

Exhibit 3A

AGREEMENT RELATING TO BACKUP TRADING ARRANGEMENTS

THIS AGREEMENT RELATING TO BACKUP TRADING ARRANGEMENTS (this “Agreement”) is made and entered into as of the 21st day of July, 2004, by and between CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED (“CBOE”) and PHILADELPHIA STOCK EXCHANGE, INC. (“Phlx” and, together with CBOE, the “Parties”).

RECITALS

A. CBOE and Phlx entered into a Memorandum of Understanding dated September 17, 2003 (the “MOU”) to memorialize their mutual understanding that they would work together to develop arrangements that would permit either of them, using the facilities of the other of them, to continue to trade certain securities that are traded on its facilities if a disabling event or occurrence were to occur to its facilities (“Backup Trading Arrangements”).

B. Pursuant to the MOU, CBOE and Phlx entered into a Term Sheet relating to Backup Trading Arrangements between CBOE and Phlx dated as of March 15, 2004 (the “Term Sheet”). The Term Sheet outlines essential commercial terms with respect to the Backup Trading Arrangements. The Term Sheet contemplates that the Parties will incorporate the understandings in the Term Sheet into a definitive agreement between them with respect to the Backup Trading Arrangements.

C. This Agreement is the agreement contemplated by the Term Sheet.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and undertakings set forth herein and for other good and valuable consideration, the Parties agree as follows:

1. Certain Definitions. In addition to terms defined elsewhere in this Agreement, the following terms shall have the respective meanings indicated:

(a) “Backup Exchange” means the Party that makes the use of its facilities available for use by the other Party if the other Party becomes a Disabled Exchange. The term “potential Backup Exchange” means either Party in its capacity as potentially the Backup Exchange.

(b) “Backup Period” means the period following a Disabling Event when the Disabled Exchange is utilizing the facilities of the Backup Exchange.

(c) “Disabled Exchange” means a Party that has experienced a Disabling Event. The term “potential Disabled Exchange” means either Party in its capacity as potentially a Disabled Exchange.

(d) “Disabling Event” means an emergency or extraordinary set of circumstances that severely and adversely affects the ability of a Party to provide a market for the

trading of securities for which the Party ordinarily provides a market and that the affected Party determines is likely to continue for at least 24 hours.

(e) “Disclosing Party” means either Party in its capacity as a discloser of its Proprietary Information to the other Party.

(f) “Effective Date” has the meaning specified in Section 11 of this Agreement.

(g) “Exchange Act” means the Securities Exchange Act of 1934 as amended.

(h) “Exclusively Listed Option” or “ELO” means an option that is listed exclusively by a Party (because the Party has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

(i) “Facility of the Disabled Exchange at the Backup Exchange” has the meaning set forth in Section 5(a)(1) of this Agreement.

(j) “Implementation Plan” means an initial implementation schedule to be agreed to by the Parties that among other things assigns responsibilities for the initial implementation and testing of the Backup Trading Arrangements. The Implementation Plan is further described in Section 2 of this Agreement.

(k) “Joint Operational Plan” means one or more detailed functional documents to be developed by the Parties describing certain aspects of the Backup Trading Arrangements with specificity. (The Joint Operational Plan was referred to in the MOU as the “Backup Plan,” and was referred to in the Term Sheet, and is referred to in this Agreement, as the “Joint Operational Plan” in order to distinguish it from any backup plan that either Party may implement for its own operations.) The Joint Operational Plan is further described in Section 2 of this Agreement.

(l) “OCC” means The Options Clearing Corporation or any successor thereto.

(m) “OPRA” means the Options Price Reporting Authority.

(n) “Preparation/Readiness Period” means any period of time when this Agreement is in effect other than a Backup Period.

(o) “Proprietary Information” has the meaning specified in Section 13 of this Agreement.

(p) “Proprietary Interests” has the meaning specified in Section 10 of this Agreement.

(q) “Receiving Party” means either Party in its capacity as a receiver of Proprietary Information of the other Party.

(r) “Singly Listed Option” means an option that is not an ELO but that is listed by a Party and not by any other national securities exchange.

(s) “Temporary Member of the Disabled Exchange” and “Temporary Member of the Backup Exchange” have the respective meanings accorded to those terms in Section 5(a)(4) and Section 6(e), and the term “Temporary Member” means either a Temporary Member of the Disabled Exchange or a Temporary Member of the Backup Exchange, or either, as indicated by the context.

2. The Joint Operational Plan and the Implementation Plan

Following execution of this Agreement by both Parties the Parties will agree to the Implementation Plan and an initial version of the Joint Operational Plan. The Parties contemplate that the Joint Operational Plan will be a living document (that is, subject to continuing review and revision to accommodate changes in the circumstances of the

Parties) and that it will address such subjects as the Parties from time to time determine to be appropriate. Without limiting the generality of the foregoing, the Parties contemplate that the Joint Operational Plan will provide for periodic testing of the Backup Trading Arrangements after the Implementation Plan is implemented.

