

EXHIBIT 5



New language
[deleted language]

A. *The Exchange is proposing to delete each and every provision of its existing Certificate of Incorporation and replace it with the following Restated Certificate of Incorporation:*

Restated Certificate of Incorporation of Boston Stock Exchange, Incorporated

Article First

The name of the corporation is Boston Stock Exchange, Incorporated (the “Corporation”).

Article Second

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the Corporation’s registered agent at such address is The Corporation Trust Corporation.

Article Third

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the national securities exchange operated by the Corporation, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii)

supporting the various elements of the national market system pursuant to Section 11A of the Securities Exchange Act

of 1934 (the "Exchange Act") and the rules thereunder, (iv) fulfilling the Corporation's self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board of Directors (the "Board") may deem appropriate.

Article Fourth

A. The total number of shares of stock that the Corporation shall have authority to issue is one thousand (1,000), all of which shall be common stock of one class, par value of one cent (\$.01) per share ("Common Stock").

B. All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by The Nasdaq Stock Market, Inc., a Delaware corporation. The Nasdaq Stock Market, Inc. may not transfer or assign any shares of stock of the Corporation, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission (the "SEC") under Section 19 of the Exchange Act and the rules promulgated thereunder.

Article Fifth

A. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. The total number of Directors constituting the entire Board shall be fixed from time to time by the stockholders.

B. The Directors shall be elected by the holders of the Common Stock and shall hold office until their respective successors have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification, or removal from office. The election of Directors need not be by written ballot.

C. Special meetings of stockholders of the Corporation may be called at any time by the holder or holders of a majority of the outstanding shares of Common Stock, by the Board acting pursuant to a resolution adopted by a majority of the Directors then in office, or by the officers of the Corporation so authorized by the By-Laws.

D. Any meeting of stockholders called by the stockholders of the Corporation may be postponed by the holder or holders of a majority of the outstanding shares of Common Stock, and any meeting of stockholders called by the Board may be postponed by action of the Board, in each case at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn any meeting of stockholders, which powers may be delegated by the Board to the chairman of such meeting either in such rules and regulations or pursuant to the By-Laws of the Corporation.

E. Newly created directorships resulting from any increase in the authorized number of Directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled in the manner specified by the By-Laws. Any Director so chosen shall hold office until the next election of Directors and until his successor shall be elected and qualified. No decrease in the number of Directors shall shorten the term of any incumbent Director.

F. Unless otherwise restricted by law, any Director may be removed by the holders of a majority of the shares at the time entitled to vote at an election of Directors, and shall cease to be a Director upon disqualification in the manner provided by the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time is not so specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Article Sixth

A. A Director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

B. Any repeal or modification of paragraph A shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

Article Seventh

Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing to the extent required by Delaware law.

Article Eighth

In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws of the Corporation; *provided, however,* that the By-Laws adopted by the Board under the

powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto.

Article Ninth

The Corporation reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.

Article Tenth

The Corporation shall have perpetual existence.

B. The Exchange is proposing to delete each and every provision of its existing Constitution and replace it with the following By-Laws:

By-Laws of Boston Stock Exchange, Incorporated

Article I Definitions

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) "Act" means the Securities Exchange Act of 1934, as amended.

(b) "affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Act, as in effect on the date of initial adoption of these By-Laws.

(c) "Board" or "Board of Directors" means the Board of Directors of the Corporation.

(d) "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act, as defined in Chapter I, Section 1(a)(6) of the Rules of the Boston Options Exchange Facility ("BOX Rules").

(e) "BOX Options Participant" or "BOX Participant" means a firm or organization that is registered with the Exchange for the purposes of participating in options trading on BOX, as defined in Chapter I, Section 1(a)(40) of the BOX Rules.

(f) "BOXR" means Boston Options Exchange Regulation LLC, a wholly owned subsidiary of the Corporation, as defined in Chapter I, Section 1(a)(9) of the BOX Rules.

(g) "BOXR Board" means the Board of Directors of BOXR, as defined in Chapter I, Section 1(a)(5) of the BOX Rules.

(h) "BOXR Nominating Committee" means the Nominating Committee of BOXR, as provided for in Section 14(e) of the Boston Options Exchange Regulation LLC By-Laws.

(i) "broker" shall have the same meaning as in Section 3(a)(4) of the Act.

(j) "Commission" means the Securities and Exchange Commission.

(k) "Contested Vote" means a process for selection of one or more Member Representative Directors for which the number of candidates on the List of Candidates exceeds the number of positions to be elected by the stockholders.

(l) "Corporation" means Boston Stock Exchange, Incorporated.

(m) "day" means calendar day.

(n) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act.

(o) "Delaware law" means the General Corporation Law of the State of Delaware.

(p) "Director" means a member of the Board.

(q) "Exchange" means the national securities exchange operated by the Corporation.

(r) "Exchange Member" means any registered broker or dealer that has been admitted to membership in the Exchange.

(s) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates and includes, where relevant, the National Association of Securities Dealers, Inc. as predecessor to the Financial Industry Regulatory Authority, Inc.

(t) "Industry Director" means a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or

dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

(u) "Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the person or twenty percent or more of the gross revenues received by the person's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the person or twenty percent or more of the gross revenues received by the person's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

(v) "List of Candidates" means the list of candidates for Member Representative Director positions to be voted upon by Exchange Members on a Voting Date.

(w) "Member Nominating Committee" means the Member Nominating Committee appointed pursuant to these By-Laws.

(x) "Member Representative Director" means a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to these By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative

Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

(y) "Member Representative member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(z) "Member Voting Record Date" means a date selected by the Board for the purpose of determining the Exchange Members entitled to vote for Member Representative Directors on a Voting Date in the event of a Contested Vote.

(aa) "Nominating Committee" means the Nominating Committee of the Board appointed pursuant to these By-Laws.

(bb) "Non-Industry Director" means a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

(cc) "Non-Industry member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member.

(dd) "Officer" means an officer of the Corporation described in Article V.

(ee) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

(ff) "person associated with an Exchange Member" or "associated person of an Exchange Member" means any partner, officer, director, or branch manager of an Exchange Member (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange Member, or any employee of such Exchange Member, except that any person associated with an Exchange Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these By-Laws.

(gg) "Public Director" means a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

(hh) "Public member" means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee

appointed by the Board who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

(ii) "Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Corporation. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Corporation, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Corporation.

(jj) "Rules" or "Exchange Rules" means the rules of the Corporation set forth in the rule manual maintained by the Corporation, as adopted by the Board, as hereafter amended or supplemented.

(kk) "statutory disqualification" shall have the same meaning as in Section 3(a)(39) of the Act.

(ll) "Voting Date" means a date selected by the Board for Exchange Members to vote with respect to Member Representative Directors in the event of a Contested Vote.

Article II Offices

Section 2.1 Location

The address of the registered office of the Corporation in the State of Delaware and the name of the registered agent at such address shall be: The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. The Corporation also may have offices at such other places both within and without the State of Delaware as the Board may from time to time designate or the business of the Corporation may require.

Section 2.2 Change of Location

In the manner permitted by law, the Board or the registered agent may change the address of the Corporation's registered office in the State of Delaware and the Board may make, revoke, or change the designation of the registered agent.

Article III Meetings of Stockholders

Section 3.1 Annual Meetings

Annual meetings of stockholders for the election of Directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and may transact such other corporate business as shall be stated in the notice of the meeting.

Only such persons as are nominated or voted upon in accordance with the procedures set forth in Article IV shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as Directors.

Section 3.2 Special Meetings

Special meetings of stockholders of the Corporation may be called at any time by the holders of a majority of the voting power entitled to vote for the election of Directors, by the Board acting pursuant to a resolution adopted by a majority of the Directors then in office, or by the Chairman of the Board, the Chief Executive Officer, the President or the Secretary.

Section 3.3. Voting

Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these By-Laws may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote thereon; all other questions shall be decided by the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote thereon, except as otherwise provided by the Certificate of Incorporation or Delaware law.

Section 3.4 Quorum

Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

Section 3.5 Notice of Meetings

Except as otherwise provided by law, written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

Section 3.6 Action Without Meeting

Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing to the extent required by Delaware law.

Article IV Board of Directors

Section 4.1 General Powers

The property, business, and affairs of the Corporation shall be managed under the direction of the Board. The Board may exercise all such powers of the Corporation and have the authority to perform all such lawful acts as are permitted by the law, the Certificate of Incorporation, or these By-Laws. To the fullest extent permitted by applicable law, the Certificate of Incorporation, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 4.12 or to the Corporation staff.

Section 4.2 Number of Directors

The exact number of Directors shall be fixed from time to time by the stockholders of the Corporation, but shall in no event be fixed at less than ten Directors. No decrease in the number of Directors shall shorten the term of any incumbent Director.

Section 4.3 Qualifications

(a) Directors need not be stockholders of the Corporation or associated persons of Exchange Members. The number of Non-Industry Directors, including at least three Public Directors and at least one Director representative of issuers and investors, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. At least twenty percent of the Directors shall be Member Representative Directors. One Industry Director shall represent BOX Participants. A Director shall not be subject to a statutory disqualification.

(b) Immediately after the initial adoption of these By-Laws, the stockholders shall hold a special meeting (or sign a consent in lieu thereof) for the purpose of electing the Board, which shall include individuals satisfying the classifications required by Section 4.3(a) but which shall not have been nominated or voted upon in accordance with Section 4.4. The initial Member Representative Directors shall be officers, directors or

employees of Exchange Members. The initial Board shall consist of at least three Public Directors, one or two Staff Directors, at least two Member Representative Directors, an Industry Director representing BOX Participants, at least one Non-Industry Director representative of issuers and investors, and such additional Industry and Non-Industry Directors as the stockholders shall deem appropriate, consistent with the requirements of Sections 4.2 and 4.3(a). As soon as practicable thereafter, the Corporation shall hold its annual meeting for the purpose of electing Directors in accordance with Section 4.4.

Section 4.4 Election

(a) Except as otherwise provided by law or these By-Laws, Directors of the Corporation shall be elected each year at the annual meeting of the stockholders, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefor, the Directors shall cause such election to be held as soon thereafter as convenient.

(b) The stockholders shall elect as Member Representative Directors the candidates nominated by the Member Nominating Committee; provided, however, that if there is a Contested Vote, the stockholders shall instead elect the candidates that emerge from the process described in Section 4.4(f).

(c) For each annual election of Directors, the Board shall select a Member Voting Record Date and a Voting Date. The Member Voting Record Date shall be at least 10 days but not more than 60 days prior to Voting Date. The Member Nominating Committee shall create a list of one or more candidates for each Member Representative Director position (the "List of Candidates") on the Board to be elected by the stockholders at the annual meeting or special meeting in lieu thereof. Promptly after selection of the Voting Date, in a Notice to Exchange Members and in a prominent location on a publicly accessible website, the Corporation (i) shall announce the Voting Date and the List of Candidates, and (ii) shall describe the procedures for Exchange Members to propose candidates for election at the next annual meeting. In the event of a Contested Vote, the Company shall also send Exchange Members the formal notice described in Section 4.4(e).

(d) An additional candidate may be added to the List of Candidates by any Exchange Member that submits a timely and duly executed written petition to the Secretary of the Corporation. To be timely, an Exchange Member's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's Voting Date (provided, however, that in the event that the Voting Date is more than 30 days before or more than 70 days after such anniversary date, notice by the Exchange Member must be so delivered not earlier than the close of business on the 120th day prior to such Voting Date and not later than the close of business on the later of the 90th day prior to such Voting Date or the tenth day following the day on which public announcement of such Voting Date is first made by the Corporation). Such Exchange Member's notice shall set forth:

(i) as to the person whom the Exchange Member proposes for election as a Member Representative Director, all information relating to that person that is required to be disclosed in solicitations of proxies for election of Directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and the rules thereunder (and such person's written consent to be named in the List of Candidates and to serving as a Director if elected); (ii) a petition in support of the candidate duly executed by the authorized representatives of 10% or more of all Exchange Members; and (iii) the name and address of the Exchange Member making the proposal. The Corporation may require any proposed candidate to furnish such other information as it may reasonably require to determine the eligibility of such person to serve as a Member Representative Director.

(e) If, by the date on which an Exchange Member may no longer submit a timely proposal under paragraph (b), there is only one candidate for each Member Representative Director position to be voted upon on the Voting Date, the Member Nominating Committee's nomination with respect to the List of Candidates shall be considered final and submitted to the stockholders for election. If there is a Contested Vote, a formal notice of the Voting Date and the List of Candidates shall be sent by the Corporation at least 10 days but no more than 60 days prior to the Voting Date to the Exchange Members who were Exchange Members on the Member Voting Record Date, by any means, including electronic transmission, as determined by the Board or a committee thereof.

(f) In the event of a Contested Vote, each Exchange Member shall have the right to cast one vote for each Member Representative Director position to be filled; provided, however, that any such vote must be cast for a person on the List of Candidates. The votes may not be cumulated. The votes shall be cast by written ballot, electronic transmission or any other means as set forth in a notice to the Exchange Members sent by the Corporation prior to the Voting Date. Only votes received prior to 11:59 p.m. Eastern Time on the Voting Date shall be counted. The persons on the List of Candidates who receive the most votes shall be submitted to the stockholders for election.

(g) The Corporation shall not be required to hold meetings of the Exchange Members.

Section 4.5 Removal and Disqualification

(a) Any or all of the Directors may be removed from office at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of Directors, at an annual meeting or a special meeting called for such purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation; provided, however, that the stockholders shall remove a Member Representative Director only for cause, which shall include, without limitation, the failure of such Director to be free of any statutory disqualification.

(b) A Director shall be disqualified and his or her term of office as a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, (a) that the Director no longer satisfies the classification for which the Director was elected; and (b) that the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If a Director is disqualified and his or her term of office as a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

Section 4.6 Resignation

Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 4.7 Filing of Vacancies

(a) Whenever any Director position other than a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation or the creation of a new directorship, the Nominating Committee shall nominate, and the Board shall appoint by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director), if applicable, for the directorship as provided in Section 4.3 to fill such vacancy.

(b) Whenever a Member Representative Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation or the creation of a new directorship, the Member Nomination Committee shall nominate, and the Board shall appoint by majority vote, a person to fill such vacancy, except that if the remaining term of office for the vacant Director position is less than six months, no replacement shall be required.

Section 4.8 Quorum and Voting

(a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required By-Law, a quorum for the transaction of business shall consist of a majority of the Board. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.

(b) Except as provided herein or by applicable law, the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board.

Section 4.9 Regulation

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of the Corporation, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected, to the fullest extent permitted by law, in relying in good faith upon the books of account or reports made to the Corporation by any of its officers, by an independent certified public accountant, by an appraiser selected with reasonable care by the Board or any committee of the Board or by any agent of the Corporation, or in relying in good faith upon other records of the Corporation.

(b) In light of the unique nature of the Corporation and its operations, and in light of the Corporation's status as a self-regulatory organization, the Board, when evaluating any proposal, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of the Exchange and the other operations of the Corporation, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

Section 4.10 Meetings

(a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the stockholders, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section 4.11.

(b) Regular meetings of the Board may be held at such time and place, within or without the State of Delaware, as determined from time to time by the Board. After such determination has been made, notice shall be given in accordance with Section 4.11.

(c) Special meetings of the Board may be called by the Chair of the Board, by the Chief Executive Officer, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.11.

(d) Directors or members of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a conference telephone or other communications equipment by means of which all persons

participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes. If all the participants are participating by telephone conference or other communications equipment, the meeting shall be deemed to be held at the principal place of business of the Corporation.

Section 4.11 Notice of Meetings; Waiver of Notice

(a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if: (i) mailed to the address last made known in writing to the Corporation by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by any form of electronic transmission, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing or by electronic transmission whether before or after the holding of such meeting, or if such Director is present at such meeting, subject to Section 10.3.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 4.12 Committees

(a) The Board may, by resolution or resolutions adopted by the Board, appoint one or more committees, each committee to consist of one or more of the Directors or other persons. Except as herein provided, vacancies in membership of any committee shall be filled by the Board. The Board may designate one or more Directors or other persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified person to act at the meeting in the place of any such absent or disqualified member. Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board.

