative and operating costs and expenses of the System allocated to the index option accounting center, such costs to be allocated to the Capital Account of each Index Member at the end of each calendar quarter on the basis of the relative number of compared trades in Index Option Securities reported by OCC as having been submitted by each Index Option Member during the preceding three calendar months.

(ii) Revenues derived from fees and charges allocated to the index option accounting center in excess of the aggregate costs and expenses allocated to the index option accounting center shall be credited to the Capital Account of each of the Index Members at the end of each calendar quarter on the same basis as provided in subparagraph (d)(i) above for the allocation of costs, except that revenues allocated to the index option accounting center derived from a Participation Fee paid to

OPRA by a new Member pursuant to Section 3.2 shall be allocated entirely to the Index Members other than the new Member, such allocation to be made on the basis provided in subparagraph (d)(i) above as applied to the Index Members other than the new Member.

(e) After-Hours Operation

In the event the OPRA System operates outside of its regular hours of operation at the request of one or more Members, costs attributable to such operation shall be allocated as follows:

(i) such costs shall first be allocated among the FCO accounting center, the index option accounting center and the basic accounting center in proportion to the share of OPRA's line output capacity (measured in KBPS) available to FCO Securities, Index Option Securities and all other Eligible Securities, respectively, during after-hours periods of operation.

(ii) costs allocated to a single accounting center in accordance with subparagraph (e)(i) above shall be further apportioned among the Capital Accounts of the Members providing a market in securities included in that accounting center during that period of time in the same proportion as other costs allocated to that accounting center are apportioned among such Capital Accounts pursuant to subparagraphs (b)(i), (c)(i) or (d)(i) above, as applicable.

EXAMPLES:

1. If the OPRA System operates from 6:00 P.M. to 8:00 P.M. at the request of Exchange A only, all incremental costs attributable to operating the System during those two hours shall be allocated to the Capital Account of Exchange A, regardless of which facilities are available during that time period.
2. If the OPRA System operates from 10:00 P.M. to 2:00 A.M. at the request of Exchanges B and C, and if information pertaining to Index Option Securities only is available during those four hours, all incremental costs attributable to such operation shall be allocated to the index option accounting center, and shall be further allocated between the Capital Accounts of Exchanges B and C in proportion to the relative number of total compared index option trades submitted by those two exchanges for clearing to OCC during the preceding quarter.
3. If the OPRA System operates from 6:00 P.M. to midnight at the request of Exchanges B, D and E, and if Exchanges B and D utilize the System to disseminate information pertaining to FCO Securities from 6:00 P.M. to 10:00 P.M., and Exchanges B and E utilize the System to disseminate information pertaining to Index Option Securities from 6:00 P.M. to midnight, all incremental costs attributable to operating the System from 6:00 P.M. to 10:00 P.M. shall be allocated between the FCO accounting center and the index option accounting center on the basis of total line output capacity available to FCO Securities and Index Option Securities, respectively, during such period. Next, all costs attributable to operating the System from 10:00 P.M. to midnight shall be allocated to the index option accounting center. Next, all costs allocable to the FCO accounting center shall be allocated between the Capital Accounts of Exchanges B and D in proportion to the relative number of total compared FCO trades submitted by those two exchanges for clearing to OCC during the preceding quarter.

Finally, all costs allocable to the index option accounting center shall be allocated between the Capital Accounts of Exchanges B and E in proportion to the relative number of total compared index option trades submitted by those two exchanges for clearing to OCC during the preceding quarter.

**Section 7.2. Special Allocations.**

(a) Notwithstanding the foregoing, this Agreement shall be deemed to contain, and the allocations of net profit and net loss as set forth in Section 7.1 shall be subject to, each of the following: (a) a “qualified income offset” as described in Treasury Regulation § 1.704-1(b)(2)(ii)(d); (b) a “partnership minimum gain chargeback” as described in Treasury Regulation § 1.704-2(f); and (c) a “partner non-recourse debt minimum gain chargeback” as described in Treasury Regulation § 1.704-2(i)(4). The Members intend that the allocations required to be made pursuant to Section 7.1 and this Section 7.2 shall satisfy the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. Without the consent of the Members, the Management Committee shall have the power to interpret and amend the provisions of Section 7.1 and this Section 7.2 in the manner necessary to ensure such compliance provided that such amendments shall not change the amounts distributable to a Member pursuant to this Agreement.