3. Each Party's Commitment to Act as a Backup Exchange

(a) Each Party hereby agrees, from and after the Effective Date, to make commercially reasonable efforts to make its facilities available to the other Party, in accordance with the Joint Operational Plan, if the other Party experiences a Disabling Event and provides notice that it wants to invoke the Backup Trading Arrangements. Each Party (for purposes of this Section, the "first Party") acknowledges that the other Party (for purposes of this Section, the "second Party") would not have any obligation to make its facilities available, even if the first Party becomes a Disabled Exchange, if the second Party reasonably determines that it also has experienced a Disabling Event or that, in the circumstances as they exist at the time, it would not be able to operate its own facilities effectively if it undertook to act as the Backup Exchange for the first Party. The Parties acknowledge that the Backup Trading Arrangements are and will be designed to permit either Party to become a Backup Exchange for the other Party on the business day following its receipt of notice that the other Party wants to invoke the Backup Trading Arrangements. (Notwithstanding the foregoing sentence, the Parties acknowledge that it may not be possible, until initial implementation of the Backup Trading Arrangements as described in the Implementation Plan has been completed, for a Party to become a Backup Exchange for the other Party on the business day following its receipt of notice that the other Party wants to invoke the Backup Trading Arrangements and that, until such initial implementation, each Party will make commercially reasonable efforts to act as the Backup Exchange in accordance with the provisions of this Section as soon as reasonably possible following its receipt of notice that the other Party wants to invoke the Backup Trading Arrangements.)

(b) The Parties agree that neither Party will have any obligation to continue to act as a Backup Exchange for more than thirty (30) days except as such Party may agree.

4. Certain Acknowledgments, Representations and Covenants

(a) The Parties will make reasonable efforts to facilitate the Backup Trading Arrangements by implementing understandings and procedures with OPRA that are consistent with this Agreement and the Joint Operational Plan. After such understandings and procedures are initially implemented the Parties will jointly make reasonable efforts to modify such understandings and procedures to keep them current with the Joint Operational Plan as in effect from time to time.

(b) The Parties will make reasonable efforts to facilitate the Backup Trading Arrangements by implementing appropriate understandings and procedures with OCC, including, without limiting the generality of the foregoing, an understanding that OCC will advise its members, if either Party becomes a Disabled Exchange and invokes the Backup Trading Arrangements, that the ELOs of the Disabled Exchange traded on the Facility of the Disabled Exchange at the Backup Exchange are registered, listed and

traded by the Disabled Exchange.

(c) If and to the extent appropriate, as determined jointly by the Parties, the Parties will make reasonable efforts to facilitate the Backup Trading Arrangements, including (without limiting the generality of the foregoing) by implementing appropriate understandings and procedures with other clearing corporations, securities information processors and National Market System Plans.

(d) Each Party agrees to make reasonable efforts to:

(1) obtain and maintain in effect consents from third parties with which it has business relationships (including without limitation index proprietors, vendors, technology providers, and lenders) to the extent necessary to enable the Backup Trading Arrangements to be implemented without additional consents if such Party or the other Party declares that it has experienced a Disabling Event; and

(2) make and maintain any other arrangements with third parties (including without limitation such Party's insurers, landlords and subtenants) that may be necessary to enable such Party to act as a Backup Exchange if the other Party declares that it has experienced a Disabling Event.

5. Understandings with Respect to ELOs

(a) With respect to each ELO of the Disabled Exchange that is, at the time of the Disabling Event, identified in the Joint Operational Plan as an ELO that the Disabled Exchange contemplates as being traded on the facilities of the other Party if the potential Disabled Exchange experiences a Disabling Event, the Parties agree that:

(1) The Backup Exchange will permit the Disabled Exchange and its members (up to the number of members for that ELO then specified in the Joint Operational Plan, or such

larger number of members as the Backup Exchange may agree in its discretion at the time of the Disabling Event) to use a portion of the floor and other facilities of the Backup Exchange to conduct the trading of such ELOs, as listings of the Disabled Exchange. That portion of the floor and other facilities of the Backup Exchange shall be deemed to be a facility of the Disabled Exchange (and is referred to herein as the "Facility of the Disabled Exchange at the Backup Exchange"). The Backup Exchange will provide support facilities as specified in the Joint Operational Plan, and appropriate additional support facilities as necessary to enable such members of the Disabled Exchange to conduct such trading.

(2) Notwithstanding that the trading of ELOs of the Disabled Exchange is conducted on the Facility of the Disabled Exchange at the Backup Exchange, such trading will be conducted in accordance with the rules of the Backup Exchange to the same extent as if such trading had been conducted on the Backup Exchange's own facilities, and (as further described in Section 7(c)) the Backup Exchange will perform the related regulatory functions with respect to such trading, in each case except as the Parties may specifically agree otherwise.