(b) The Board may, by resolution or resolutions adopted by the Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of

the Corporation to the extent permitted by law. A committee, to the extent permitted by law and provided in the resolution or resolutions creating such committee, may authorize the seal of the Corporation to be affixed to all papers that may require it.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election of Directors) expressly required by Delaware law to be submitted to stockholders for approval, or (ii) adopting, amending, or repealing any By-Law of the Corporation.

(d) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

(e) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(f) Upon request of the Secretary of the Corporation, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Member Representative, Non-Industry, or Public Committee member. The Secretary of the Corporation shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this subsection at least annually and upon request of the Secretary of the Corporation, and shall report immediately to the Secretary any change in such information.

(g) The term of office of a committee member shall terminate immediately upon a determination by the Board, by a majority vote of the Directors, (i) that the committee member no longer satisfies the classification for which the committee member was selected; and (ii) that the committee member's continued service as such would violate the compositional requirements of such committee set forth in these By-Laws. If the term of office of a committee member terminates under this Section, and the remaining term of office of such committee member at the time of termination is not more than six months, during the period of vacancy the relevant committee shall not be deemed to be in violation of the compositional requirements of such committee set forth in these By-Laws by virtue of such vacancy.

Section 4.13 Committees Composed Solely of Directors

(a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board. The number of Non-Industry

Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The percentage of Public Directors on the Executive Committee shall be at least as great as the percentage of Public Directors on the whole Board, and the percentage of Member Representative Directors on the Executive Committee shall be at least as great as the percentage of Member Representative Directors on the whole Board. An Executive Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(b) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of the Corporation, including recommendations for Corporation's annual operating and capital budgets and proposed changes to the rates and fees charged by Corporation. A Finance Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(c) The Board shall appoint a Management Compensation Committee. The Management Compensation Committee shall consider and recommend compensation policies, programs, and practices for employees of the Corporation. A majority of Management Compensation Committee members shall be Non-Industry Directors. The Chief Executive Officer shall be an ex-officio, non-voting member of the Management Compensation Committee. A Management Compensation Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(d) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of four or five Directors, none of whom shall be officers or employees of the Corporation. A majority of the Audit Committee members shall be Non-Industry Directors. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year or until his or her successor is elected and qualified, and subject to such Director's earlier resignation, removal, disqualification, or death.

(ii) The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Corporation's financial reporting process and the financial information that is provided to the stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Corporation's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Corporation's independent auditors (or nominate the independent auditors to be proposed for ratification by the stockholders); and (D) direct and oversee all the activities of the Corporation's

internal audit function, including but not limited to management's responsiveness to internal audit recommendations.

(iii) No member of the Audit Committee shall participate in the consideration or decision of any matter relating to a particular Exchange Member, company, or individual if such Audit Committee member has a material interest in, or a professional, business, or personal relationship with, that Exchange Member, company, or individual, or if such participation shall create an appearance of impropriety. An Audit Committee member shall consult with the General Counsel of the Corporation to determine if recusal is necessary. If a member of the Audit Committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Audit Committee.

(iv) The Audit Committee shall have exclusive authority to: (A) hire or terminate the head of the Corporation's Internal Audit Department; (B) determine the compensation of the head of the Internal Audit Department; and (C) determine the budget for the Internal Audit Department. The Internal Audit Department and its head shall report directly to the Audit Committee. The Audit Committee may, in its discretion, direct that the Internal Audit Department also report to senior management of the Corporation on matters the Audit Committee deems appropriate and may request that senior management of the Corporation perform such operational oversight as necessary and proper, consistent with preservation of the independence of the internal audit function. The Internal Audit Department and its head may also be employees of one or more affiliates of the Corporation, and may serve in a similar capacity with respect to such affiliate(s).

(e) The Board shall appoint a Regulatory Oversight Committee. The Committee shall oversee the adequacy and effectiveness of the Corporation's regulatory and self-regulatory organization responsibilities; assess the Corporation's regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Corporation's regulatory functions. In furtherance of its functions, the Regulatory Oversight Committee shall (A) review the Corporation's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (B) meet regularly with the Chief Regulatory Officer in executive session; and (C) be informed about the compensation and promotion or termination of the Chief Regulatory Officer and the reasons therefore. The Regulatory Oversight Committee shall consist of three members, each of whom shall be a Public Director and an "independent director" as defined in Rule 4200 of the Rules of the Nasdaq Stock Market.

Section 4.14 Committees Not Composed Solely of Directors

(a) The Board shall appoint an Exchange Listing and Hearing Review Council and an Exchange Review Council as provided in Articles VI and VII of the By-Laws.

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board in accordance with Section 4.4 of these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on the Exchange Listing and Hearing Review Council, the Exchange Review Council, or other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Exchange Listing and Hearing Review Council or the Exchange Review Council. In nominating an Industry Director who is representative of BOX Participants, the Nominating Committee shall give due consideration to the recommendation of the BOXR Nominating Committee.

(i) The Nominating Committee shall consist of no fewer than six and no more than nine members. The number of Non-Industry members on the Nominating Committee shall equal or exceed the number of Industry members on the Nominating Committee. If the Nominating Committee consists of six members, at least two shall be Public members. If the Nominating Committee consists of seven or more members, at least three shall be Public members. No officer or employee of the Corporation shall serve as a member of the Nominating Committee in any voting or non-voting capacity. No more than three of the Nominating Committee members and no more than two of the Industry members shall be current Directors.

(ii) A Nominating Committee member may not simultaneously serve on the Nominating Committee and the Board, unless such member is in his or her final year of service on the Board, and following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

(iii) The Member Nominating Committee shall consist of no fewer than three and no more than six members. All members of the Member Nominating Committee shall be a current associated person of a current Exchange Member. The Board will appoint such individuals after appropriate consultation with representatives of Exchange Members.

(iv) Members of the Nominating Committee and the Member Nominating Committee shall be appointed annually by the Board and may be removed by a majority vote of the Board.

(v) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Member Representative, Non-Industry, or Public Director, if applicable, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee each nominee's classification, if applicable. Directors shall update the information submitted

under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(c) The Board shall appoint a Quality of Markets Committee.

(i) The Quality of Markets Committee shall have the following functions: (A) to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors, both individual and institutional, retail firms, market making firms, companies on the Exchange, and other market participants; and (B) to advise the Board with respect to national market system plans and linkages between the facilities of the Corporation and other markets.

(ii) The Quality of Markets Committee shall include broad representation of participants in the Exchange, including investors, market makers, integrated retail firms, and order entry firms. The Quality of Markets Committee shall include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Quality of Markets Committee. The number of Non-Industry members of the Quality of Markets Committee shall equal or exceed the sum of the number of Industry members and Member Representative members.

(iii) At all meetings of the Quality of Markets Committee, a quorum for the transaction of business shall consist of a majority of the Quality of Markets Committee, including not less than fifty percent of the Non-Industry members. If at least fifty percent of the Non-Industry members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than fifty percent of the Non-Industry members be present to constitute the quorum shall be waived.

(d) The Board shall appoint a Market Operations Review Committee, which shall exercise the functions specified in the Exchange Rules, in accordance with procedures specified therein. The Market Operation Review Committee shall include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Market Operations Review Committee. No more than fifty percent of the members of the Market Operations Review Committee shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed ten percent of its total revenues.

(e) The Board shall appoint an Arbitration and Mediation Committee, or shall cause the Corporation to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint an Arbitration and Mediation Committee on the Corporation's behalf.

- (i) The Arbitration and Mediation Committee shall advise the Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of public investors and Exchange Members, shall monitor rules and procedures governing the conduct of dispute resolution, and shall have such other powers and authority as are necessary to effectuate the purposes of the Exchange Rules.
- (ii) The Arbitration and Mediation Committee shall consist of no fewer than 3 and no more than 10 members, and shall have at least fifty percent Non-Industry members.
- (iii) At all meetings of the Arbitration and Mediation Committee, a quorum for the transaction of business shall consist of a majority of the Arbitration and Mediation Committee, including not less than fifty percent of Non-Industry committee members. If at least fifty percent of the Non-Industry committee members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an agenda prior to such meeting, the requirement that not less than fifty percent of the Non-Industry committee members be present to constitute the quorum shall be waived.
- (f) The Board shall appoint a Market Regulation Committee, or shall cause the Corporation to enter into an agreement with a self-regulatory organization that provides regulatory services pursuant to which such self-regulatory organization shall appoint a Market Regulation Committee on the Corporation's behalf.
- (i) The Market Regulation Committee shall advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Member's conduct and trading activities in the Exchange; provide a pool of attorney panelists for hearing panels under the Exchange Rules; participate in the training of hearing panelists on issues relating to quotations, executions, trade reporting, and trading practices; and review and recommend to the Exchange Review Council changes to the Exchange's guidelines for sanctions to be imposed on members for violations of Exchange Rules. The Market Regulation Committee shall not have any involvement in deciding whether or not to institute disciplinary proceedings.
- (ii) The Market Regulation Committee shall have at least fifty percent Non-Industry members.
- (iii) At all meetings of the Market Regulation Committee, a quorum for the transaction of business shall consist of a majority of the Market Regulation Committee, including not less than fifty percent of the Non-Industry committee members. If at least fifty percent of the Non-Industry committee members (A) are present at or (B) have filed a waiver of attendance for a meeting after receiving an

agenda prior to such meeting, the requirement that not less than fifty percent of the Non-Industry committee members be present to constitute the quorum shall be waived.

Section 4.15 Conflicts of Interest; Contracts and Transactions Involving Directors

(a) A Director or a member of the Exchange Listing and Hearing Review Council, the Exchange Review Council, or any other committee shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or Exchange Listing and Hearing Review Council member, Exchange Review Council member, or other committee member shall recuse himself or herself or shall be disqualified.

(b) No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are Directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or solely because any such Director's or officer's votes are counted for such purpose, if: (i) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes or ratifies the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee or the stockholders.

Section 4.16 Compensation of Board, Council, and Committee Members

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Exchange Listing and Hearing Review Council and Exchange Review Council members, and the members of other committees. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 4.17 Action Without Meeting

Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in accordance with applicable law.

Article V Officers, Agents, and Employees

Section 5.1 Principal Officers

The principal officers of the Corporation shall be elected by the Board and shall include a Chair, a Chief Executive Officer, a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board, need be Directors of the Corporation.

Section 5.2 Election of Principal Officers; Term of Office

(a) The principal officers of the Corporation shall be elected annually by the Board at the annual meeting of the Board convened pursuant to Section 4.10(a). Failure to elect any principal officer annually shall not dissolve the Corporation.

(b) If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at any regular or special meeting of the Board.

(c) Each principal officer shall hold office until a successor is duly elected and qualified, or until death, resignation, or removal.

Sec. 5.3 Subordinate Officers, Agents, or Employees

In addition to the principal officers, the Corporation may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the Chief Executive Officer, the President, or any officer designated by the Board, may from time to time determine. Agents and employees of the Corporation shall be under the supervision and control of the officers of the Corporation, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Section 5.4 Delegation of Duties of Officers

The Board may delegate the duties and powers of any officer of the Corporation to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Section 5.5 Resignation and Removal of Officers

(a) Any officer may resign at any time upon notice of resignation to the Board, the Chief Executive Officer, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of the Corporation may be removed, with or without cause, by the Board. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the Corporation.

Section 5.6 Chair of the Board

The Chair of the Board shall preside at all meetings of the Board at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

Section 5.7 Chief Executive Officer

The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have general supervision over the business and affairs of the Corporation. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

Section 5.8 President

The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board at which the President is present. The President shall have general supervision over the operations of the Corporation. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.

Section 5.9 Vice President

The Board shall elect one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign

them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

Section 5.10 Chief Regulatory Officer

An officer of the Corporation with the position of Executive Vice President or Senior Vice President shall be designated as the Chief Regulatory Officer of the Corporation. The Chief Regulatory Officer shall have general supervision of the regulatory operations of the Corporation, including responsibility for overseeing the Exchange's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Corporation is a party. The Chief Regulatory Officer shall meet with the Regulatory Oversight Committee of the Corporation in executive session at regularly scheduled meetings of such committee, and at any time upon request of the Chief Regulatory Officer or any member of the Regulatory Oversight Committee. The Chief Regulatory Officer may also serve as the General Counsel of the Corporation.

Section 5.11 Secretary

The Secretary shall act as Secretary of all meetings of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation, and shall have supervision over the care and custody of the books and records of the Corporation. The Secretary shall be empowered to affix the Corporation's seal, if any, to documents, the execution of which on behalf of the Corporation under its seal is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, the Chief Executive Officer or the President.

Section 5.12 Assistant Secretary

In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

Section 5.13 Treasurer

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Corporation and shall cause the funds of the Corporation to be deposited in the name of the Corporation in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Corporation. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

Section 5.14 Assistant Treasurer

In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

Article VI Exchange Listing and Hearing Review Council

Section 6.1 Appointment and Authority

The Board shall appoint an Exchange Listing and Hearing Review Council. The Exchange Listing and Hearing Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to listing decisions. The Exchange Listing and Hearing Review Council also shall consider and make recommendations to the Board on policy and rule changes relating to issuer listings. The Board may delegate such other powers and duties to the Exchange Listing and Hearing Review Council as the Board deems appropriate.

Section 6.2 Number of Members and Qualifications

(a) The Exchange Listing and Hearing Review Council shall consist of no fewer than 8 and no more than 18 members, of which not more than fifty percent may be engaged in market-making activity or employed by an Exchange Member whose revenues from market-making activity exceed ten percent of its total revenues. The Exchange Listing and Hearing Review Council shall include at least five Non-Industry members (including at least two Public members), and a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Exchange Listing and Hearing Review Council.

(b) As soon as practicable following the appointment of members, the Exchange Listing and Hearing Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the

Exchange Listing and Hearing Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

Section 6.3 Nomination Process

The Secretary of the Corporation shall collect from each nominee for the office of member of the Exchange Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Public, or Non-Industry member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Section 6.4 Term of Office

(a) Except as otherwise provided in this Article, each Exchange Listing and Hearing Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Listing and Hearing Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Section 6.5 Resignation

A member of the Exchange Listing and Hearing Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 6.6 Removal

Any or all of the members of the Exchange Listing and Hearing Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Section 6.7 Disqualification

Notwithstanding Section 6.4, the term of office of an Exchange Listing and Hearing Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Public, or Non-Industry) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Listing and Hearing Review Council set forth in Section 6.2. If the term of office of an Exchange Listing and Hearing Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Listing and Hearing Review Council shall not be deemed to be in violation of Section 6.2 by virtue of such vacancy.

Section 6.8 Filling of Vacancies

If a position on the Exchange Listing and Hearing Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section 6.2(a) to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Section 6.9 Quorum and Voting

At all meetings of the Exchange Listing and Hearing Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Listing and Hearing Review Council, including one Non-Industry member and one Member Representative member. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Section 6.10 Meetings

The members of the Exchange Listing and Hearing Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Article VII Exchange Review Council

Section 7.1 Appointment and Authority

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Exchange Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

Section 7.2 Number of Members and Qualifications

The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair.

Section 7.3 Nomination Process

The Secretary of the Corporation shall collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Section 7.4 Term of Office

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

Section 7.5 Resignation

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 7.6 Removal

Any or all of the members of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Section 7.7 Disqualification

Notwithstanding Section 7.4, the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Section 7.2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Section 7.2 by virtue of such vacancy.

Section 7.8 Filling of Vacancies

If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Section

7.2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Section 7.9 Quorum and Voting

At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than fifty percent of the Non-Industry members of the Exchange Review Council and at least one Member Representative member of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Section 7.10 Meetings

The members of the Exchange Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Section 7.11 Review Subcommittee

The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Exchange Rules and to perform any other function authorized by the Exchange Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than fifty percent of the members of the Review Subcommittee, including not less than fifty percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

Article VIII Indemnification

Section 8.1 Indemnification of Directors, Officers, Employees, and Agents

(a) The Corporation shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of the Corporation, or is or was a Director, officer, or employee of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another

corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) The Corporation shall advance expenses (including attorneys' fees and disbursements) reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) The Corporation may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of the Corporation or is or was an agent of the Corporation who is or was serving at the request of the Corporation as a Director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) The Corporation may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by the Corporation to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those

Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) The person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to the Corporation.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), the Corporation shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) The Corporation's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

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

Section 8.2 Indemnification Insurance

The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee, or

agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability hereunder.