(b) Notwithstanding any other provision in this Agreement, in the Fiscal Year in which there is a final liquidation of the Company and a distribution of its remaining assets, items of gross income, gain, deductions, and loss shall be allocated among the Members, to the greatest extent possible, so as to cause the Capital Account balance of each Member to be equal to the amount of liquidating distributions payable to the Member pursuant to the provisions of Section 9.2.

**Section 7.3. Allocations Pursuant to Section 704(c) of the Code.** In accordance with Section 704(c) of the Code and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value. In the event the book value of any Company Property is required to be adjusted pursuant to Section 3.3(b) and Treasury Regulation § 1.704-1(b)(2)(iv)(f) promulgated under section 704(b) of the Code, allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted book value in the same manner as under Section 704(c) of the Code and the Regulations thereunder. Such allocations shall be made by the Management Committee using the “traditional method” set forth in Treasury Regulation § 1.704-3(b). Allocations pursuant to this Section 7.3 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member’s share of distributions pursuant to any provision of this Agreement.

**Section 7.4. Changes in Members’ Interests.** If during any fiscal period of the Company there is a change in any Member’s Company Interest as a result of the admission of one or more Members or the withdrawal of a Member, the net profit, net loss or any other item allocable to the Members under this Article VII for the period shall be allocated among the Members so as to reflect their varying interests in the Company during the period. In the event that the change in the interests of the Members results from the admission or withdrawal of a Member, the allocation of net profit, net loss, or any other item allocable among the Members under this Article IV shall be made on the basis of an interim closing of the Company’s books as of each date on which a Member is admitted to or withdraws from the Company; provided that the Company may use interim closings of the books as of the end of the month preceding and the month of the admission or withdrawal, and prorate the items for the month of withdrawal on a daily basis, unless the Management Committee determines that such an allocation would be materially unfair to any Member. In the event that the change in the Company Interests of the Members results from a transfer of all or any portion of a Company Interest by a Member, the net profit, net loss, or any other items allocable among the Members under this Article VII shall be determined on a daily, monthly, or other basis, as determined by the

Management Committee using any permissible method under section 706 of the Code and the Treasury Regulations promulgated thereunder.

## ARTICLE VIII

### RECORDS AND ACCOUNTING; REPORTS

#### Section 8.1. Accounting.

(a) Except as provided in Section 8.1(b) and Section 8.2, the Management Committee shall maintain a system of accounting established and administered in accordance with GAAP, and all financial statements or information supplied to the Members shall be prepared in accordance with GAAP (subject, in the case of unaudited statements, to year-end adjustments and the omission of footnotes). The Fiscal Year of the Company shall be the Fiscal Year which the Company is required to adopt under section 706 of the Code.

(b) Assets received by the Company as Capital Contributions shall be recorded at their fair market values, and the Capital Account maintained for each Member shall comply with Treasury Regulations section 1.704-1 (b)(2)(iv) promulgated under section 704(b) of the Code. In the event fair market values for certain assets of the Company are not determined by appraisals, fair market value for such assets shall be reasonably agreed to among the Members in arm's-length negotiations.

(c) All matters concerning accounting procedures shall be determined by the Management Committee.

**Section 8.2. Tax Returns.** The Management Committee shall cause federal, state, provincial, and local income tax returns for the Company to be prepared and timely filed with the appropriate authorities and shall arrange for the timely delivery to the Members of such information as is necessary for such Members to prepare their federal, state and local tax returns.