(3) The members of the Disabled Exchange authorized to trade in the ELOs of the Disabled Exchange at the Facility of the Disabled Exchange at the Backup Exchange shall not be authorized to trade in any options or other securities listed by the Backup Exchange. Such members of the Disabled Exchange shall not be deemed to be members

of the Backup Exchange for any purpose except as expressly provided in the Agreement. Without limiting the generality of the foregoing, such members of the Disabled Exchange will not be permitted to participate in the corporate governance of the Backup Exchange.

(4) The members of the Backup Exchange shall not be authorized to trade the ELOs of the Disabled Exchange on the Facility of the Disabled Exchange at the Backup Exchange, except that, following a Disabling Event:

(i) The Disabled Exchange may deputize certain willing floor brokers of the Backup Exchange as temporary members of the Disabled Exchange to permit them to execute orders as floor brokers in such ELOs on the Facility of the Disabled Exchange at the Backup Exchange; and

(ii) At the instruction of the Disabled Exchange, the Backup Exchange shall select members of the Backup Exchange that are willing to be deputized by the Disabled Exchange as temporary members of the Disabled Exchange authorized to make markets in the ELOs of the Disabled Exchange on the Facility of the Disabled Exchange at the Backup Exchange for such period of time following a Disabling Event as the Disabled Exchange determines to be appropriate, and the Disabled Exchange may deputize such members of the Backup Exchange as temporary members of the Disabled Exchange for that purpose (including, without limiting the generality of the foregoing, for the purpose of acting as the DPM or specialist or in a similar capacity pursuant to the rules that govern the operation of the Facility of the Disabled Exchange at the Backup Exchange with respect to one or more ELOs of the Disabled Exchange).

Any member of the Backup Exchange so deputized by the Disabled Exchange is sometimes referred to in this Agreement as a “Temporary Member of the Disabled Exchange.” A Temporary Member of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the Facility of the Disabled Exchange at the Backup Exchange; provided, however, that any such Temporary Member (1) shall be deemed to have satisfied, and the Disabled Exchange will waive specific compliance with, rules governing or applying to the maintenance of a person’s or a firm’s status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such and (2) shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the Facility of the Disabled Exchange at the Backup Exchange to the extent described herein. Each Party agrees to amend its rules to cause, and agrees to cause its rules during the term of this Agreement to continue to cause, any of its members that is deputized a Temporary Member of the Disabled Exchange to acknowledge that the member’s participation in the trading of an ELO of the Disabled Exchange will be subject to the rules that govern the operation of the Facility of the Disabled Exchange at the Backup Exchange.

(b) The Disabled Exchange shall have the right to designate its members that will be authorized to trade ELOs of the Disabled Exchange on the Facility of the Disabled Exchange at the Backup Exchange and to designate its members that will be authorized to make markets in such ELOs and, if applicable, its member that will be the DPM or specialist.

(c) With respect to ELOs of the Disabled Exchange that, at the time of the

Disabling Event, are not identified in the Joint Operational Plan as ELOs of such Party that such Party contemplates as being traded on the facilities of the other Party if such Party experiences a Disabling Event, the Disabled Exchange may request the Backup Exchange to accommodate the trading of such ELOs, and the Backup Exchange may agree to do so in its discretion. If the Backup Exchange agrees to do so, the Backup Exchange shall specify the number of members of the Disabled Exchange that it believes that it can accommodate, and the applicable provisions of Sections (a) and (b) shall apply with respect to the trading of such ELOs.

(d) The Disabled Exchange shall have the right, consistent with its rules, to initiate trading in additional series of any of its ELOs that are traded on the Facility of the Disabled Exchange at the Backup Exchange.

6. Understandings with Respect to Singly Listed Options

(a) With respect to each Singly Listed Option of the Disabled Exchange that is, at the time of a Disabling Event, identified in the Joint Operational Plan as a Singly Listed Option of such Party that such Party contemplates as being traded on the facilities of the other Party if such Party experiences a Disabling Event, the Parties agree that the Backup Exchange shall list such Singly Listed Option (even if the Singly Listed Option does not satisfy the standard listing and maintenance criteria of the Backup Exchange), and that the trading of such Singly Listed Options shall be conducted on the Backup Exchange in accordance with the rules of the Backup Exchange. The Parties contemplate that each will amend its rules to provide that, if the other Party becomes a Disabled Exchange and Singly Listed Options of the Disabled Exchange are

listed pursuant to the preceding sentence that do not satisfy the standard listing and maintenance criteria of the Backup Exchange, such Singly Listed Options will be subject, upon listing by the Backup Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).