Article IX Capital Stock

Section 9.1 Certificates

Each stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in the Corporation owned by such stockholder.

Section 9.2 Signatures

Certificates for shares of capital stock of the Corporation shall be signed in the name of the Corporation by two officers with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of the Corporation or a facsimile thereof.

Section 9.3 Stock Ledger

(a) A record of all certificates for capital stock issued by the Corporation shall be kept by the Secretary or any other officer, employee, or agent designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) The Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof.

Section 9.4 Transfers of Stock

(a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of the Corporation.

(b) Transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

(c) All of the authorized shares of Common Stock initially shall be issued and outstanding, and shall initially be held by The Nasdaq Stock Market, Inc., a Delaware corporation. The Nasdaq Stock Market, Inc. may not transfer or assign any shares of stock of the Corporation, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.

Section 9.5 Cancellation

Each certificate for capital stock surrendered to the Corporation for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 9.6 until such existing certificate shall have been canceled.

Section 9.6 Lost, Stolen, Destroyed, and Mutilated Certificates

In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate in place of such mutilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, the Corporation may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any mutilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

Section 9.7 Fixing of Record Date

The Board may fix a record date in accordance with Delaware law.

Section 9.8. Dividends

Subject to the provisions of the Certificate of Incorporation, the Board may, out of funds legally available therefor at any regular or special meeting, declare dividends upon

stock of the Corporation as and when they deem appropriate. Notwithstanding the foregoing, dividends shall not be paid using Regulatory Funds.

Article X Miscellaneous Provisions

Section 10.1 Corporate Seal

The seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Corporation, the year of its incorporation, and the words "Corporate Seal" and "Delaware." The seal may be used by causing it to be affixed or impressed, or a facsimile thereof may be reproduced or otherwise used in such manner as the Board may determine.

Section 10.2 Fiscal Year

The fiscal year of the Corporation shall begin the 1st day of January in each year, or such other month as the Board may determine by resolution.

Section 10.3 Waiver of Notice

(a) Whenever notice is required to be given by law, the Certificate of Incorporation or these By-Laws, a waiver thereof by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board, or members of a committee, need be specified in any waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 10.4 Execution of Instruments, Contracts, etc.

(a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of the Corporation by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board may authorize any officer, employee, or agent, in the name of and on behalf of the Corporation, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States government or by any state, county, municipal, or other governmental authority may be executed in the name of the Corporation by any officer of the Corporation, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of the Corporation. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Article XI Amendments; Emergency By-Laws

Section 11.1 By Stockholders

These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the stockholders by the affirmative vote of the holders of a majority of voting power of the then outstanding stock entitled to vote, voting together as a single class.

Section 11.2 By Directors

To the extent permitted by the Certificate of Incorporation, these By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any regular or special meeting of the Board by a resolution adopted by a vote of a majority of the whole Board.

Section 11.3 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the stockholders which shall, notwithstanding any different provision of law, the Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

Article XII Exchange Authorities

Section 12.1 Rules

To promote and enforce just and equitable principles of trade and business, to maintain high standards of commercial honor and integrity among Exchange Members, to collaborate with governmental and other agencies in the promotion of fair practices and the elimination of fraud, and in general to carry out the purposes of the Corporation and of the Act, the Board is hereby authorized to adopt such rules and such amendments thereto as it may, from time to time, deem necessary or appropriate, including, but not limited to, rules for the required or voluntary arbitration of controversies between members and between members and customers or others. If any such rules or

amendments thereto are approved by the Commission or otherwise become effective as provided in the Act, they shall become effective Exchange Rules as of the date of Commission approval or effectiveness under the Act. The Board is hereby authorized, subject to the provisions of these By-Laws and the Act, to administer, enforce, and interpret, any Rules adopted hereunder.

Section 12.2 Disciplinary Proceedings

(a) The Board is authorized to establish procedures relating to disciplinary proceedings involving Exchange Members and their associated persons.

(b) The Board is authorized to impose appropriate sanctions applicable to Exchange Members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all Exchange Members, limitation of activities, functions, and operations of an Exchange Member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with Exchange Members, including censure, fine, suspension, or barring a person associated with an Exchange Member from being associated with all Exchange Members, limitation of activities, functions, and operations of a person associated with an Exchange Member, or any other fitting sanction, for:

(i) a breach by an Exchange Member or a person associated with an Exchange Member of any covenant with the Corporation or its members;

(ii) violation by an Exchange Member or a person associated with an Exchange Member of any of the terms, conditions, covenants, and provisions of the By-Laws, the Rules, or the federal securities laws, including the rules and regulations adopted thereunder;

(iii) failure by an Exchange Member or person associated with an Exchange Member to: (A) submit a dispute for arbitration as may be required by the Rules; (B) appear or produce any document in the Exchange Member's or person's possession or control as directed pursuant to the Rules; (C) comply with an award of arbitrators properly rendered, where a timely motion to vacate or modify such award has not been made pursuant to applicable law or where such a motion has been denied; or (D) comply with a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition;
or

(iv) failure by an Exchange Member or person associated with an Exchange Member to adhere to any ruling, order, direction, or decision of or to pay any sanction, fine, or costs imposed by the Board or any entity to which the Board has delegated its powers.

Section 12.3 Membership Qualifications

(a) The Board shall have authority to adopt rules and regulations applicable to applicants seeking to become Exchange Members, Exchange Members, and persons associated with applicants or Exchange Members, establishing specified and appropriate standards with respect to the training, experience, competence, financial responsibility, operational capability, and such other qualifications as the Board finds necessary or desirable.

(b) The Board may from time to time make such changes in such rules, regulations, and standards as it deems necessary or appropriate.

(c) Uniform standards for regulatory and other access issues, such as admission to membership and conditions to becoming an Exchange market maker, shall be promulgated and applied on a consistent basis, and the Corporation shall institute safeguards to ensure fair and evenhanded access to all of its services and facilities.

Section 12.4 Fees, Dues, Assessments, and Other Charges

The Board shall have authority to fix and levy the amount of fees, dues, assessments, and other charges to be paid by Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls; provided, however, that such fees, dues, assessments, and other charges shall be equitably allocated among Exchange Members and issuers and any other persons using any facility or system that the Corporation operates or controls.

Section 12.5 Authority to Take Action Under Emergency or Extraordinary Market Conditions

The Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the national securities exchange operated by the Corporation or any other organized securities markets that may be operated by the Corporation, the operation of any automated system owned or operated by the Corporation, and the participation in any such system or any or all persons or the trading therein of any or all securities; and

(b) the operation of any or all offices or systems of Exchange Members, if, in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.

C. *The Exchange is proposing to adopt the following Amended and Restated Limited Liability Company Agreement of Boston Options Exchange Regulation, LLC and to amend the By-Laws of Boston Options Exchange Regulation, LLC as indicated below:*

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
BOSTON OPTIONS EXCHANGE REGULATION, LLC

This Amended and Restated Limited Liability Company Agreement (together with the exhibit and schedules attached hereto, this "Agreement") of Boston Options Exchange Regulation, LLC (the "Company") is entered into by Boston Stock Exchange, Incorporated (the "Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, the Member has previously formed the Company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (the "LLC Act"), by filing a Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware on March 25, 2002;

WHEREAS, the Company was formed for the purpose of overseeing the activities of the Boston Options Exchange facility and has done so since its formation; and

WHEREAS, the Member desires to continue the Company as a limited liability company under the LLC Act and to amend and restate the limited liability company agreement of the Company as currently in effect in its entirety.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby amend and restate the current limited liability company agreement of the Company in its entirety as follow:

Section 1. Name.

The name of the limited liability company is Boston Options Exchange Regulation, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 100 Franklin Street, Boston, MA 02110 or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

Section 5. Member.

The mailing address of the Member is set forth on Schedule B attached hereto. The Member has heretofore been admitted to the Company as a member of the Company and shall hereby continue as a member of the Company upon its execution of a counterpart signature page to this Agreement.

Section 6. Certificates.

Ken Leibler, as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased, and the Member, each Director and each Officer thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the LLC Act. The Member, any Director or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The Member, any Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the LLC Act. Upon the cancellation of the Certificate of Formation in accordance with the LLC Act, this Agreement and the Company shall terminate.

Section 7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the LLC Act and engaging in any and all activities necessary or incidental to the foregoing. Without

limiting the generality of the foregoing, the nature of the business or purposes to be conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the Boston Options Exchange facility, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Exchange Act and the rules thereunder, (iv) to assist the Member in fulfilling its self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

Section 8. Powers.

The Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act.

Section 9. Management.

(a) Board of Directors. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Board of Directors may determine at any time the number of Directors to constitute the Board in accordance with the By-laws. The authorized number of Directors may be increased or decreased by the Board of Directors at any time subject to the limitations set forth in the By-laws, but no decrease in the number of Directors shall shorten the term of any incumbent Director. The current number of Directors is eight. All Directors shall be elected in the manner described in the By-Laws and shall meet any qualifications for Directors set forth in the By-Laws. Each Director elected, designated or appointed shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of this Agreement and the By-Laws. A Director need not be a member of the Company. The Directors as of the date of adoption of this Agreement are listed on Schedule C hereto.

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors has the authority to bind the Company. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 9(g) or to any officer, employee or agent of the Company.

(c) By-Laws. The Company, the Member and the Board of Directors hereby adopt the By-Laws of the Company in the form attached hereto as Exhibit A, as the same may be amended from time to time in accordance with the terms therein and in this Agreement (the "By-Laws"). The Board, each Officer and the Member shall be subject to the express provisions of this Agreement and of the By-Laws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

(d) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chair of the Board, the Chief Executive Officer, or the Chief Legal Officer on not less than one day's notice to each Director by telephone, facsimile, mail; telegram or any other means of communication, and special meetings shall be called by the Chair of the Board, the Chief Executive Officer, the Chief Legal Officer or Secretary in like manner and with like notice upon the written request of at least one-third of the Directors.

(e) Quorum; LLC Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting and without prior notice if written consents (including consents transmitted by electronic transmission), setting forth the action so taken, are executed by at least the number of members of the Board or committee, as the case may be, who would have been required to approve such action at a meeting of the Board at which a quorum was present.

(f) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or other communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or other communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(g) Committees.

(i) The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured

by an amendment to the By-Laws. The Board may designate one or more Directors or other Persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(ii) Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies in the membership of any committee shall be filled by the Board.

(iii) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

(iv) Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(v) To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(h) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(i) Removal and Resignation of Directors. Unless otherwise restricted by law, any Director may be removed or expelled for cause by the Member, and may be removed by the Board of Directors in the manner provided by the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof shall not be

necessary to make such resignation effective. Any vacancy caused by any such removal, expulsion or resignation may be filled in the manner provided in the By-Laws. In the event of a vacancy, the Board may continue to act in accordance with this Agreement and the By-Laws so long as the remaining Directors can comprise a quorum.

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the LLC Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(k) The Company has taken a number of actions prior to the adoption of this Agreement. The Member hereby authorizes, approves and confirms all actions taken by the Company, and the Board, any Director or any Officer on behalf of the Company, prior to the execution of this Agreement in furtherance of the purposes of the Company.

Section 10. Officers.

(a) Except as provided herein, the Board may, from time to time as it deems advisable, select natural persons who are employees or agents of the Company and designate them as officers of the Company (the "Officers") and assign titles (including, without limitation, Chief Executive Officer, Chief Legal Officer, Chief Compliance Officer, Vice President, Secretary and Treasurer) to any such person. The initial Officers shall be appointed by the Member. The additional or successor Officers shall be chosen by the Board. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Board. The Officers of the Company as of the date of adoption of this Agreement are listed on Schedule D hereto.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) Duties of Board and Officers. Except to the extent otherwise modified herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 11. Limited Liability.

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company.

Section 12. Capital Contributions.

The Member has contributed to the Company the amounts set forth in the books and records of the Company.

Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the LLC Act or any other applicable law, and (ii) the Company shall not make a distribution to the Member using Regulatory Funds.

Section 16. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the

Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the LLC Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

Section 17. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 18. Other Business.

Unless otherwise restricted by law, the Member, and any Officer, Director, employee or agent of the Company and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 19. Exculpation and Indemnification.

(a) Neither the Member nor any Officer, Director, employee, agent or committee member of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's willful misconduct with respect to such acts or omissions.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand,

action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 19.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person.

(f) The foregoing provisions of this Section 19 shall survive any termination of this Agreement.

Section 20. Assignments.

The Member may transfer or assign in whole or in part its limited liability company interest in the Company only if such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. The transferee of a limited liability company interest in the Company shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 20, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

Section 21. Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the Member and a majority of the whole Board, (ii) the termination of the legal existence of the Member or the occurrence of any other event that terminates the continued membership of the Member in the Company

unless the Company is continued without dissolution in a manner permitted by the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the LLC Act.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the LLC Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the LLC Act.

Section 22. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons and, to the extent provided in Section 14 of the By-Laws of the Company, Options Participants as defined therein) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Covered Persons and, to the extent provided in Section 14 of the By-Laws of the Company, Options Participants as defined therein).

Section 23. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 24. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 25. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member and is enforceable against the Member, in accordance with its terms.

Section 26. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Section 28. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (i) in the case of the Company, to the Company at its address in Section 2, (ii) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (iii) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amended and Restated Limited Liability Company Agreement as of the _____ day of _____, 2008.

MEMBER:

BOSTON STOCK EXCHANGE
INCORPORATED

By: _____

Name:

Title:

SCHEDULE A

Definitions

(A) Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Agreement" means this Amended and Restated Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated, supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (B) (i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the LLC Act.

"Board" or "Board of Directors" means the Board of Directors of the Company.

"By-Laws" has the meaning set forth in Section 9.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on March 25, 2002, as amended or amended and restated from time to time.

"Company" means Boston Options Exchange Regulation, LLC, a Delaware limited liability company.

"Covered Persons" has the meaning set forth in Section 19.

"Directors" means the Persons elected/appointed to the Board of Directors from time to time in accordance with this Agreement and the By-Laws, in their capacity as managers of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"LLC Act" has the meaning set forth in the preamble to this Agreement.

"Member" means Boston Stock Exchange Incorporated, as the sole member of the Company.

"Officer" means an officer of the Company described in Section 10.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

"Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Company. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

(B) Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Limited Liability Company Interest</u>
<u>Boston Stock Exchange Incorporated</u>	<u>100 Franklin Street Boston, MA 0</u>	<u>100%</u>

SCHEDULE C

DIRECTORS as of April 15, 2008 (Excluding Option Participant Directors)

William Shea

Robert Mazarella

Bruce Newell

William Devin

Stephen Barrett

OPTION PARTICIPANT DIRECTORS as of April 15, 2008

Charles Goodgal

Gerald O'Connell

Arthur Hogan

SCHEDULE D

OFFICERS as of April 15, 2008

TITLE

John Katovich

Chief Legal Officer

Bruce Goodhue

Chief Regulatory Officer

Maura Looney
and

Assistant Vice President, Regulation
Enforcement

EXHIBIT A

BY-LAWS

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term

- (a) "Act" shall mean the Securities Exchange Act of 1934, as amended;
- (b) "Associated person" means a person who is a partner, officer, director, or employee of a Participant, or any person directly or indirectly controlling, controlled by or under common control with a Participant.
- (c) "Board" means the Board of Directors of Boston Options Exchange Regulation, [L.L.C.]LLC;
- (d) "BOX" means the Boston Options Exchange Facility;
- (e) "BOXR" means the Boston Options Exchange Regulation, [L.L.C.]LLC;
- (f) "BOX Rules" means the Rules of the Boston Options Exchange Facility;
- (g) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;
- (h) "BSE" means the Boston Stock Exchange, Incorporated;
- (i) [(h)] "BSE Rules" means the [Constitution] Certificate of Incorporation, the By-Laws and the Rules of the Board of [Governors]Directors of [the Boston Stock Exchange, Inc.]BSE;
- (j) [(i)] "Commission" means the Securities and Exchange Commission;
- (k) [(j)] "day" means calendar day;
- (l) [(k)] "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;
- (m) [(l)] "Delegation Plan" means the ["]Plan of Delegation of Functions and Authority by [the Boston Stock Exchange, Inc.]BSE to [Boston Options Exchange Regulation, L.L.C."]BOXR as approved by the Commission and amended from time to time;
- (n) [(m)] "Director" means a member of the Board;

(o) [(n)]"LLC[.] Agreement" means the ["]Boston Options Exchange Group [L.L.C.]LLC Operating Agreement["] as approved by the Commission and amended from time to time;

(p) [(o)]"Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker";

(q) [(p)]"Public Director" means a director who has no material business relationship with a broker, dealer, the BSE, BOX or BOXR, or any affiliate of BSE, BOX or BOXR;

(r) [(q)]"Regulatory Services Agreement" means the Regulatory Services Agreement entered into between BSE and Boston Options Exchange Group[, L.L.C.] LLC[.]; and

(s) "BOXR LLC Agreement" means the Limited Liability Company Agreement of BOXR, as approved by the Commission and amended from time to time.