**Section 8.3. Company Funds.** Pending use in the business of the Company or distribution to the Members, the funds of the Company may, in the discretion of the Management Committee, be deposited in a bank account or accounts, or invested in the following interest-bearing taxable or nontaxable investments: checking and savings accounts, certificates of deposit and time or demand deposits in commercial banks, U.S. government securities, securities fully guaranteed by U.S. government agencies, bankers' acceptances, securities issued by money market mutual funds, savings and loan association deposits, deposits in members of the Federal Home Loan Bank System, or commercial paper rated A-1 or better by Standard & Poor's Corporation or Prime-I or better by Moody's Commercial Paper Division of Moody's Investor Services, Inc., or the successor to either of them; provided that the Management Committee shall not make any such deposits or investments that would require registration of the Company under the Investment Company Act of 1940. Such funds shall not be commingled with funds of any other person. Withdrawal of funds shall be made upon such signatures as the Management Committee may designate.

#### Section 8.4. Tax Matters Partner.

(a) The Chicago Board Options Exchange, Inc. is hereby appointed the "Tax Matters Partner" of the Company for all purposes pursuant to sections 6221-6231 of the Code. As Tax Matters Partner, the Tax Matters Partner shall (i) furnish to each Member affected by an audit of the Company income tax returns a copy of each notice or other communication received from the Internal Revenue Service or applicable state authority (except such notices or communications as are sent directly to the Member), (ii) keep such Member informed of any administrative or judicial proceeding, as required by section 6623(g) of the Code, (iii) allow each such Member an opportunity to participate in all such administrative and judicial proceedings, and (iv)

advise and consult with each such Member as to proposed adjustments to the federal or state income tax returns of the Company.

(b) The Tax Matters Partner, as such, shall not have the authority to (i) enter into a settlement agreement with the Internal Revenue Service which purports to bind any Member, without the written consent of such Member, or (ii) enter into an agreement extending the period of limitations as contemplated in section 6229(b)(1)(B) of the Code without the approval of the Management Committee.

(c) The Company shall not be obligated to pay any fees or other compensation to the Tax Matters Partner in its capacity as such, but may pay compensation to the Tax Matters Partner for services rendered to the Company in any other capacity. However, the Company shall reimburse the Tax Matters Partner for any and all out-of-pocket costs and expenses (including reasonable attorneys and other professional fees) incurred by it in its capacity as Tax Matters Partner. The Company shall indemnify, defend and hold the Tax Matters Partner harmless from and against any loss, liability, damage, costs or expense (including reasonable attorneys' fees) sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Member's responsibilities as Tax Matters Partner, so long as such act or decision does not constitute gross negligence or willful misconduct.

## ARTICLE IX

### DISSOLUTION AND TERMINATION

**Section 9.1. Dissolution of Company.** The Company shall dissolve and its assets and business shall be wound up upon the occurrence of any of the following events:

- (a) Unanimous written consent of the Members to dissolve the Company;
- (c) The sale or other disposition of all or substantially all the Company Property;
- (d) An event which makes it unlawful or impossible for the Company business to be continued; or
- (e) The termination of one or more Members such that there is only one remaining Member.

**Section 9.2. Liquidation and Distribution.**

(a) Following the occurrence of an event described in Section 9.1, the Management Committee shall act as liquidating trustee and shall wind up the affairs of the Company by (i) selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales), and (ii) applying and distributing the proceeds of such sale, together with other funds held by the Company: (i) first, to the payment of all debts and liabilities of the Company; (ii) second, to the establishments of any reserves reasonably necessary to provide for any contingent recourse liabilities and obligations; and (iii) third, to the Members in proportion to the balances in their Capital Accounts at the date of such distribution.

(b) It is the intent of the parties hereto that the liquidation amounts distributable to the Members pursuant to Section 9.2(a) shall be equal to the Members' respective ending Capital Account balances. Therefore, notwithstanding anything to the contrary in this Agreement, to the extent not inconsistent with the applicable Treasury Regulations under Section 704 of the Code, if, upon the dissolution of the Company, any Member's ending Capital Account balance (determined immediately after all net profit and net loss, and other items of gain, income, loss and deduction have been tentatively allocated under this Agreement and reflected in the Capital Accounts of the Members as if this Section 9.2(b) were not in this Agreement) is less than such Member's liquidation amount, then (i) such Member shall be specially allocated items of gain or income for such year (and, if necessary, for the preceding year if the Company has not yet