(b) With respect to Singly Listed Options of the Disabled Exchange that, at the time of the Disabling Event, are not identified in the Joint Operational Plan as Singly Listed Options of such Party that such Party contemplates as being traded on the facilities of the other Party if such Party experiences a Disabling Event, the Party that experiences a Disabling Event may request the other Party to accommodate the trading of such Singly Listed Options, and the other Party may agree to do so in its discretion.

(c) Singly Listed Options of the Disabled Exchange that are traded on the Backup Exchange pursuant to Section (a) or (b) will be traded as listings of the Backup Exchange by members of the Backup Exchange and, to the extent provided in Sections (d) and (e), by members of the Disabled Exchange. The Parties will identify in the Joint Operational Plan as in effect from time to time, for each such Singly Listed Option of the Disabled Exchange, the member of the Backup Exchange that would be appointed by the Backup Exchange to act as the DPM or specialist unit, as applicable, in such Singly Listed Option. The Parties contemplate that, if the DPM or specialist unit on the Disabled Exchange with respect to a Singly Listed Option is a member of the Backup Exchange, such entity will be designated as the DPM or specialist unit for such option on the Backup Exchange. The Parties contemplate that any other Singly Listed Option will be

allocated to a DPM or specialist unit in accordance with the rules of the Backup Exchange.

(d) The Parties will specify in the Joint Operational Plan as in effect from time to time a number of members of each Party that each Party could accommodate for the purpose of trading the Singly Listed Options of the Disabled Exchange in the event that the other Party becomes a Disabled Exchange. The Backup Exchange may agree in its discretion at the time of a Disabling Event to accommodate a larger number of members of the Disabled Exchange for that purpose.

(e) The Disabled Exchange will select those of its members, up to the numbers agreed to by the Backup Exchange as described in Section (d), that will be accommodated by the Backup Exchange for the purpose of trading the Singly Listed Options of the Disabled Exchange, and the Backup Exchange will grant temporary access to such members of the Disabled Exchange to conduct business on the Backup Exchange for that purpose. (Such a member of the Disabled Exchange is sometimes referred to in this Agreement as a “Temporary Member of the Backup Exchange.”) Any Temporary Member of the Backup Exchange shall only be permitted (i) to act in those capacities that are authorized by the Backup Exchange and that are comparable to capacities in which such Temporary Member has been authorized to act on the Disabled Exchange and (ii) to trade in those securities in which such Temporary Member is authorized to trade on the Disabled Exchange. Each Temporary Member shall be subject to, and obligated to comply with, the rules of the Backup Exchange that are applicable to the Backup Exchange’s own members; provided, however, that any such Temporary Member (1)

shall be deemed to have satisfied, and the Backup Exchange will waive specific compliance with, rules governing or applying to the maintenance of a person’s or a firm’s status as a member of the Backup Exchange, including all dues, fees and charges imposed generally upon members of the Backup Exchange based on their status as such and (2) shall have none of the rights of a member of the Backup Exchange except the right to conduct business on the Backup Exchange to the extent described herein. Each Party agrees to amend its rules to cause, and agrees to cause its rules during the term of this Agreement to continue to cause, any of its members that is deputized a Temporary Member of the Backup Exchange to acknowledge that the member’s participation in the trading of Singly Listed Options on the Backup Exchange will be subject to the rules of the Backup Exchange with respect to such trading.

7. Regulatory and Related Matters

(a) Each Party will amend its rules to provide, and agrees to cause its rules during the term of this Agreement to continue to provide, that, whenever any of its members trades using the facilities of the other Party pursuant to this Agreement (as either a Temporary Member of the Disabled Exchange pursuant to Section 5(a)(4) or a Temporary Member of the Backup Exchange pursuant to Section 6(e)): (i) such member shall be subject to, and obligated to comply with, the rules of the other Party to the extent applicable during the period of such trading (including, without limiting the generality of the foregoing, the rules of the other Party limiting its liability for the use of its facilities that apply to members of the other Party); (ii) the member organization associated with

such member, if any, shall be responsible for all obligations arising out of that member's activities on or relating to the other Party; and (iii) the clearing firm of such member shall guarantee and clear the transactions of such member on the facilities of the other Party.

(b) The Parties will cooperate to facilitate the registration of members, clerks, and other personnel as may be necessary if the Backup Trading Arrangements are implemented. Without limiting the generality of the foregoing, the Parties agree that, if either becomes a Disabled Exchange and provides notice to the other that it wants to invoke the Backup Trading Arrangements, it will send one or more support liaisons to the Backup Exchange to assist as required with such registration.

(c) During any Backup Period:

(i) The operation of the Facility of the Disabled Exchange at the Backup Exchange will be subject to the rules of the Backup Exchange; provided, that (1) such operation will be subject to the rules of the Disabled Exchange with respect to doing business with the public, margin requirements, net capital requirements and listing requirements, (2) the members of the Disabled Exchange that are trading on the Facility of the Disabled Exchange at the Backup Exchange (but not, as further provided in Section 5(a)(4), Temporary Members of the Disabled Exchange) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange and (3) the Parties may establish from time to time in the Joint Operational Plan specific understandings with respect to other rules of the Disabled Exchange that would apply to the operation of the Facility of the Disabled Exchange at the Backup Exchange.