SEC. 1 Location

[Boston Options Exchange Regulation, L.L.C.]BOXR[,] shall maintain a registered office in the State of Delaware as required by law. BOXR may also have offices and/or trading facilities at other places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as the business of BOXR may require.

SEC. 2 General Powers

The property, business and affairs of BOXR shall be managed by or under the direction of the Board. The Board may exercise all such powers of BOXR and have the authority to perform all such lawful acts as are permitted by law, the [L.L.C.]LLC Agreement, the Regulatory Services Agreement, the BOXR LLC Agreement, these By-Laws, or the Delegation Plan to assist the BSE in fulfilling its self regulatory responsibilities as set forth in [Section 6(b) of] the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the [L.L.C.]LLC Agreement, the Regulatory Services Agreement, the BOXR LLC Agreement, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 14 of the By-Laws, or to the BOXR staff in a manner not inconsistent with the Delegation Plan.

SEC. 3 No change.

SEC. 4 Qualifications

Directors need not be Participants of BOX, or members of BSE. [Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution]. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include at least one member of the BSE Board of [Governors]Directors. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

SEC. 5 - SEC. 6 No change.

SEC. 7 Removal

Unless otherwise restricted by the [L.L.C.]LLC Agreement, the BOXR LLC Agreement, these By-Laws, the BSE Rules or the BOX Rules, any or all of the Directors may be removed from office at any time, with cause, only if a determination is reasonably and promptly made by the BSE Board by a majority vote, that, based upon the facts known to the BSE Board at the time such determination is made that the Director sought to be removed (i) acted in bad faith; or (ii) did not act in a manner in the best interests of BOXR; or (iii) engaged in conduct which was unlawful; or (iv) deliberately breached his or her duty to BOXR.

SEC. 8 No change.

SEC. 9 Filling of Vacancies

If a Director position becomes vacant for any reason, the BSE Board or Executive Committee shall appoint a person to satisfy the classification (e.g. [Industry or] Public or BOX Option Participant) for the directorship, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

SEC. 10 No change.

SEC. 11 Regulation

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of BOXR not inconsistent with the law, BSE and BOX Rules, the [L.L.C.]LLC Agreement, the BOXR LLC Agreement [Regulatory Services Agreement], or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of accounts or reports made to BOXR by any of its officers, by an independent professional (e.g. attorney, certified public accountant, business consultant) or in relying in good faith upon other records of BOXR.

(b) The Exchange shall use all confidential information gained during the performance of its self-regulatory obligations, including information relating to activities of Exchange members and BOX [p]Participants, solely for regulatory purposes and will use all reasonable measures to prevent disclosure of such information to any third party, other than to its employees, agents and subcontractors on a need-to-know basis. The Exchange will take reasonable steps to advise its employees, agents and subcontractors of the confidential nature of the information.

SEC. 12 - SEC. 13 No change.

SEC. 14 Committees

(a) No change.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to BOXR by the BSE under the Delegation Plan. Such delegation shall be in accordance with applicable law, the [L.L.C.]LLC Agreement, the BOXR LLC Agreement [the Regulatory Services Agreement], and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of BOXR to the extent permitted by law and not inconsistent with the Delegation Plan.

(c) No change.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. At least one [Governor]Director of the BSE Board who is also a Director of the

BOXR Board shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

(e) Nominating Committee. The Nominating Committee shall nominate Participant representatives to the BOXR Board and the BSE Board of [Governors]Directors and members for each vacant position on the Nominating Committee.

(i) Composition of Nominating Committee. There shall be elected by ballot six persons to serve on the BOXR Nominating Committee which shall consist of a total of seven persons, five of whom shall represent broker-dealer Participant organizations of BOX (at least one of which shall be a BOX Market Maker), and two of whom shall be public representatives who shall have no material business relationship with a broker, dealer, the BSE, BOX or BOXR, or any affiliate of BSE, BOX or BOXR (one of whom will be a "Public Director" of the BOXR Board, and appointed to the Nominating Committee by the BOXR Board, as set forth in Paragraph (a) of this Section 14).

(ii) No change.

(iii) Nomination, Appointment, and Election of Representatives to the BSE Board of Governors and the BOXR Board

(A) Meeting of Nominating Committee. The Nominating Committee Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee for each open position for BOX participant representatives for the BOXR Board and the one nominee for the BSE Board of [Governors]Directors that are to be filled at the annual election. The nominees for BOX Participant representatives must be officers or directors of a firm approved as a BOX Option Participant, as set forth in Section 4 of the By-Laws, above. The Nominating Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such offices. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of [Governors]Directors. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in

September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) - (D) No change.

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. In each case, the two nominees receiving the highest number of votes for the BOXR Board shall be declared elected thereto, and the one nominee receiving the highest number of votes for the BSE Board of [Governors]Directors shall be [declared elected thereto]recommended by the Nominating Committee for election thereto. Tie votes shall be decided by the respective Board at its first meeting following the election.

(F) At the conclusion of the election, the successful candidates thereof for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of [Governors]Directors shall be presented to the [BSE Board]stockholders of BOXR and BSE, respectively, for [appointment, in accordance with Article II, Section 4, of the BSE Constitution]election. [Such presentation to the BSE Board shall be administered by the Chairman of the BOXR Nominating Committee and shall occur prior to or during the next regularly scheduled annual meeting of the BSE Board of Governors.]

(G) No change.

(f) Hearing Committee. Promptly after the annual meeting of BOXR, the Chairman of the Board of BOXR, shall appoint a Hearing Committee composed of such number of Participants and non-Participants as the Chairman of BOXR shall deem necessary, none of whom shall be members of the BOXR Board of Directors or the BSE Board of [Governors]Directors. This Committee or any panel thereof shall have at least one Options Participant member and shall have exclusive jurisdiction to conduct hearings on disciplinary proceedings brought by BOXR against any Participant, or any person employed by or associated with any Participant for any alleged violation of the Securities Exchange Act of 1934, the Rules and Regulations thereunder, the [Constitution]By-Laws or Rules of the Board of [Governors]Directors of the [Boston Stock Exchange, Inc.,]BSE, the Rules of Boston Options Exchange, LLC, the BOXR LLC Agreement or the By-Laws of [Boston Options Exchange Regulation]BOXR, or the interpretations and stated policies of either the BSE Board of [Governors]Directors or the Board of Directors of BOXR.

(i) If a Participant, or person employed by or associated with a Participant is adjudged guilty in any disciplinary proceeding, the Committee or any panel thereof shall be empowered to impose one or more of the following disciplinary sanctions: fine, censure, suspension, expulsion, limitation or termination as to activities, functions, operations or association with a BSE member or Participant, or any other appropriate sanction with respect to each charge as to which guilt is determined. Any Participant or person adjudged guilty in any disciplinary proceeding by the Committee or any panel thereof shall have the right to appeal such decision to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of [Governors]Directors, which shall have the discretion whether to hear such appeal. If the BSE Board of [Governors]Directors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of [Governors]Directors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission. Notwithstanding the foregoing, a decision by the Committee or a panel with respect to a Participant that is an affiliate of The NASDAQ OMX Group, Inc. within the meaning of Chapter XXXIX, Section 2 of the BSE Rules (or any comparable successor rule) may not be appealed to or reviewed by the BOXR Board or the BSE Board of Directors, but rather shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may be appealed to the Commission.

(ii) The foregoing jurisdiction, function and powers shall be exercised by the Committee in accordance with the provision of the Rules of the Board of [Governors]Directors of the BSE, as set forth in Chapter XXX [therein] of such rules or any comparable successor to such rule. With respect to the reference to "members", "member organizations", "membership" or similar terms in the BSE Rules, the applicability of the relevant sections inures to BOX "Participants".

(iii) – (iv) No change.

SEC. 15 - SEC. 23 No change.

SEC. 24 Indemnification and Exculpation [of Directors, Officers, Employees, Agents, and Committee Members]

Exculpation and indemnification of BSE, the Officers, Directors, employees, agents and committee members of the Company and any employees, representatives, agents and Affiliates of BSE (collectively, the "Covered Persons") is governed by Section 19 of the BOXR LLC Agreement.

[(a) BOXR shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of BOXR, or committee member, or is or

was a Director, officer, or employee of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of BOXR to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) BOXR shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) BOXR may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of BOXR or is or was an agent of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) BOXR may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by BOXR to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is

made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of BOXR; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to BOXR.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), BOXR shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

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

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days after a written claim therefor by an indemnified person has been received by BOXR, the indemnified person may file suit to recover the unpaid amount of such claim and, if

successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, BOXR shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.]

SEC. 25 - SEC. 26 No change.

SEC. 27 Waiver of Notice

(a) Whenever notice is required to be given by law, or these By-Laws, a written waiver thereof, signed by the person or persons entitled[s] to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or

members of a committee of [a] Directors need be specified in any written waiver of notice.

(b) No change.

SEC. 28 - SEC. 29 No change.

SEC. 30 Alteration of By-Laws by Directors

To the extent permitted by law, these By-Laws, BSE Rules, BOX Rules, the [L.L.C.] LLC Agreement, the BOXR LLC Agreement, or the Regulatory Services Agreement, these By-Laws may be altered, amended, repealed, or new By-Laws adopted by approval of a majority of the BSE Board at any regular or special meeting of the BSE Board.

SEC. 31 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the BSE Board that shall, notwithstanding any different provision of law, the [L.L.C.] LLC Agreement, the BOXR LLC Agreement, the Regulatory Services Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which BOXR conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

D. The Exchange is proposing to amend the Third Amended and Restated Operating Agreement of BSX Group LLC as indicated below:

BSX GROUP LLC

[THIRD] FOURTH AMENDED AND RESTATED OPERATING AGREEMENT

This [THIRD]FOURTH AMENDED AND RESTATED OPERATING AGREEMENT is made as of [March 13, 2007]_____, 2008 (the "Effective Date"), by and among [Boston Stock Exchange, Inc., a corporation organized under the laws of Delaware ("BSE"), Citigroup Financial Strategies Inc., a corporation organized under the laws of Delaware ("Citi"), Credit Suisse First Boston Next Fund Inc., a corporation organized under the laws of Delaware ("Credit Suisse"), LB 1 Group, Inc., a corporation organized under the laws of Delaware ("Lehman"), Fidelity Global Brokerage Group, Inc., a corporation organized under the laws of Massachusetts or its designated affiliates ("Fidelity"), Merrill Lynch L.P. Holdings Inc., a corporation organized under the laws of Delaware ("Merrill"),]The NASDAQ OMX Group, Inc., a Delaware corporation ("NASDAQ OMX"), the Boston Stock Exchange, Incorporated, a Delaware corporation

and wholly-owned subsidiary of NASDAQ OMX (“BSE”), and all other Persons who become a party hereto as Members of BSX Group LLC (the “Company”) in accordance with the terms hereof, for the purpose of recording their agreement regarding the affairs of the Company and the conduct of its business.

RECITALS

WHEREAS, on June 4, 2004 the BSE caused the Certificate of Formation (the “Certificate”), attached as of Exhibit 1 hereto, to be filed with the Office of the Secretary of State of the State of Delaware for the purpose of commencing the existence of the Company pursuant to the Act (as defined below);

WHEREAS, [the parties] BSE and other Persons formerly Members of the Company formed the Company for the purpose of developing and operating an electronic market as a facility (as defined in Section 3(a)(2) of the Exchange Act) of the BSE for trading U.S. Equities (as defined below), the Boston Equities Exchange (“BeX”);

WHEREAS, [the parties executed] this Operating Agreement was originally executed on August 15, 2005, [executed] an Amended and Restated Operating Agreement was executed on May 26, 2006, [and executed] a second Amended and Restated Operating Agreement was executed on June 6, 2006, and a third Amended and Restated Operating Agreement was executed on March 13, 2007;[.]

WHEREAS, subsequent to the execution of this Agreement, the Company and the BSE executed a Facility Services Agreement dated August 18, 2006, pursuant to the principal terms and conditions set forth in Schedule 4 (the “BSE Facility Services Agreement”), whereby the Company [will] has operated the business of BSE related to the trading of U.S. Equities (the “BSE Equities Business”); [and]

WHEREAS, the operations of BeX were discontinued on September 5, 2007, and

[WHEREAS, subsequent to the execution of this Agreement, it is anticipated that the Company will enter into each of the Related Agreements.]

WHEREAS, BSE entered into an Agreement and Plan of Merger, dated as of October 1, 2007, as amended November 12, 2007 and January 18, 2008, by and among BSE, NASDAQ OMX and Yellow Merger Corporation, a Delaware corporation and wholly-owned subsidiary of NASDAQ OMX (the “Transitory Subsidiary”), pursuant to which the Transitory Subsidiary merged with and into BSE with BSE surviving the merger as a wholly-owned subsidiary of NASDAQ OMX;

WHEREAS, Citigroup Financial Strategies Inc., Credit Suisse First Boston Next Fund Inc., LB 1 Group, Inc., Fidelity Global Brokerage Group, Inc., Merrill Lynch L.P. Holdings Inc. and certain individuals (the “Prior Members”) entered into a Purchase and Sale Agreement, dated as of October 1, 2007, as amended November 12, 2007 and January 18, 2008, by and among the Prior Members and NASDAQ OMX (the “Purchase

Agreement”), pursuant to which NASDAQ OMX purchased the Prior Members’ equity interests in the Company; and

WHEREAS, BSE and NASDAQ OMX desire to amend this Agreement to reflect the admission of NASDAQ OMX as a Member hereof and the withdrawal of the Prior Members pursuant to the Purchase Agreement; and

WHEREAS, as a result of the Purchase Agreement and such amendments to this Agreement, BSE and NASDAQ OMX are the sole Members of the Company;

NOW, THEREFORE, in order to carry out their intent as expressed above and in consideration of the mutual agreements hereinafter contained, the parties hereby agree as follows:

Article 1

Definitions

1.1 Certain Defined Terms: As used in this Agreement, the following capitalized terms have the following meanings:

“Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et. seq., as amended and in effect from time to time, and any successor statute.

“Additional Capital Contribution” means any Capital Contribution effected after completion of the Initial Capital Contributions pursuant to Section 7.3 hereof.

“Advisors” means, with respect to any Person, any of such Person’s attorneys, accountants or consultants.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

“Agreement” means this [Third]Fourth Amended and Restated Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

["Atos" means Atos Euronext S.A.]

["Atos Services Agreement" shall mean the agreement(s) to be entered into by and between Atos and the Company, pursuant to the principal terms and conditions set forth in Schedule 5, as in effect from time to time, relating to Atos providing development, software licenses, maintenance and technical services for the BeX.]

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the Act.

"Board" has the meaning set forth in Section 4.1 hereof.

"BSE" has the meaning set forth in the preamble.

"BSE Contribution Schedule" shall mean the Contribution Schedule of the BSE set forth in Schedule 3.

"BSE Facility Services Agreement" has the meaning set forth in the recitals hereto.

["BSE Rules" mean the Rules of the Board of Governors of the BSE.]

"BeX" has the meaning set forth in the recitals hereto.

["BeX Market Participant" means a firm, or organization that is registered with the BSE pursuant to the BSE Rules for purposes of participating in equities trading on the BeX.]