filed its tax return for such preceding year), and (ii) the other Members shall be specially allocated items of deduction or loss for such year (and, if necessary, for the preceding year if the Company has not yet filed its tax return for such preceding year), until each such Member's actual Capital Account balance equals the liquidation amount for such Member. The special allocation provision provided by this Section 9.2(b) shall be applied in such a manner so as to cause the difference between each Member's liquidation amount and the balance in its Capital Account (determined after this allocation, but immediately prior to the distributions pursuant to Section 9.2(a)) to be the smallest dollar amount possible. Nothing contained in this Section 9.2(b) shall change the manner in which the remaining assets of the Company shall be distributed pursuant to Section 9.2(a).

**Section 9.3. Termination.** Each of the Members shall be furnished with a statement prepared by the Company's independent accountants, which shall set forth the assets and liabilities of the Company as of the date of the final distribution of Company Property under Section 9.2 and the net profit or net loss for the fiscal period ending on such date. Upon compliance with the distribution plan set forth in Section 9.2, the Members shall cease to be such, and the liquidating trustee shall execute, acknowledge, and cause to be filed a certificate of cancellation of the Company. Upon completion of the dissolution, winding up, liquidation and distribution of the liquidation proceeds, the Company shall terminate.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1. Notices And Addresses.** All notices required to be given under this Agreement shall be in writing and may be delivered by certified or registered mail, postage prepaid, by hand, or by any private overnight courier service. Such notices shall be mailed or delivered to the Members at the addresses set forth on Schedule A to this Agreement or such other address as a Member may notify the other Members of in writing. Any notices to be sent to the Company shall be delivered to the principal place of business of the Company or at such other address as the Management Committee may specify in a notice sent to all of the Members. Notices shall be effective (i) if mailed, on the date three days after the date of mailing or (ii) if hand delivered or delivered by private courier, on the date of delivery.

**Section 10.2. Governing Law.** This Agreement shall be governed by and construed in accordance with the Delaware Act and internal laws and decisions of the State of Delaware, provided that the rights and obligations of the Members and of Vendors, Subscribers and other persons contracting with OPRA in respect of the matters covered by this Agreement shall at all times also be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated thereunder..

**Section 10.3. Amendments.** This Agreement may be amended from time to time when authorized by the affirmative vote of all of the Members, subject to the approval of the Securities and Exchange Commission.

**Section 10.4. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Members, Assignees, and their respective legal representatives and successors.

**Section 10.5. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument.

**Section 10.6. Modifications to be in Writing.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment,

modification or alteration shall be binding unless the same is in writing and adopted in accordance with the provisions of Section 10.3.

**Section 10.7. Captions.** The captions are inserted for convenience of reference only and shall not affect the construction of this Agreement.

**Section 10.8. Validity and Severability.** If any provision of this Agreement shall be held invalid or unenforceable, that shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain in full force and effect.

**Section 10.9. Statutory References.** Each reference in this Agreement to a particular statute or regulation, or a provision thereof, shall be deemed to refer to such statute or regulation, or provision thereof, or to any similar or superseding statute or regulation, or provision thereof, as is from time to time in effect.

The undersigned have executed this Agreement as of the date first above written.

CHICAGO BOARD OPTIONS EXCHANGE,  
INC.

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

INTERNATIONAL SECURITIES  
EXCHANGE, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NASDAQ OMX BX, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NASDAQ OMX PHLX, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

THE NASDAQ STOCK MARKET, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NYSE AMEX LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NYSE ARCA, INC.

By: \_\_\_\_\_

MEMBERS OF OPTIONS PRICE REPORTING AUTHORITY, LLC

Chicago Board Options Exchange, Incorporated

International Securities Exchange, LLC

NASDAQ OMX BX, Inc.

NASDAQ OMX PHLX, Inc.

The NASDAQ Stock Market, Inc.

NYSE Amex LLC

NYSE Arca, Inc.