(ii) The Backup Exchange will be responsible for surveillance and enforcement respecting trading of Singly Listed Options on the Backup Exchange and ELOs on the Facility of the Disabled Exchange at the Backup Exchange, including in each case by members of the Disabled Exchange; provided, that the Parties may agree that the Disabled Exchange will perform functions described in this Section in a particular situation. If the Backup Exchange initiates an enforcement proceeding with respect to the trading during a Backup Period of the Singly Listed Options of the Disabled Exchange by a Temporary Member of the Backup Exchange or the ELOs of the Disabled Exchange by a member of the Disabled Exchange (other than a Temporary Member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the Backup Period, the Backup Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the Backup Period.

(iii) Arbitration of any disputes with respect to any such trading will be conducted in accordance with the rules of the Backup Exchange unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

(d) The Parties will coordinate any public announcements concerning the matters and arrangements that are the subject matter of this Agreement. If either Party should experience a Disabling Event, and such Party invokes the Backup Trading Arrangements and the other Party agrees to make its facilities available in accordance with Section 3(a), each Party will make reasonable efforts to keep the other apprised of its communications in respect to the Backup Trading Arrangements with the appropriate regulatory

authorities before, during and after the resulting Backup Period.

8. Costs of Developing and Maintaining Backup Trading Arrangements During Preparation/Readiness Period

(a) Each Party shall absorb the costs of assigning members of its staff to develop and maintain the Backup Trading Arrangements. Notwithstanding the foregoing, each Party in its capacity as the potential Disabled Exchange will reimburse the other Party in its capacity as the potential Backup Exchange for discrete and material costs that, with the prior approval of the potential Disabled Exchange, the potential Backup Exchange incurs to prepare to act as a Backup Exchange. Such discrete and material costs may include, without limitation, costs associated with: obtaining special data feeds and communication lines needed to support trading of the potential Disabled Exchange's ELOs; modifying the facilities of the potential Backup Exchange specifically to accommodate the members of the potential Disabled Exchange; establishing and maintaining a supply of handheld computers specifically for the benefit of the potential Disabled Exchange; acquiring the right to use software that would be used specifically to support the potential Disabled Exchange; and modifying software already in use by the potential Backup Exchange specifically to accommodate the requirements of the potential Disabled Exchange.

(b) To the extent reasonably possible, the Parties will cause any costs that are to be paid by the potential Disabled Exchange pursuant to this Section to be invoiced directly to that Party by the third party supplier. If a potential Backup Exchange is entitled to be reimbursed by the potential Disabled Exchange for any costs incurred pursuant to this Section, the potential Backup Exchange shall promptly present the potential Disabled Exchange with an invoice for

such costs together with reasonable supporting documentation, and the potential Disabled Exchange shall pay such invoice within forty-five days of its receipt of the invoice.

9. Costs, Fees and Revenues During A Backup Period.

(a) The Parties will cause the Joint Operational Plan to include a daily fee that each Party would be entitled to charge the other Party during any Backup Period for acting as the Backup Exchange with respect to ELOs of the other Party. (The daily fee values for Phlx acting as the Backup Exchange for CBOE and for CBOE acting as the Backup Exchange for Phlx may be different.) The Parties will update these daily fee values at least annually. These daily fee values will compensate each Party for its costs associated with acting as the Backup Exchange with respect to the ELOs of the other Party. During any Backup Period the Backup Exchange may bill the Disabled Exchange for fees described in this Section as often as weekly.

(b) The Backup Exchange will not impose any charge on the Disabled Exchange with respect to the trading of Singly Listed Options, and will absorb all costs associated with such trading.

(c) The Disabled Exchange will receive the per contract and per contract side fees

on all transactions in the ELOs of the Disabled Exchange traded on the Facility of the Disabled Exchange at the Backup Exchange. The parties contemplate that such fees will be determined in accordance with the fee schedule of the Disabled Exchange and that the Backup Exchange will make reasonable efforts to implement such fee schedule. Each Party will amend its rules and/or Fee Schedule to include, and agrees to cause its rules and/or Fee Schedule to continue to include, provisions to this effect.

(d) The Backup Exchange may impose per contract and per contract side fees on all transactions in the Singly Listed Options of the Disabled Exchange traded on the facilities of the Backup Exchange, in accordance with the fee schedule of the Backup Exchange, and may retain all such fees.