"Capital Account" means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member's Capital Account (i) its Capital Contributions; (ii) the share of income and gain of the Company allocated to the Member pursuant to Section 10.1 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Section 10 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes); (iii) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations § 1.704-1 (b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, the Board may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)(f) upon the occurrence of any event described in subparagraph (5) of such Regulations. The

Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations § 1.704-1 (b)(2)(iv)(g) in the event of a revaluation of the Company property pursuant to Treasury Regulations § 1.704-1 (b)(2)(iv)(f), or if required by Treasury Regulations § 1.704-1 (b)(2)(iv)(d)(3).

“Capital Contribution” means the amount of cash and the fair market value of all property (net of any liability secured by such property that the Company is considered to assume, or take subject to Section 752 of the Code) and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company.

“Certificate” has the meaning set forth in the recitals hereto.

“Code” means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

“Company” has the meaning set forth in the preamble.

“Company Minimum Gain” means partnership minimum gain with respect to the Company, as determined under Treasury Regulations § 1.704-2(d).

“Confidential Information” means any confidential or proprietary information of the Company, including any confidential or proprietary information conveyed to the Company pursuant to this Agreement or any Related Agreements.

“DGCL” has the meaning set forth in Section 4.2(b) hereof.

“Directors” has the meaning set forth in Section 4.1(a) hereof. Each Director shall be a “manager” within the meaning of the Act.

“Disclosing Member” has the meaning set forth in Section 16.3 hereof.

“Distributable Cash” has the meaning set forth in Section 9.1 hereof.

“Effective Date” means the date hereof.

[“Executive Equity Program” shall mean the equity program created by the Company on or about November 20, 2006.]

“Excess Units” means the Units owned by a Person, either alone or with its Affiliates, in excess of 20% of all Units then issued and outstanding.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

“Facility” shall have the meaning set forth in Section 3(a)(2) of the Exchange Act.

“Fiscal Year” has the meaning set forth in Section 12.3 hereof.

[“Founding Members” shall mean the BSE, Citi, Credit Suisse, Lehman, Merrill and Fidelity.]

“Funding Date” [– S] shall mean any date on which a Member provides a Capital Contribution or Additional Capital Contribution including the Initial Funding Date.

“Government Authority” means any federal, national, state, municipal, local, foreign, territorial, provincial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

“Indemnitees” has the meaning set forth in Section 14.1 hereof.

“Initial Capital Contributions” has the meaning set forth in Section 7.1.

“Initial Funding Date” shall mean the date which is thirty (30) days following August 18, 2005.

[“Launch Date” shall mean the date on which the BeX begins full processing of U.S. Equities on the ATOS NSC platform.]

[“Lava” means Lava Trading, Inc.]

[“Lava Services Agreement” shall mean the agreement(s) to be entered into by and between Lava and the Company, pursuant to the principal terms and conditions set forth in Schedules 6.1 and 6.2, as in effect from time to time, relating to Lava providing customized application software (e.g., Lava Solutions), market connectivity, hosting, maintenance and technical operations support for the BeX.]

“Liquidator” has the meaning set forth in Section 11.1(b) hereof.

“Member” means each Person admitted and named as a Member on Schedule 2 hereto, and any Person admitted to the Company as an additional or substitute member of the Company as provided by this Agreement, in such Person’s capacity as a member of the Company. For the avoidance of doubt, a transferee or an assignee (including, without limitation, the personal representatives (as defined in the Act) of a Member) of a limited liability company interest in the Company shall not be a member of the Company, and no transferee or assignee, except as otherwise specifically provided in this Agreement with respect to BSE, other than a duly admitted member of the Company, shall have any right whatsoever to vote or consent to any action with respect to the Company, and shall not be entitled to exercise any rights of Members held by such Members by virtue of their admission to the Company as members of the Company, whether any such rights arise under this Agreement, the Act or other applicable law, unless and until such transferee or assignee is admitted to the Company as a member of the Company in accordance with the provisions of this Agreement.

“Member Entities” has the meaning set forth in Section 5.7 hereof.

“Member Information” has the meaning set forth in Section 16.3 hereof.

“Member Nonrecourse Deductions” means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations § 1.704-2(i)(2).

“Member Nonrecourse Debt Minimum Gain” means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations § 1.704-2(i)(2).

[“Member Transfer Notice” has the meaning set forth in Section 8.3(a) hereof.]

“Nonrecourse Debt” means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations § 1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations § 1.752-2).

“Nonrecourse Deductions” shall have the meaning as set forth in Treasury Regulations § 1.704-2(b)(1) and the amount for the partnership year shall be determined in accordance with the rules of Treasury Regulations § 1.704-2(c).

[“Non-Transferring Founding Member” has the meaning set forth in Section 8.2(a) hereof.]

“Ownership Concentration Limit” has the meaning set forth in Section 8.53(a) hereof.

“Percentage Interest” with respect to a Member or Person means the ratio of the number of Units held by the Member or Person to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.

“Person” shall mean an individual, corporation, association, general or limited partnership, organization, business, firm, limited liability company, joint venture, trust, estate, or other entity, association or organization, whether constituting a legal entity or not.

“Regulatory Services Provider” shall [initially] mean the BSE [and thereafter the provider of regulatory services contemplated by the BSE Facility Services Agreement].

“Related Agreements” means the BSE Facility Services Agreement and any other agreement among or between any of the Members and the Company, or to which the Members or the Company are otherwise parties, in all cases necessary for the conduct of the business of the Company.

“Regulatory Funds” means fees, fines, or penalties derived from the regulatory operations of the Company. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

“SEC” means the United States Securities and Exchange Commission.

“Self-Regulatory Organization” shall have the meaning set forth in the Exchange Act.

“Senior Executive” has the meaning set forth in Section 4.7 hereof.

[“Super Major Action” has the meaning set forth in Section 4.4 hereof.]

“Tax Amount” of a Member for a fiscal year or other period shall mean the product of (a) the Member’s Tax Rate for such fiscal year or other period, and (b) the Member’s Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by the Board.

“Tax Amount Base” of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; provided that such taxable income shall be computed (i) without regard to the application of §704 (c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

“Tax Rate” of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member’s Tax Amount Base.

“Total Votes” has the meaning set forth in Section [4.4(a)]5.8 hereof.

“Transfer” has the meaning set forth in Section 8.1(a) hereof.

“Transferee” [has the meaning set forth in Section 8.2 hereof]means a third party or another Member to which a Transferring Member proposes to transfer Units.

[“Transfer Notice” has the meaning set forth in Section 8.2(a) hereof.]

“Transferring Member” [has the meaning set forth in Section 8.2 hereof] means a Member that desires to, directly or indirectly, whether voluntarily, by operation of law, or otherwise, Transfer all or any portion of the Units owned, directly or indirectly, by such Member.

“Treasury Regulations” means the regulations promulgated under the Code, as amended and in effect from time to time.

“Units” shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights, except as otherwise specifically provided in this Agreement with respect to BSE, shall be vested in only duly admitted members of the Company), or to exercise any right of a member of the Company under this Agreement, the Act or other applicable law.

“Unpermitted Deficit” has the meaning set forth in Section 10.3 hereof.

“U.S. Equities” means equity securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, and NASD’s Over-The-Counter Bulletin Board equity securities.

1.2 Other Definitions

The words “include,” “includes,” and “including” where used in this agreement are deemed to be followed by the words “without limitation.”

Any reference to “Dollars” or “\$” in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the Act will have the meaning set forth in the Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, Sections, Schedules, and Exhibits shall be deemed to mean the preamble and sections of, and schedules and exhibits to, this Agreement.

Article 2

Organization

2.1 Formation and Continuation of Company. Each of the parties hereto hereby (a) ratifies the formation of the Company as a limited liability company under the Act,

the execution of the Certificate and the filing of the Certificate in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of the Company shall be BSX Group LLC.

2.2 Principal Office; Registered Agent and Office. The principal place of business of the Company shall be located at 100 Franklin Street, Boston, MA 02110. The Board may, at any time, change the name or the principal place of business of the Company and shall give notice thereof to the Members. The registered agent for service of process on the Company in the State of Delaware required to be maintained by § 18-104 of the Act shall be The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, [Corporation Service Company, 2711 Centerville Road, Suite 400,] Wilmington, New Castle County, Delaware [19808] 19801 and the registered office of Company in the State of Delaware shall be c/o [Corporation Service Company]The Corporation Trust Company at the same address. The Board may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Members.

2.3 Term. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the Act or pursuant to a provision of this Agreement.

2.4 Interest of Members; Property of Company. Units held by a Member shall be personal property for all purposes. All real and other property owned by the Company shall be deemed the Company's property owned by the Company as an entity, and no Member, individually, shall own any such property. The name and mailing address of each Member and the number and class of Units held by each and the Percentage Interest represented thereby shall be as listed on Schedule 2 attached hereto. The Board shall be required to update said Schedule 2 from time to time as necessary to accurately reflect the information contained therein upon (i) a Member ceasing to be a member of the Company, (ii) the admission of a new Member or (iii) any change in the number or class of Units owned by a Member, in each case pursuant to the terms and conditions specified in this Agreement.

2.5 The Units.

(a) Except as otherwise provided in this Agreement [or the Executive Equity Program], all Units are identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units.

(b) Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units shall be rounded to the nearest whole number, to the extent feasible, as determined by the Board.

2.6 Intent. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7 Article 8 Opt-In. Each limited liability company interest in the Company (including the Units) shall constitute a “security” within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the “Delaware UCC”) and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (each, an “Other State UCC”). For all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company’s jurisdiction in the Company’s capacity as the issuer of Units.

2.8 Certificates.

(a) All Units shall be represented by one or more certificates (a “Unit Certificate”) issued to the registered owner of such Units by the Company. Each such Unit Certificate shall be denominated in terms of the number and class of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company. Within fourteen (14) days of a Funding Date, the Company shall issue to each Person one or more Unit Certificates in the name of such Person to represent the Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the class and number of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Units represented by such Unit Certificate, as reflected on the books and records of the Company:

(i) makes proof by affidavit, in form and substance satisfactory to the Board in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by the Board in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to the Board in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by the Board.

(d) Upon the Transfer in accordance with the provisions of this Agreement by any Person of any or all of its Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the class and number of Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that class and number of Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

“THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF, THE FOURTH AMENDED AND RESTATED OPERATING AGREEMENT OF BSX GROUP LLC (THE “COMPANY”), DATED AS OF [JUNE 6, 2006] _____, 2008, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE “AGREEMENT”). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT,

VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

EACH LIMITED LIABILITY COMPANY INTEREST REPRESENTED HEREBY SHALL CONSTITUTE A “SECURITY” WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE (INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE “DELAWARE UCC”) AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994 REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN “OTHER STATE UCC”). FOR ALL PURPOSES OF ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE SHALL CONSTITUTE THE LOCAL LAW OF THE COMPANY’S JURISDICTION IN THE COMPANY’S CAPACITY AS THE ISSUER OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY.”

(ii) In addition, unless counsel to the Company has advised Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

“THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED.”

Article 3

Purpose

3.1 Purpose. The purpose of the Company is to develop, own and operate the [BeX] BSE Equities Business and to engage in any and all activities necessary, convenient, desirable or incidental to the foregoing, including, without limitation, acquiring, holding, managing, operating and disposing real and personal property. The

Company shall not engage in any other business or activity except as approved in accordance with Section 4.4(b)(ix) hereof.

3.2 Role of BSE. Pursuant to the BSE Facility Services Agreement and the BSE Contribution Schedule, BSE will provide SEC approved Self-Regulatory Organization services and status as the regulatory framework for the [BeX]Company and the BSE Equities Business. As the Regulatory Services Provider, BSE will have the sole regulatory responsibility for the activities of the Company and the BSE Equities Business [BeX]. BSE will also provide certain administrative services as agreed by [BeX] the Company and BSE.

Article 4

Governance

4.1 Board of Directors.

(a) The Members [(except for Executive Equity Program Members)] shall establish a Board of Directors of the Company (the “Board” or “Directors”) to implement this Agreement. The Board shall be comprised of from five (5) to fifteen (15) Directors, and shall initially consist of ~~[six (6)]~~five (5) Directors. Except as otherwise specifically provided in this Agreement, the Board will manage the development, operations, business and affairs of the Company, without the need for any approval of any Member or other Person.

(b) BSE shall be entitled to designate two (2) Directors. Citi, Credit Suisse, Lehman, Merrill, and Fidelity shall each be entitled to designate one (1) Director. Thereafter, if any Founding Member with its Affiliates maintains a Percentage Interest of 3[.00]% or greater, it shall have the right to retain/designate one (1) Director. If BSE maintains a Percentage Interest of 6[.00]% or greater, it shall have the right to retain/designate two (2) Directors. Additionally, as long as the BeX remains a Facility of the BSE, the BSE shall have the right to retain/designate one (1) Director, in the event it is no longer otherwise entitled to designate any Directors pursuant to this Section 4.1(b), whether or not the BSE maintains any Percentage Interest or is admitted to the Company as a Member of the Company.]

~~[(c)]~~(b)BSE shall be entitled to designate all of the Directors. Each Director shall serve at the pleasure of ~~[the Member which designated such Director]~~ BSE and may from time to time be replaced by BSE~~[such Member]~~. Any such replacement must be a member of senior management or Board of Directors of the designating party or an Affiliate of such designating party or of its principal owner or owners. Each Member shall notify the other Members in writing of any person designated by it to serve as a Director and any replacement for such person promptly following such designation or replacement]. The Board shall terminate a Director: (i) in the event such Director has violated any provision of this Agreement or any federal or state securities law; or (ii) if the Board determines that such action is necessary or appropriate in the public interest or

for the protection of investors. If a Director is terminated pursuant to this subsection (b), BSE shall have the right to appoint a replacement. [A Member whose appointed Director is terminated pursuant to this subsection (c) shall have the right to appoint a replacement.]

[(d) Subject to Sections 4.4(b)(iv) and 4.4(b)(vi), in the event of the addition of any new Members or the transfer of interest from a Member to a Transferee Member, the Board shall determine the number of Board seats, if any, to be designated by the new or Transferee Member and will determine the disposition of the Board seats designated by any Transferring Member.]

[(e) The Board may increase the size of the Board and/or provide for Board representation for new or Transferee Members with Percentage Interests equal to or greater than 5.00%.]

[(f)](c) In the event that a Director has not been designated or is unable to attend or participate in any meeting of the Board or any committee thereof, the Member that designated or has the right to designate such Director may appoint an individual to attend such meetings and to participate in the deliberations of such meetings. Such individual will not be permitted to vote on behalf of the Member, nor will such individual be considered an attendee of any meetings for the purposes of constituting a quorum.

4.2 Authority and Duties of Board; Committees.

(a) Authority and Conduct. The Board shall have the specific authority delegated to it pursuant to this Agreement. Each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the BSE pursuant to their regulatory authority and the provisions of this Agreement. Furthermore, each Director shall take into consideration whether his or her actions as a Director would cause BSX to engage in conduct that fosters and does not interfere with the Company's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

(b) Duties of Board. Without limiting the general duties and authority of the Board as set forth in this Article 4, except as otherwise provided in this Agreement, the Board shall have all of the powers of the Board of Directors of a corporation organized under the General Corporation Law of the State of Delaware, as from time to time in effect (the "DGCL"), including the power and responsibility to manage the business of the Company, select and evaluate the performance of the Senior Executive, and establish and monitor capital and operating budgets.

(c) Executive Committee. There may be an executive committee of the Board consisting of at least one or more Directors [designated by each of the Founding Members, as long as such Person is still a Member], such executive committee to be formed by resolution passed by the Board. The act of a majority of the members of such committee shall be the act of the committee. Said committee may meet at stated times or on notice to all members of such committee, and[, subject to Section 4.2(e) below,] shall have and may exercise all powers of the Board in the management of the business affairs of the Company. Vacancies in the membership of the committee shall be filled by the Board in accordance with this Section 4.2(c) at a regular meeting or at a special meeting of the Board called for that purpose.

(d) Other Committees. The Board may also designate one or more committees in addition to the executive committee, by resolution or resolutions passed by a majority of the whole Board.

(e) [Powers Denied to Committees. Committees of the Board, including the executive committee, shall not, in any event, have any power or authority to transact any Super Major Action.]