(e) Each Party agrees that, if it acts as the Backup Exchange, it will not impose any dues, technology fees, or facilities-related fees, or other fees and charges imposed generally upon members of the Backup Exchange based on their status as such, on members of the Disabled Exchange that engage in trading during a Backup Period on the Facility of the Disabled Exchange at the Backup Exchange (since the Disabled Exchange will compensate the Backup Exchange with respect to such trading by means of the daily fee described in Section 9(a)).

(f) Each Party agrees that, whenever any of its members trades using the facilities of the other Party pursuant to this Agreement (as either a Temporary Member of the Disabled Exchange pursuant to Section 5(a)(4) or a Temporary Member of the Backup Exchange pursuant to Section 6(e)), the other Party may impose on such members dues, technology fees, facilities-related fees, or other fees and charges that it imposes generally upon its own members based on their status as such.

(g) If either Party experiences a Disabling Event, the Parties shall instruct OPRA that the transaction volume in ELOs (but not in Singly Listed Options) on the Facility of the Disabled Exchange at the Backup Exchange is to be attributed to the Disabled Exchange for purposes of determining the OPRA revenues of the two Parties.

(h) To the extent reasonably possible, the Parties will cause any fees to which either the Backup Exchange or the Disabled Exchange becomes entitled during a Backup Period to be paid directly to that Party by the source (including OPRA and OCC) from which such fees are due. If either Party becomes entitled during a Backup Period to receive any fees directly from the other Party, the other Party will remit the amount of such fees promptly upon its receipt of such fees or its determination as to the amount of such fees.

10. Intellectual Property Rights.

As between the Parties, each Party is and shall remain the owner of all of its systems and any and all "Proprietary Interests" therein. (The term "Proprietary Interests" is used in this Agreement to mean patents, copyrights, trade secrets, trademarks, and other intellectual property rights, whether registered or unregistered.) Nothing in this Agreement shall be understood to be a license granted by either Party to the other Party to use any of the first Party's systems or Proprietary Interests relating thereto except (i) as the Parties may specifically agree or (ii) as necessary to cause the facilities of the Backup Exchange to become the Facility of the Disabled Exchange at the Backup Exchange as and to the extent contemplated in this Agreement.

11. Effective Date; Termination; Post-Termination.

(a) This Agreement shall become effective on the date (the “Effective Date”) that is the later of (i) the date first set forth above or (ii) the date on which proposed rule changes filed by each Party with the Securities and Exchange Commission shall both have become effective pursuant to Section 19(b) of the Exchange Act.

(b) Either Party may terminate this Agreement: (1) without cause on not less than six months prior written notice to the other; (2) following the failure of the other to cure any breach of this Agreement within thirty days following its receipt of notice of the breach, on not less than ten days prior written notice to the other; or (3) upon ninety (90) days prior written notice to the other Party (or such lesser period of time as may be necessary pursuant to law, rule, regulation or court order) if (i) any legislation, rule or regulation is finally adopted or any government interpretation is issued that reasonably causes the continuing performance by the terminating Party of its obligations pursuant to this Agreement no longer to be reasonably practical or otherwise causes such continuing performance not to be in its interests or (ii) any court order is issued compliance with which reasonably requires termination of this Agreement. Notwithstanding the foregoing, if a Backup Period is in effect on the date when any termination of this Agreement would otherwise be effective, this Agreement shall not terminate earlier than the date that is thirty days after the end of such Backup Period, subject, in the event of a termination of this Agreement pursuant to clause (3), to the requirements of the legislation, rule, regulation or court order upon which the termination is based.

(c) Following any termination of this Agreement, upon the written request of the other Party, each Party will return any assets of the other Party provided to it by the other Party for the purposes of this Agreement and each Party will deliver to the other Party any data with respect to any trading conducted using the facilities of such Party while such Party was in fact acting as the Backup Exchange not already in the possession of the other Party.

(d) The provisions of Sections 10, 12, 13, and 14 of this Agreement, and of this Section 11, shall survive any termination of this Agreement and remain in effect in accordance with their respective terms.

12. Disclaimer of Warranties; Limitations of Liability.

(a) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY WILL ACT AS THE BACKUP EXCHANGE, AND PROVIDE ANY GOODS AND OTHER SERVICES PROVIDED HEREUNDER, WITHOUT WARRANTY OF ANY KIND, INCLUDING, SPECIFICALLY, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

(b) EXCEPT IN THE EVENT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY, OR LOSSES IN CONNECTION WITH DEATH, PERSONAL INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY EITHER PARTY, OR EITHER PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 13 HEREOF, EACH PARTY AGREES THAT (1) THE OTHER PARTY SHALL NOT BE LIABLE TO IT FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES,

INCLUDING LOST PROFITS, AND (2) IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY TO THE OTHER FROM ANY CAUSE WHATSOEVER ARISING FROM OR RELATING TO THIS AGREEMENT (OTHER THAN A LIABILITY OF A PARTY ARISING OUT OF A FAILURE OF SUCH PARTY TO PAY FEES TO THE OTHER PARTY) EXCEED TEN THOUSAND DOLLARS (\$10,000.00), REGARDLESS OF WHETHER THE PARTY ALLEGEDLY CAUSING THE DAMAGE HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Neither Party shall have any liability to the other Party with respect to any act or omission of any of the first Party's members acting as a Temporary Member of the second Party. Each Party's recourse with respect to any act or omission of any Temporary Member that it deputizes, if any, shall be solely against such Temporary Member.