[(f)] Substitute Committee Member; Minutes. In the absence or on the disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint, in accordance with the provisions of this Section 4.2, another individual to act at the meeting in the place of such absent or disqualified member. All committees shall keep regular minutes of its proceedings and report the same to the Board as may be required by the Board.

4.3 (a) Meetings. The Board will meet as often as the members thereof deem necessary, but not less frequently than every three (3) months. Meetings may be conducted in person or by telephone or in any other manner agreed to by the Board. Any Director may call a meeting of the Board upon fourteen (14)-calendar days prior written notice. In any case where the convening of a meeting of Directors is a matter of urgency, notice of such meeting may be given not less than forty-eight (48)] hours before such meeting is to be held. No notice of a meeting shall be necessary when all members of the Board are present. [In the event that the Board consists of less than eight (8) Directors, the attendance of at least four (4) Directors shall constitute a quorum for purposes of any meeting of the Board. In the event that the Board consists of eight (8) or more Directors, the attendance of at least a majority of all] A majority of the [Directors]Board shall constitute a quorum for purposes of any meeting of the Board. Except as may otherwise be provided by this Agreement, each of the Directors will be entitled to vote on any action to be taken by the Board, except that the Senior Executive (if a Director) shall not be entitled to vote on matters relating to his or her powers, compensation or performance.

(b) All quorum and voting requirements shall be adjusted accordingly for the suspension of any Member made pursuant to Sections 5.8 or 8.[4]2(f). Any Director

shall be entitled to vote the votes allocated to another Director after having received such Director's proxy in writing. Meetings of the Board may be attended by other representatives of the Members and other persons related to the Company as agreed to from time to time by the Board and as otherwise specified in this Agreement. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if (i) all members of the Board or committee consent to voting on such action without a meeting, and (ii) written consents, setting forth the action so taken, are executed by the members of the Board or committee, as the case may be, representing the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all members of the Board or committee, as the case may be, permitted to vote were present and voted. The Board will set up procedures relating to the recording of minutes of its meetings.

(c) Voting Trusts. Members are prohibited from entering into voting trust agreements with respect to their Units.

(d) Standard Voting Requirement. Unless otherwise provided by this Agreement, for purposes of taking any action or voting on any matter coming before the Board, each Director shall have one (1) vote, and any action to be taken by the Board shall be considered effective only if approved by a majority of the Directors entitled to vote on such action.

4.4 [(a)] Special Voting Requirements. Notwithstanding anything contained in this Agreement or the Related Agreements to the contrary, so long as the Company is or operates a facility of BSE, in the event that BSE, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of BSE's regulatory functions, its responsibilities under the Exchange Act or as specifically required by the SEC (collectively, "Regulatory Requirements"), (i) without BSE's affirmative vote no such action, transaction or aspect of an action or transaction shall be authorized, undertaken or effective, and (ii) BSE shall have the sole and exclusive right to direct that any such required, necessary or appropriate act, as it may determine in its sole discretion, be taken or transaction be undertaken by or on behalf of the Company without regard to the vote, act or failure to vote or act by any other party in any capacity. [Section 4.3(c) and subject to the other provisions of this Agreement, for purposes of voting on any Super Major Action (as defined below), there shall be a total of 100 votes (the "Total Votes") available to be voted on any action to be taken by the Board. Each Director, except as otherwise limited herein, shall be entitled to vote that percentage of the Total Votes equal to the quotient obtained by dividing (i) the quotient of (A) the number of Units held by the Member that designated such Director (if applicable, rounded down to the nearest whole Unit) divided by (B) the aggregate number of Units held by all Members that designated Directors by (ii) the number of Directors designated by such Member.]

[No action with respect to any:

(i) Super Major Action (as defined in paragraph (c) below), shall be effective unless approved by Directors holding seventy-five percent (75%) of the Total Votes, including the affirmative vote of all of the votes of Directors designated by four (4) of the Founding Members, plus the affirmative vote of all of the votes of Directors designated by the BSE.

In addition, unless approved by the Board as provided above, none of the Members on behalf of the Company shall enter into or permit the Company to enter into any Super Major Action. No other Member votes are required for a Super Major Action.

(b) For purposes of this Agreement, "Super Major Action" means any of the following:

(i) merger or consolidation of the Company with any other entity or the sale by the Company of any material portion of its assets;

(ii) except as otherwise provided in the BSE Facility Services Agreement, operating the BeX utilizing any other Regulatory Services Provider other than BSE or an Affiliate of BSE;

(iii) making any material change in the market structure of the BeX from that contemplated by the Members as of the date hereof;

(iv) subject to the provisions of Section 4.1, appointing (or retaining) Directors to afford representation to Members, other than Founding Members, having a Percentage Interest less than 5[.00]%;

(v) subject to Article 8, the acquisition of any Units by any Person (other than BSE) that results in such Person, alone or together with any Affiliate of such Person, newly holding an aggregate Percentage Interest equal to or greater than twenty percent (20%);

(vi) altering the provisions for Board membership for the Founding Members specified in Section 4.1(b);

(vii) entering into, amending, renewing or terminating the Lava Services Agreement and the Atos Services Agreement;

(viii) amending this Section 4.4(b), or entering into, assuming or becoming bound by contract to do any of the foregoing in this Section 4.4(b), either directly or indirectly, including through the adoption, amendment, alteration or repeal of any provision or term of this Agreement.

(ix) entry by the Company into any line of business other than the business described in Article 3;

(x) except as expressly contemplated by this Agreement and the Related Agreements, entering into any agreement, commitment, or transaction with a Member or any of its Affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to the Company than the Company would obtain in a comparable transaction or agreement with a third party;

(xi) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding-up of the Company;

(xii) entering into any partnership, joint venture or other similar joint business undertaking;]

4.5 Officers. The Board will appoint such officers and agents of the Company, including a Senior Executive, as it shall from time to time deem necessary. Such officers and agents shall have such terms of employment, shall receive such compensation and shall exercise such powers and perform such duties as the Board shall from time to time determine.

4.6 Duties of the Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members and at all meetings of the Board. The Chairman of the Board shall have the general powers and duties of management usually vested in the office of Chairman of the Board of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the development of the Company as the Board shall from time to time direct.

4.7 Duties of the Senior Executive. Subject to the supervision and direction of the Board, a senior executive (referred to herein as the "Senior Executive") shall have general supervision, direction and control of the business and the officers of the Company. The Senior Executive shall have the general powers and duties of management usually vested in the office of Chief Executive Officer of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the Company as the Board shall from time to time direct. The Senior Executive shall be responsible for advising the Board on the status of the Company on a regular basis or more frequently as requested by the Board.

4.8 No Management by Members. Except as otherwise expressly provided herein or as requested by the Board, no Member shall take part in the day-to-day management or operation of the business and affairs of the Company [unless their membership is through the BSXG Executive Equity Program]. Except and only to the extent expressly provided for in this Agreement and the Related Agreements and as delegated by the Board to committees of the Board or to duly appointed officers or agents of the Company, no Member or other Person other than the Board shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

4.9 Reliance by Third Parties. Any Person dealing with the Company or the Board may rely upon a certificate signed by the Chairman of the Board, or such other officer of the Company designated by the Board, as to:

- (a) the identity of the members of the Board or any committee thereof, any officer or agent of the Company or any Member hereof;
- (b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or in any other manner germane to the affairs of the Company;
- (c) the Persons who are authorized to execute and deliver any agreement, instrument or document of or on behalf of the Company; or
- (d) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

Article 5

Powers, Duties, and Restrictions of the Company and the Members

5.1 Powers of the Company. In furtherance of the purposes set forth in Article 3, and subject to the provisions of Article 4, the Company, acting through the Board (and the Members hereby delegate such authority to the Board), will possess the power to do anything not prohibited by the Act, by other applicable law, or by this Agreement, including but not limited to the following powers: (i) to undertake any of the activities described in Article 3; (ii) to make, perform, and enter into any contract, commitment, activity, or agreement relating thereto; (iii) to open, maintain, and close bank and money market accounts, to endorse, for deposit to any such account or otherwise, checks payable or belonging to the Company from any other Person, and to draw checks or other orders for the payment of money on any such account; (iv) to hold, distribute, and exercise all rights (including voting rights), powers, and privileges and other incidents of ownership with respect to assets of the Company; (v) to borrow funds, issue evidences of indebtedness, and refinance any such indebtedness in furtherance of any or all of the purposes of the Company, to guarantee the obligations of others, and to secure any such indebtedness or guarantee by mortgage, security interest, pledge, or other lien on any property or other assets of the Company; (vi) to employ or retain such agents, employees, managers, accountants, attorneys, consultants and other Persons necessary or appropriate to carry out the business and affairs of the Company, and to pay such fees, expenses, salaries, wages and other compensation to such Persons as the Board shall determine; (vii) to bring, defend, and compromise actions, in its own name, at law or in equity; and (viii) to take all actions and do all things necessary or advisable or incident to the carrying out of the purposes of the Company, so far as such powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the Company's business, purpose, or activities.

5.2 Powers of Members. Except as otherwise specifically provided by this Agreement or required by the Act or by the SEC pursuant to the Exchange Act, no Member shall have the power to act for or on behalf of, or to bind, the Company, and unless otherwise determined by the Board, all Members shall constitute one class or group of members of the Company for all purposes of the Act.

5.3 Member Conduct. The Company[,] and [to the extent that it relates to the Company or the BeX,] each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the BSE pursuant to their regulatory authority and the provisions of this Agreement; and to engage in conduct that fosters and does not interfere with [BSX]the Company's or BSE's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

5.4 Member's Compensation. Except as otherwise specifically provided in this Agreement or in any of the Related Agreements, the Members shall not be entitled to any compensation for their services hereunder.

5.5 Resignation. Except as contemplated by Article VIII, no Member shall resign from the Company unless and until such Member's required Initial Capital Contribution has been satisfied or specifically assumed by another Person and such Person has become a Member in accordance with this Agreement.

5.6 Cessation of Status as a Member. A Member will cease to be a member of the Company upon the Bankruptcy or the dissolution of such Member.

5.7 Claims Against or By Members. [Subject to Article 13, e]Except as set forth in the Related Agreements or required by the SEC pursuant to the Exchange Act, any and all matters relating to claims: (i) by the Company against a Member or a former Member or any Affiliate of a Member or a former Member (collectively the "Member Entities"); or (ii) by a Member Entity against the Company shall be controlled by the Directors designated by the Member or Members that are not affiliated with such Member Entity. No Director shall be entitled to vote on (A) whether to initiate a claim by the Company against the Member that appointed such Director or an Affiliate of such Member, (B) any matter concerning a claim initiated by the Company against the Member that appointed such Director or a Member Entity affiliated with such Member, or (C) any matter concerning a claim initiated against the Company by the Member that appointed such Director or a Member Entity affiliated with such Member. Any action to be taken by the Board with respect to any such claim shall be considered effective only if approved by a majority of the Directors (that are not affiliated with such Member Entity).

5.8 **Suspension of Voting Privileges and Termination of Membership.** For purposes of voting under this Section 5.8, there shall be a total of 100 votes (the "Total Votes") available to be voted on any action to be taken by the Board. Each Director, except as otherwise limited herein, shall be entitled to vote that percentage of the Total Votes equal to the quotient obtained by dividing (i) the quotient of (A) the number of Units held by the Member that designated such Director (if applicable, rounded down to the nearest whole Unit) divided by (B) the aggregate number of Units held by all Members that designated Directors by (ii) the number of Directors designated by such Member. After appropriate notice and opportunity for hearing, the Board, by a vote of Directors representing 2/3 of the Total Votes, including the affirmative vote of the BSE and excluding the vote of such Member subject to sanction, may suspend or terminate a Member's voting privileges or membership in the Company, under the Act or this Agreement: (i) in the event such Member is subject to a "statutory disqualification," as defined in Section 3(a)(39) of the Exchange Act; or (ii) in the event such Member has violated any material provision of this Agreement, or any federal or state securities law which would have a material adverse effect on the Company; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

Article 6

Operating Budget

The Company's operating budget for each Fiscal Year must be approved by a majority of the Board. [Exhibit 2 hereto sets forth the use of the Company's initial proceeds.]

Article 7

Members; Financing Company

7.1 Initial Capital Contributions – Units.

(a) Subject to the BSE Contribution Schedule, the Initial Capital Contribution by, and the date such Initial Capital Contribution was made or shall be made to the Company, as the case may be, by each Member is set forth opposite their respective names on Schedule 1 hereto, as amended from time to time.

(b) The number of Units (and class designation) held by, and Percentage Interest of, each Member is set forth in Schedule 2 hereto, as amended from time to time.

(c) The value assigned to each Initial Capital Contribution is equal to the amount of cash and the fair market value of all other assets, services and/or properties contributed by such Member, determined as set forth on Schedule 1.

(d) In the event of any dispute as to the fair market value of any Capital Contribution made through the provision of services or the contribution of assets or property, the fair market value of such Capital Contribution shall be finally determined by an independent accounting firm of national prominence that has no current business relationship with any of the disputing Members or the Company or as the Members shall otherwise agree.

7.2 Members; Capital. The Capital Contributions of the Members shall be set forth on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the Act.

7.3 Additional Capital Contributions.

[(a) Additional Capital Contributions.] The Board shall, at its sole discretion, determine the capital needs of the Company. If at any time or from time to time after the Effective Date the Board shall determine that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by the Board, including but not limited to the following: (i) the issuance of new Units to third parties; (ii) the issuance of convertible debt; (iii) borrowing funds from new sources; (iv) borrowing funds from existing Members or deferring payment for services performed by then-existing Members; and (v) the issuance of additional Units to then-existing Members. In all cases, the Board shall pursue those financing alternatives deemed non-dilutive to the existing Members before all other financing alternatives.

[(b) In the event that the Board determines by majority vote to issue additional Units, such Units shall first be offered to the then-existing non-Executive Equity Program Members in the proportion that the number of Units they own then represent to all Units then issued and outstanding (such Member's "Ratable Purchase Interest"). If one or more non-Executive Equity Program Members do not offer to purchase all Units offered to them within fifteen (15) days of their receipt of such offer, then the unpurchased Units shall be offered for sale as follows:]

[(i) If one or more of the non-purchasing Members is a Founding Member, the Company shall deliver to each Founding Member (other than any non-purchasing Member) a written notice stating that such Founding Member (other than any non-purchasing Member) shall have the irrevocable and exclusive option to purchase up to that portion of the unsold units as equals the product of]

[(A) the number of Units not purchased by the Founding Members multiplied by]

[(B) a fraction, the numerator of which shall be the Ratable Purchase Interest of such Founding Member and the denominator of which shall be the aggregate Ratable Purchase Interests of all Founding Members (other than any non-purchasing Founding Members) (the “First Option Proportionate Share”). Within fifteen (15) days of delivery of the Company’s notice, each Founding Member (other than any non-purchasing Founding Member) shall deliver to the Company a written notice stating whether it elects to exercise its option under this subparagraph (i) and the maximum number of Units not purchased by the Founding Members that it is willing to purchase.]

[(ii) If, after complying with subparagraph (i) above, any offered Units remain unsold, the Company shall deliver to each non-Executive Equity Program Member other than the Founding Members (each, an “Offeree”) a written notice stating that such Offeree shall have the irrevocable and exclusive option to purchase such remaining Units as equals the product of (A) the remaining unsold Units multiplied by (B) a fraction, the numerator of which shall be the number of Units then owned by such Offeree and the denominator of which shall be the aggregate number of Units then held by all Offerees (the “Second Option Proportionate Share”). Within fifteen (15) days of delivery of the Company’s notice, each Offeree shall deliver to the Company a written notice stating whether it elects to exercise its option under this subparagraph (ii) and the maximum number of Units (up to all such Offeree’s Second Option Proportionate Share) that it is willing to purchase.]

[(iii) In the event that, after taking the actions set forth in subparagraphs (i) and (ii), any Units remain unsold, the Board, by majority vote, subject to Section 4.4(b)(v), may sell such Units to such parties on such terms as it shall determine in its sole discretion.]

7.4 Borrowings and Loans. If any Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member’s Capital Contribution unless specifically agreed to by the Board and such Member. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by the Board in accordance with Article 4.

7.5 General. Except as otherwise provided in this Agreement, any Member and its Affiliate may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a Member in the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by all of the members of the Board from time to time or, if such transaction is contemplated by this Agreement, or any other Related Agreement, on the terms provided for in this Agreement or such Related Agreement.

7.6 Liability of the Members and Directors. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract,

tort or otherwise, will be solely the debts, obligations and liabilities of the Company and not that of any Member or Director.

Article 8

Transferability of Units

8.1 Restrictions on Transfer.

(a) Subject to Section 4.4[(b)(v)], except for (i) transfers among non-Executive Equity Program Members or (ii) transfers to Affiliates of a non-Executive Equity Program Member, including employees and their immediate family members of a non-Executive Equity Program Member or such non-Executive Equity Program Member's Affiliates], no Person shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, transfer, dispose of, sell, lend, pledge, hypothecate, encumber, assign, exchange, participate, subparticipate, or otherwise transfer in any manner (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement unless prior to such Transfer the transferee is approved by the Board. To be eligible for such Board approval, the proposed transferee must (i) have sufficient financial assets to support such Transfer, (ii) be able to carry out its duties as a Member hereunder, if admitted as such, and (iii) be under no regulatory or governmental bar or disqualification. Notwithstanding the foregoing, registration as a broker-dealer or Self-Regulatory Organization is not required to be eligible for such Board approval.

(b) In addition to the foregoing requirements, and notwithstanding anything to the contrary contained in this Agreement, a Person [(other than an Affiliate of an existing non-Executive Equity Program Member)] shall be admitted to the Company as an additional or substitute member of the Company only upon (i) such Person's execution of a counterpart of this Agreement to evidence its written acceptance of the terms and provisions of this Agreement, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (ii) if such Person is a transferee, its agreement in writing to its assumption of the obligations hereunder of its assignor, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (iii) if such Person is a transferee, confirmation by the Board that the Transfer was permitted by this Agreement, and (iv) approval of the Board. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of this Agreement and assumed in writing the obligations hereunder of its predecessor in interest, such transferee shall be deemed, by the acquisition of such Units, to have agreed to be subject to and bound by all the obligations of this Agreement with the same effect and to the same extent as any predecessor in interest of such transferee.

(c) All costs incurred by the Company in connection with the admission to the Company of a substituted Member pursuant to this Article 8 shall be

borne by the transferor Member (and if not timely paid, by the substituted Member), including, without limitation, costs of any necessary amendment hereof, filing fees, if any, and reasonable attorneys' fees.

[8.2 Initial Right of First Refusal. In the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, Transfer (other than a transfer from a non-Executive Equity Program Member to its Affiliate, which is expressly excluded from this Section 8.2) all or any portion of the Units owned, directly or indirectly, by such Member, and obtains a bona fide offer therefor either from a third party or another Member (each, in such case, a "Transferee"), the Transferring Member shall first offer such Units (the "Transfer Units") to the Company in the following manner:]

[(a) The Transferring Member shall promptly deliver a written notice (the "Transfer Notice") to the Company and the other non-transferring Founding Members (the "Non-Transferring Founding Members") specifying in reasonable detail the proposed price, terms and conditions of such proposed Transfer and the identity of the proposed Transferee (the "Transfer Offer"). The Transfer Notice shall constitute an irrevocable offer by the Transferring Member to sell the Transfer Units to the Company (and in the event the Company does not purchase the Transfer Units, the Non-Transferring Founding Members) (in the manner set forth herein) at a price equal to the price contained in the Transfer Offer and upon substantially the same terms as contained in the Transfer Offer.]

[(b) Upon receipt of such Transfer Notice, the Company shall be entitled, subject to Section 8.4 hereof, and by written notice to the Transferring Member and the Non-Transferring Founding Members within 10 days after receipt of the Transfer Notice, to elect to purchase all but not less than all of the Transfer Units at the price and on the terms and conditions specified in the Transfer Notice.]

[8.3 Secondary Right of First Refusal and Closing Mechanics. Subject to Section 8.1 and 8.2 hereof, in the event that the Company does not elect to purchase all of the Transfer Units pursuant to Section 8.2 above, the Transferring Member shall then offer the Transfer Units to the Non-Transferring Founding Members in the following manner:]

[(a) The Transferring Member shall promptly deliver a written notice (the "Member Transfer Notice") to the Non-Transferring Founding Members that the Company has not purchased the Transfer Units, and shall specify in reasonable detail the proposed price, terms and conditions of such proposed transfer and the identity of the proposed Transferee.]

[(b) Upon receipt of such Member Transfer Notice, each of the Non-Transferring Founding Members shall be entitled, subject to Section 8.4 hereof, and the other provisions of this Article 8 (except for Section 8.2), and by notice to the Transferring Member and the Company within 20 days after receipt of the Member

Transfer Notice, to collectively elect to purchase (or cause its Affiliate to purchase) all but not less than all (unless otherwise mutually agreed by the Non-Transferring Founding Members and the Transferring Member) of the Transfer Units at the price and on the terms and conditions specified in the Member Transfer Notice. The Company shall promptly provide copies of each such notice to the Transferring Member and the other Non-Transferring Founding Members.]

[(c) If the aggregate number of Transfer Units as to which notices of election to purchase are provided by Non-Transferring Founding Members exceeds the number of Transfer Units, the right to purchase the Transfer Units shall be allocated among the Non-Transferring Founding Members (with rounding to avoid fractional shares) in proportion to (A) the number of Transfer Units elected to be purchased by each Non-Transferring Founding Member, relative to (B) the aggregate number of Transfer Units (on a cumulative basis) that all Non-Transferring Founding Members elect to purchase pursuant to this Section 8.3.]

[(d) If the Company or one or more Non-Transferring Founding Members elect to purchase all the Transfer Units, the Transferring Member shall, subject to the provisions of this Article 8, complete such sale to the Company or such Non-Transferring Founding Members within 30 days after receipt of the Transfer Notice or Member Transfer Notice, as applicable, at a price and on terms and conditions specified in the Transfer Notice or Member Transfer Notice, as applicable, except that the closing date may be delayed by the Company for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals, to the extent such delay is required by law. At such closing, the Company or such Non-Transferring Founding Member(s) shall deliver the consideration for the purchase in the appropriate amount to the Transferring Member against delivery of certificates representing the Transfer Units so purchased, duly endorsed for transfer.]

[(e) If no Non-Transferring Founding Member elects to purchase the Transfer Units, the Transferring Member may, subject to the provisions of this Article 8, complete the sale described in the Member Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Member Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals, to the extent such delay is required by law. In the event the Transferring Member does not complete such sale to the Transferee within such 60-day period (as extended, if applicable), any subsequent proposed sale of any Transfer Units shall be once again subject to the provisions of Section 8.2 and this Section 8.3.]

[8.4]8.2 Additional Restrictions. Anything contained in the foregoing provisions of this Article 8 expressed or implied to the contrary notwithstanding:

(a) In no event shall a Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units or any rights arising under,

out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement take place if such Transfer: (i) in the opinion of tax counsel to the Company, could cause a termination of the Company within the meaning of Section 708 of the Code or, (ii) in the opinion of the Board, based on advice of tax counsel, could cause a termination of the Company's status as a partnership or cause the Company to be treated as a publicly traded partnership for federal income tax purposes, (iii) is prohibited by any state, federal or provincial securities laws, or (iv) is prohibited by this Agreement.

(b) The Board may, in addition to any other requirement that it may impose, require as a condition of any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units that the Transferring Member furnish to the Company an opinion of counsel satisfactory (both as to such opinion and as to such counsel) to counsel to the Company that such Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, complies with applicable federal and state securities laws.

(c) Notwithstanding anything to the contrary contained in this Agreement, any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, in contravention of any of the provisions of this Article 8 shall be void ab initio, and ineffectual and shall not bind or be recognized by the Company.

(d) Beginning after SEC approval of this Agreement, the Company shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition that results in a Member's Percentage Interest, alone or together with any Affiliate of such Member, meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%.

(e) Beginning after SEC approval of this Agreement, in addition to the notice requirement in subsection [(f)](d), the parties agree that the following Transfers are subject to the rule filing process pursuant to Section 19 of the Exchange Act: (i) any Transfer that results in the acquisition and holding by any Person, alone or together with any Affiliate of such Person, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (i.e., 25%, 30%, etc.); or (ii) any Transfer that results in a reduction of the BSE's aggregate Percentage Interest to below the 20% threshold. Additionally, SEC approval will be required to permit any Person, alone or together with any Affiliate of such Person, to control greater than 20% of the Total Votes, regardless of Percentage Interest.

(f) For purposes of this subsection (f): (i) a "controlling interest" shall mean the ownership by any Person, alone or together with any Affiliate of such Person, of a 25% or greater interest in a Member; and (ii) a[n "Acquirer"] "Controlling Person" shall mean a Person who, alone or together with any Affiliate of such Person, [acquires] holds a controlling interest in a Member. A[n Acquirer] Controlling Person shall be required to execute, and the relevant Member shall take such action as is necessary to

ensure that a[n Acquirer] Controlling Person executes, an amendment to this Agreement upon establishing a controlling interest in any Member who, alone or together with any Affiliate of such Member, holds a Percentage Interest in the Company equal to or greater than 20%. In such amendment the [Acquirer] Controlling Person shall agree, and the relevant Member shall take such action as is necessary to ensure that the [Acquirer] Controlling Person agrees, to become a new party to this Agreement and shall agree, and the relevant Member shall take such action as is necessary to ensure that the [Acquirer] Controlling Person agrees, to abide by all the provisions of this Agreement. Beginning after SEC approval of this Agreement, any amendment to this Agreement executed pursuant to this subsection (f) is subject to the rule filing process pursuant to Section 19 of the Exchange Act. The rights and privileges, including all voting rights, of the Member in whom a controlling interest is [acquired] held under this Agreement and the Act shall be suspended until such time as the amendment executed pursuant to this subsection (f) has become effective pursuant to Section 19 of the Exchange Act or the [Acquirer] Controlling Person no longer holds a controlling interest in the Member.

(g) No Member shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, Transfer (except to an Affiliate) in any manner all or any portion of its Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement prior to the second anniversary of the Launch Date (the “Lock-up Period”). The Board may waive such restriction by a majority vote.]

[8.5]8.3 Ownership Concentration Limit.

(a) No Person, either alone or with its Affiliates, who is a [BeX Participant]BSE member, shall be permitted at any time to own in the aggregate more than 20% of the outstanding Units of the Company (the “Ownership Concentration Limit”); provided, however, that this restriction shall not be construed to limit the ownership of Units of the Company by NASDAQ OMX or BSE.

(b) In the event that a Person that is not a [BeX Participant]BSE member, either alone or together with its Affiliates, exceeds the Ownership Concentration Limit and subsequently becomes a [BeX Participant]BSE member, then that Person shall, within 180 days of the date that he/she became a [BeX Participant]BSE member, transfer sufficient ownership interest so that the Person that is now also a [BeX Participant]BSE member does not exceed the Ownership Concentration Limit; provided, however, that this restriction shall not be construed to apply to NASDAQ OMX or BSE.

[8.6]8.4 Voting Limitation. In the event that a Member, or any Affiliate of such Member, is approved by the BSE as a [BeX Participant]BSE member and such Member owns more than 20% of the Units, alone or together with any Affiliates of such Member, the Member and its designated Directors shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member or its designated Directors, if any, be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Units held by such Member; provided,

however, that whether or not such Member or its designated Directors, if any, otherwise participates in a meeting in person or by proxy, such Member's Excess Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Units held by the other Members are voted (including any abstentions from voting); provided, however, that this restriction shall not be construed to apply to NASDAQ OMX or BSE.

[8.7 Rights of Inclusion.]

[(a) If at any time, Members collectively holding more than 50% of the Units (the "Majority Transferors") propose to sell, in one or more related transactions, 20% or more of their Units to any third party, such disposition shall not be permitted unless such Majority Transferors shall offer (the "Majority Offer") by written notice (the "Majority Notice") to the other non-Executive Equity Program Members (individually, a "Minority Offeree" and collectively, the "Minority Offerees") the right to elect to include, at the option of each Minority Offeree, in the sale to the third party, some or all of the Units owned by such Minority Offeree, subject to the provisions of Section 8.7(b). The Majority Notice shall describe the proposed transaction and shall include the sale consideration and other material terms thereof and shall be accompanied by copies of the documents pursuant to which such disposition is to be effected. At any time within 15 days after the delivery of the Majority Notice, each of the Minority Offerees may accept the offer included in the Majority Notice for up to such number of Units determined in accordance with the provisions of Section 8.7(b) by furnishing written notice of such acceptance to the Majority Transferors.]

[(b) Each Minority Offeree shall have the right to sell, pursuant to the Majority Offer, up to the same percentage of such Minority Offeree's Units as the percentage of Units to be disposed of by the Majority Transferors then bears to the total number of Units then owned by the Majority Transferors; provided, that if the Majority Offer is for a maximum number of Units and such number is less than the number that would be disposed of by application of the foregoing, then the right to sell Units shall be allocated on a pro rata basis among the Majority Transferors and the Minority Offerees electing to accept the Majority Offer in proportion to (i) the number of Units offered to be sold by such Member, as compared with (ii) the aggregate number of Units offered to be disposed of in the aggregate by the Majority Transferors and such Minority Offerees.]

[(c) The disposition by the Minority Offerees pursuant to Section 8.7(b) shall be on the same terms and conditions as are received by the Majority Transferors and as stated in the Majority Notice.]

[(d) At the closing of the sale of Units of the Majority Transferors and the Minority Offerees to the third party pursuant to the Majority Offer, each Minority Offeree that has elected to sell its Units pursuant to the Majority Offer shall execute such documents as are to be executed by all Members pursuant to the Majority Offer against payment to such Minority Offeree of the total price for the Units

and shall furnish such other evidence of the completion and time of completion of the sale and the terms thereof as may be reasonably requested.]

(e) If within 15 days after the delivery of the Majority Notice, any Minority Offeree fails to accept the offer contained in the Majority Notice, such Minority Offeree will be deemed to have waived any and all of its rights with respect to the sale or other disposition of Transfer Units described in the Majority Notice and the Majority Transferors shall have 60 days in which to enter into an agreement to dispose of not more than the amount described in the Majority Notice on terms not more favorable to the Majority Transferors than were set forth in the Majority Notice. If, at the end of 75 days following the delivery of the Majority Notice, the Majority Transferors have not completed the sale or other disposition of Units of the Majority Transferor in accordance with the terms of the third party's offer, all the restrictions on disposition contained in this Agreement with respect to Units owned by the Majority Transferor shall again be in effect.]

[8.8]8.5 Continuation of LLC. The liquidation, dissolution, bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member.

[8.9]8.6 No Retroactive Effect. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the Company books (as though the Company's Fiscal Year has ended) or make pro-rata allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

Article 9

Distributions

9.1 Current Distributions. If at any time and from time to time the Board determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company ("Distributable Cash"), then:

(a) Within 10 days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (or, in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such member under Section

9.1(b) for such fiscal year (any such excess, a “Shortfall Amount”), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this subsection for a fiscal year exceed the Member’s Tax Amount for such fiscal year, such excess shall be deducted from the Member’s Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 9.1(b) or Section 11.2. Subsequent distributions made to the Member pursuant to Sections 9.1(b) and Section 11.2 shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such member pursuant to Section 9.1(b) and Section 11.2 if this Agreement contained no provision for Tax Distributions.

(b) After making the Tax Distributions described in subsection (a) hereof, the Board may distribute all or any portion of remaining Distributable Cash to the Members in proportion to their Percentage Interests, unless the distribution is a liquidating distribution, which shall be made in the manner set out in Section 11.1(b).

9.2 Limitation. The Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its interest in the Company if and to the extent such distribution would violate the Act or other applicable law. Distributions shall not be paid using Regulatory Funds.

9.3 Withholdings Treated as Distributions. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 9.1(a), 9.1(b) or 11.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount is treated, pursuant to the previous sentence, as a distribution under Section 9.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 9.1(a).

Article 10

Allocations of Profits and Losses

10.1 Allocations of Profits; General. Except as provided in Sections 10.3 through 10.9 below, all profits and credits of the Company (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of losses under Section 10.2 not previously taken into

account pursuant to this clause first, to the extent of such losses, and second, in proportion to their Percentage Interest.