13. Confidential Information.

(a) Each Party in its capacity as a Receiving Party agrees, with respect to confidential or proprietary information of the other Party to which the Receiving Party obtains access in connection with establishing or maintaining the Backup Trading Arrangements (such confidential or proprietary information referred to in this Agreement as "Proprietary Information"), that it (1) will keep such Proprietary Information confidential and will not (except as required by applicable law, regulation or legal process or order of a court of competent jurisdiction, administrative agency or governmental body or subpoena, law, rule, or regulation),

without the Disclosing Party's prior written consent, disclose any Proprietary Information to any third party in any manner whatsoever, and (2) will not use such Proprietary Information for any purpose whatsoever except for the purposes of this Agreement; provided, however, that the Receiving Party may reveal Proprietary Information to its employees, officers, directors, Governors and counsel, to its consultants that have an obligation of confidentiality to the Receiving Party and to its vendors that have an obligation of confidentiality to or for the benefit of the Disclosing Party, in each case, (i) who need to know the Proprietary Information for a purpose contemplated by this Agreement, and (ii) who are informed by the Receiving Party of the confidential nature of the Proprietary Information and of the existence of this Agreement; and, provided, further, that the Receiving Party may reveal Proprietary Information of the other Party (x) to the extent required or requested by a government agency with regulatory jurisdiction over the Receiving Party, and (y) in the course of fulfilling its regulatory responsibilities, including responsibilities over members and associated persons, under the Exchange Act, in each case, provided that the Receiving Party takes reasonable steps to request confidential treatment for the Proprietary Information of the other Party. The obligations and restrictions set forth in this Section do not apply to that part of the Proprietary Information that (1) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this provision, (2) was available or becomes available to the Receiving Party on a non-confidential basis, but only if the Receiving Party believes the source of such Proprietary Information is not prohibited from transmitting the Proprietary Information to it by a contractual, legal, fiduciary or other obligation, (3) is required pursuant to a subpoena or

other judicial or administrative process or is otherwise required by applicable law (provided, that the Receiving Party shall provide the Disclosing Party with prompt notice of such requirement in order to afford the Disclosing Party an opportunity to seek a protective order), or (4) is developed independently without use of or reliance upon the Proprietary Information. The Parties acknowledge that information about the Backup Trading Arrangements themselves (as opposed, for example, to technical information about the Parties' respective systems) does not and will not constitute Proprietary Information of either Party.

(b) The Parties agree that a breach of this Section 13 by a Receiving Party would cause irreparable harm to the Disclosing Party, and that the Disclosing Party shall be entitled to seek injunctive or other equitable relief in the event of an actual or threatened breach.

(c) The obligations of the Parties under this Section 13 supersede the confidentiality provisions of the MOU and shall survive with respect to each Party so long as it is in possession of information of the other Party that constitutes Proprietary Information.

14. Miscellaneous.

(a) This Agreement and the relationship between the Parties that is described in this Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to its conflict of law provisions.

(b) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the

arbitrators may be entered in any court having jurisdiction thereof. Any arbitration shall be conducted by a panel of three arbitrators selected in accordance with the Commercial Arbitration Rules; provided, that the third arbitrator shall be experienced in the workings of national securities exchanges. The relief that the arbitrators may grant may include, but is not limited to, specific performance of this Agreement.

(c) Each Party acknowledges that the other Party has a responsibility to conduct its affairs in a manner consistent with the requirements of the Exchange Act and the rules and regulations thereunder which govern the conduct of self-regulatory organizations (as defined in the Exchange Act) and each Party agrees that nothing in this Agreement shall be understood to require the other Party to do any act which may jeopardize the registration of the other Party or cause the other Party to act inconsistently with said responsibilities.

(d) This Agreement together with the Implementation Plan and the Joint Operational Plan, each as it may be amended from time to time, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior written or verbal agreements with respect to such subject matter.

(e) Headings are for reference only, and shall not be used in the interpretation or construction of the terms and conditions of this Agreement.

(f) A Party's failure to insist upon or enforce strict performance of any provision

of this Agreement shall not be construed as a waiver of any provision or right.

(g) Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party, except that either Party may assign or transfer this Agreement in its entirety to a successor upon merger or consolidation of such Party or the acquisition by such successor of all or substantially all of the assets of such Party. Subject to the foregoing restrictions, this Agreement shall bind and inure to the benefit of the assignees and successors of the Parties hereto.

(h) Any notice required or permitted by this Agreement shall be in writing and shall be deemed given if sent by prepaid registered or certified United States mail, return receipt requested (if available), overnight mail with a nationally recognized overnight mail courier, or sent by electronic mail, facsimile or similar communication, addressed to the person indicated below or to such other person or address for which a party gives notice hereunder. Notices will be deemed given three (3) business days after deposit in the U.S. Mail, one (1) business day after deposit with an overnight mail courier, or when confirmation of receipt is obtained if sent by electronic mail, facsimile or similar communication, as applicable.

If given to Phlx, to:

Lanny A. Schwartz, Esq.
Executive Vice President and General Counsel
Philadelphia Stock Exchange, Inc.
1900 Market Street
Philadelphia, PA 19106 Fax: 215-496-5057 E-Mail:
Lanny.Schwartz@phlx.com

If given to CBOE, to: Philip M. Slocum Senior Vice President –
Trading Operations Chicago Board Options Exchange,
Incorporated 400 South LaSalle Street Chicago, Illinois 60605
Fax: (312) 786-7409 E-Mail: Slocum@cboe.com

With a copy to: Joanne Moffic-Silver General Counsel and Corporate
Secretary Chicago Board Options Exchange, Incorporated 400
South LaSalle Street Chicago, Illinois 60605 Fax: (312) 786-
7919 E-Mail: mofficj@cboe.com

(i) Neither Party shall be liable to the other for its failure to perform or delay in performing any of its obligations under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, failures or delays caused by the other Party, acts of God (including without limitation, flood or earthquake), war, terrorism, embargo, strike, labor disturbance, riot, public disorder, catastrophes of fire or explosion, federal, state, local or foreign laws or regulations not existing at the time of execution of this Agreement, failure of any telecommunications or computer facilities or services, or the intervention of any governmental authority ("Force Majeure Event"). If either Party is affected by a Force Majeure Event, it will give prompt notice thereof to the other Party and will use all reasonable efforts to eliminate or alleviate the effect of such Force Majeure Event.

(j) Nothing in this Agreement, express or implied, is intended to or shall confer on any person other than the parties hereto and their respective permitted successors and assigns any rights or remedies under or by reason of this Agreement.

(k) This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

PHILADELPHIA STOCK EXCHANGE, INC.

By: /s/ Meyer S. Frucher

Name: Meyer S. Frucher Title: Chairman & CEO Date: 7/29/04

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By: /s/ Edward J. Joyce Name: Edward J. Joyce Title: President Date: 7/21/04

Exhibit 3B

**FIRST AMENDMENT TO
AGREEMENT RELATING TO BACKUP TRADING ARRANGEMENTS**

This First Amendment to Agreement Relating to Backup Trading Arrangements (“Amendment”) is made and entered into as of the ___ day of December, 2004 by and between CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED (“CBOE”) and PHILADELPHIA STOCK EXCHANGE, INC. (“Phlx”). This Amendment amends that certain Agreement Relating to Backup Trading Arrangements (“Agreement”), dated as of July 21, 2004, by and between CBOE and Phlx. To the extent that there is any conflict or inconsistency between the provisions set forth in the Agreement and those contained in this Amendment, the provisions contained in this Amendment shall be controlling. All capitalized terms used herein without definition shall have the meanings ascribed to those terms in the Agreement unless otherwise specified.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Transaction Fees for ELOs of Disabled Exchange Traded on Facility of Disabled Exchange at Backup Exchange.** Section 9(c) of the Agreement is amended by deleting it in its entirety and replacing it with the following:

“(c) The Disabled Exchange will receive the per contract and per contract side fees on all transactions in the ELOs of the Disabled Exchange traded on the Facility of the Disabled Exchange at the Backup Exchange. The parties contemplate that such fees will be determined in accordance with the fee schedule of the Disabled Exchange and that the Backup Exchange will implement such fee schedule. Each Party will amend its rules and/or Fee Schedule to include, and agrees to cause its rules and/or Fee Schedule to continue to include, provisions to this effect.”

2. **Regulation of Facility of Disabled Exchange at Backup Exchange.** Section 7(c)(ii) of the Agreement is amended by inserting the following sentence at the end of Section 7(c)(ii):

“The Backup Exchange and Disabled Exchange shall coordinate with each other regarding surveillance and enforcement respecting trading of ELOs on the Facility of the Disabled Exchange at the Backup Exchange, and the Disabled Exchange shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Facility of the Disabled Exchange at the Backup Exchange.”

3. **Miscellaneous.** Except as expressly modified by this Amendment, the provisions of the Agreement, and the obligations and rights of the Parties under the Agreement, shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives.

PHILADELPHIA STOCK
EXCHANGE, INC.

CHICAGO BOARD OPTIONS
EXCHANGE, INCORPORATED

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____