10.2 Allocations of Losses; General. (a) Except as provided in Sections 10.3 through 10.9 below, all net losses of the Company for each fiscal year (for both accounting and tax purposes), and all Nonrecourse Deductions, shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of profits under Section 10.1 not previously taken into account pursuant to this clause first, to the extent of such profits, second, in proportion to the Members' Capital Contributions, to the extent thereof, and third, in proportion to their Percentage Interest.

(b) Allocations of Nonrecourse Deductions shall be made pursuant to Treasury Regulation Section 1.752-3(a).

10.3 Limitation. Notwithstanding anything otherwise provided in Section 10.2, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5), or (6) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members. In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit. In the event that upon liquidation of the Company or the liquidation of a Member's interest, such Member's Capital Account has an Unpermitted Deficit, the Member must make a Capital Contribution to such Member's Capital Account so as to cure the Unpermitted Deficit.

10.4 Qualified Income Offset. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations § 1.704-1 (b)(2)(ii)(d)(4), (5) or (6), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations § 1.704-1 (b)(2)(ii)(d), and shall be interpreted consistently therewith.

10.5 Nonrecourse Debt and Chargebacks. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 10.3, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of the Company, such

Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations § 1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

10.6 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations § 1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations § 1.704-2(i) (4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations § 1.704-2(i)(4), and shall be interpreted and applied in a manner consistent therewith.

10.7 Calculation of Profits and Losses. Net Profit and Net Loss shall be computed for each Fiscal Year as an amount equal to the Company's taxable income or loss for such Fiscal Year determined in accordance with Code Section 703(a), including pursuant to Code Section 703(a)(1), all items of income, gain loss or deduction required to be stated separately and with adjustments as follows: (a) In computing Net Profit or Net Loss pursuant to this Section, there shall be added any income of the Company exempt from federal income tax and not otherwise taken into account in computing the Company's taxable income or loss; (b) Any expenditure of the Company, that was not otherwise taken into account in computing Net Profit or Net Loss, which is described in Code Section 705(a)(2)(B) or that pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) is treated as an expenditure that is described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or loss; (c) To the extent that the net book value of any asset of the Company is adjusted to equal such asset's fair market value or to the extent that the net book value of any asset of the Company is adjusted as a result of a distribution in kind to any Member, where such distribution equals to the fair market value of such asset on the date of distribution, then such adjustment shall be taken into account as gain or loss from the disposition of such asset for the purposes of computing

Net Profit or Net Loss; (d) To the extent that any gain or loss is recognized for federal income tax purposes as a result of the disposition of any asset of the Company, such gain or loss for the purposes of this Section, such gain or loss will be computed by reference to the net book value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its net book value; and (e) Any items allocated pursuant to Section 10.2(b) Allocations of Nonrecourse Deductions, or Section 10.3 Limitation, or Section 10.4 Qualified Income Offset, or Section 10.5 Nonrecourse Debt and Chargebacks shall not be taken into account in computing Net Profit or Net Loss.

10.8 Section 704(c) and Capital Account Revaluation Allocations. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Percentage Interest and shall not affect its Capital Account. In addition to the foregoing, if the Company's assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (e.g., because of a revaluation of the Members' Capital Accounts under Treasury Regulations § 1.704-1 (b)(2)(iv)(f)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 10.8.

10.9 Offset of Regulatory Allocations. The allocations required by Sections 10.3 through 10.6 and Section 10.8 are intended to comply with certain requirements of the Treasury Regulations. The Board may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

10.10 Terminating and Special Allocations. Notwithstanding the foregoing allocation provisions, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss, or deduction incurred by the Company in the fiscal year of such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 11.3, and immediately before the making of any liquidating distributions to the Members under Section 11.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 11.2.

Article 11

Dissolution and Winding Up

11.1 (a) The Company shall be dissolved and its affairs shall be wound up upon:

(i) the election to dissolve the Company made by the Board [pursuant to Section 4.4(b)(xi)]; or

(ii) the entry of a decree of judicial dissolution under § 18-802 of the Act; or

(iii) the resignation, expulsion, Bankruptcy or dissolution of the last remaining Member, or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the business of the Company is continued without dissolution in accordance with the Act; or

(iv) the occurrence of any other event that causes the dissolution of a limited liability company under the Act unless the Company is continued without dissolution in accordance with the Act.

The legal representatives, if any, of any Member shall succeed as assignee to such Member's interest in the Company upon the Bankruptcy, or dissolution of such Member, but shall be admitted as a substitute Member, subject to Article 8, only with the written consent of the Board (such consent to be in the Board's sole discretion); unless and until such consent is given, any Percentage Interest in the Company held by such legal representatives of a Member shall not be included in calculating the Percentage Interests of the Members required to take any action under this Agreement.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of the Company, in which case a liquidating trustee may be appointed for the Company by vote of a majority of the Directors (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of the Company, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; provided, that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any

action brought against it in connection therewith by applying, *mutatis mutandis*, the provisions of Article 14.

11.2 Application and Distribution of Assets.

(a) [Pre-Launch.] The assets of the Company in winding up at any time [prior to the Launch Date] shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members, for the return[, to the extent possible,] of their [respective] Capital Contributions[, in a manner such that those assets contributed by the Members that are not divisible or saleable are first applied and distributed to the Member which contributed such asset and then, such that all remaining liquid or other assets are distributed to the Members in proportion to the sum of (i) the amount of cash contributed and (ii) the fair market value of the out-of-pocket expenses, services and/or other properties, contributed by each such Member, first, for the return of their Capital Contributions, and second,] and then in proportion to their respective Percentage Interests.

[(b) Post-Launch. The assets of the Company in winding up at any time following the Launch Date shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members, first, for the return of their Capital Contributions, and second, in proportion to their respective Percentage Interests.]

[(c)](b) Reserve. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

11.3 Capital Account Adjustments. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, the Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 10 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this

subsection shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Percentage Interests.

11.4 Termination of the LLC. Subject to Section 18.12 of this Agreement, the separate legal existence of the Company shall terminate when all assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 11, and a Certificate of Cancellation shall have been filed in the manner required by Section 18-203 of the Act.

Article 12

Books, Records and Accounting

12.1 Books of Account. The Board shall cause to be entered in appropriate books, kept at the Company's principal place of business, which must be in the United States, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other the Company records during normal business hours; provided that the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. Notwithstanding the foregoing, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and the SEC at no additional cost to the BSE or the SEC. The books, records, premises, officers, directors, agents, and employees of the Company shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act. The Board shall not have the right to keep confidential from the Members any information that the Board would otherwise be permitted to keep confidential pursuant to § 18-305(c) of the Act.

12.2 Deposits of Funds. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as the Board may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as the Board shall determine.

12.3 Fiscal Year. The fiscal year of the Company shall begin on October 1st and end on September 30th (the "Fiscal Year").

12.4 Financial Statements; Reports to Members. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within [ninety (90)] days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

12.5 Tax Elections. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating

to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 10 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

12.6 Tax Matters Member. [BSE]NASDAQ OMX shall be the tax matters Member of the Company for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service as it, in its absolute discretion, deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, [BSE]NASDAQ OMX shall (a) promptly deliver to the other Members copies of any notices, letters or other documents received by [BSE]NASDAQ OMX as the tax matters Member of the Company, (b) keep the other Members informed with respect to all matters involving [BSE]NASDAQ OMX as the tax matters Member of the Company, and (c) consult with the other Members and obtain the approval of the other Members prior to taking any actions as the tax matters Member of the Company. The tax matters Member shall not be entitled to be paid by the Company any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by the Company for all costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Company with respect to any action brought against it in connection with the settlement of any such proceeding by applying, *mutatis mutandis*, the provisions of Article 14.

Article 13

[Arbitration]Reserved

[13.1 (a) All disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be (x) settled by arbitration before a panel of three neutral arbitrators (the "Neutral Arbitrators") appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, each having experience with and knowledge of the general field related to the dispute, claim or controversy (with at least one being an attorney), and (y) administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules as in effect at the time a request for arbitration is made. For the purposes of this Section 13.1, the following persons shall be deemed not to be a Neutral Arbitrator: (i) a director, officer, employee, agent, partner or shareholder of any party to the dispute or of the Company; (ii) a consultant to the Company or of any party to the dispute; (iii) a person with a direct or indirect financial interest in any contract with any party to the dispute; (iv) a director, officer or key employee of a company at a time when such company was party to a contract with any party to the dispute; or (v) a relative of any person referred to in clauses (i), (ii), (iii) or (iv) above. Arbitration may be commenced at any time by any party to the dispute by giving written notice to the other party or parties to the dispute that such dispute has been

referred to arbitration under this Section 13.1. Any determination or award rendered by the Neutral Arbitrators shall be conclusive and binding upon the parties to such dispute and judgment on the award rendered by the Neutral Arbitrators may be entered and enforced in any court having jurisdiction thereof; provided, however, that any such determination or award shall be accompanied by a reasoned award of the Neutral Arbitrators giving the reasons for the determination or award. The parties hereby consent to the non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts or to any federal court located within the Commonwealth of Massachusetts for any action (i) to compel arbitration, (ii) to enforce the award of the Neutral Arbitrators or (iii) prior to the appointment and confirmation of the Neutral Arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law. Any provisional or equitable remedy, which would be available from a court of law, shall be available from the arbitrators to the parties. In making any determination or award, the Neutral Arbitrators shall be authorized to award interest on any amount awarded. This provision for arbitration shall be specifically enforceable by the parties to the disputes and the determination or award of the Neutral Arbitrators in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Each of the parties to the dispute shall pay its own expenses of arbitration and the expenses of the Neutral Arbitrators shall be equally shared; provided, however, that if in the opinion of the Neutral Arbitrators any claim was frivolous or in bad faith, the Neutral Arbitrators may assess, as part of the determination or award, all or any part of the arbitration expenses of the other party or parties (including reasonable attorneys' fees) and of the Neutral Arbitrators against any party so acting in bad faith or raising such frivolous claim.]

[(b) The place of arbitration shall be Boston, Massachusetts and the language of the arbitral proceedings shall be English.]

Article 14

Exculpation and Indemnification

14.1 Members Generally. Except as set forth in the second sentence of this Section 14.1, no Member, nor any Affiliate of a Member, nor any of Member or Affiliate's respective shareholders, directors, employees, Advisors or other agents, nor any Directors, officers, agents, Advisors or employees of the Company (collectively, the "Indemnitees"), shall have any liability to the Company, to any other Member, or to any third party for any loss suffered by the Company, such other Member or such third party that arises out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or the Related Agreements, unless otherwise specified in the Related Agreements or (b) otherwise in its capacity as a Member, if such Member or such other Indemnitee, in good faith, determined that such course of conduct was in the best interests of the Company or not inconsistent with the best interests of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Member (or other Indemnitees) or a material breach by such Member of this Agreement. To the fullest extent permitted by law, each

Member (and such other Indemnitees) shall be indemnified by the Company against any losses, judgments, liabilities, expenses (including, without limitation, reasonable attorneys' fees and court costs) and amounts paid in settlement of any claims sustained by it arising out of any action or inaction of such Member (or any other Indem[i]nitee), (a) with respect to its activities under this Agreement or the Related Agreements, unless otherwise specified in the Related Agreements or (b) otherwise in its capacity as a Member, provided that the same were not the result of gross negligence or willful misconduct of such Member (or such other Indemnatee) or a breach by such Member of this Agreement or any Related Agreement. Any Person claiming reimbursement of expenses under this Article 14 shall be paid amounts to which he or it would be entitled hereunder as such expenses are incurred upon presentation of appropriate documentation to the Company, subject to providing a written undertaking to repay any such amounts to which such Person ultimately turns out not to be entitled under the standards herein set forth. The indemnification and advancement of expenses provided by this Article shall continue as to an Indemnatee who has ceased to be a Member (or otherwise an Indemnatee), and shall inure to the benefit of the heirs, executors, administrators, and successors of such Member (and the other Indemnitees). Any indemnification pursuant to this Section 14.1 shall be solely out of the assets of the Company and shall not be a personal obligation of any Member.

14.2 Duties of Indemnatee. To the extent that, at law or in equity, an Indemnatee has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, the Members and any other Indemnatee acting in connection with the Company's business or affairs shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnatee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Indemnatee.

[14.3 Company Market Participant Indemnity. The rules and regulations of the BeX shall contain procedures whereby the Company shall require all BeX Participants to execute an agreement prior to using the BeX concerning such Person's participation in the BeX, which agreement shall include, among other things, the agreement of such Person to waive liability of the Company, its Members and their respective Affiliates with respect to such Person's participation in the BeX.]

Article 15

Maintenance of Separate Business

The Company shall at all times: (a) to the extent that any of the Company's offices are located in the offices of an Affiliate, pay fair market rent for its office space located therein; (b) maintain the Company's books, financial statements, accounting records and other limited liability company documents and records separate from those of any Affiliate or any other Person; (c) not commingle the Company's assets with those of any Affiliate or any other Person; (d) maintain the Company's books of account, bank

accounts and payroll separate from those of any Affiliate; (e) act solely in its name and through its own authorized agents, and in all respects hold itself out as a legal entity separate and distinct from any other Person; (f) make investments directly or by brokers engaged and paid by the Company or its agents (provided that if any agent is an Affiliate of the Company it shall be compensated at a fair market rate for its services); (g) manage the Company's liabilities separately from those of any Affiliate and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except that an Affiliate may pay the organizational expenses of the Company; and (h) pay from the Company's assets all obligations and indebtedness of any kind incurred by the Company.

Notwithstanding the foregoing, the books, records, premises, officers, directors, agents and employees of the Company shall be deemed to be those of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act, as amended. In addition, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and its Affiliates and the SEC without charge to such Persons. The Company shall abide by all Act formalities, including the maintenance of current records of the Company affairs, and the Company shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Company. The Company shall (i) pay all its liabilities, (ii) not assume the liabilities of any Affiliate unless approved by unanimous consent of the Board and (iii) not guarantee the liabilities of any Affiliate unless approved by unanimous consent of the Board. The Board shall make decisions with respect to the business and daily operations of the Company independent of and not dictated by any Affiliate.

Article 16

Confidentiality and Related Matters

16.1 Disclosure and Publicity. The parties hereto agree that the initial public disclosures concerning the transactions contemplated by this Agreement and the Related Agreements shall require prior approval of all Members; provided that the parties shall be entitled to make such public disclosures as are required pursuant to applicable law or the rules of any applicable Government Authority.

16.2 Confidentiality Obligations of Members.

(a) Each Member agrees that it will use the Confidential Information only in connection with the activities contemplated by this Agreement and the Related Agreements or pursuant to the Exchange Act and rule and regulations thereunder, and it will not disclose any Confidential Information to any Person except as expressly permitted by this Agreement and the Related Agreements or pursuant to the Exchange Act and rules and regulations thereunder.

[The]A Member[s] may disclose Confidential Information only:

(i) to its directors, officers and employees who have a reasonable need to know the contents thereof and who are subject to similar such confidentiality obligations;

(ii) on a confidential basis to those Advisors of the Member who have a reasonable need to know the contents thereof, so long as such disclosure is made pursuant to the procedures referred to in Section 16.4(b);

(iii) to the extent required by applicable statute, rule or regulation promulgated under the Exchange Act, the U.S. federal securities laws and rules thereunder; or in response to a valid request from the SEC pursuant to the Exchange Act and the rules thereunder, the BSE (or through a subsidiary of BSE through delegated authority), or any other applicable self-regulatory organization (including [the NASD]FINRA);

(iv) to the extent required by applicable statute, rule or regulation (other than the U.S. federal securities laws and the rules thereunder); or any court of competent jurisdiction; provided that the Member has made reasonable efforts to conduct its relevant business activities in a manner such that the disclosure requirements of such statute, rule or regulation or court of competent jurisdiction do not apply, and provided that the Company is given notice and an adequate opportunity to contest such disclosure or to use any means available to minimize such disclosure; and

(v) to the extent that such Confidential Information has become generally available publicly through no fault of the Member or its directors, officers, employees or Advisors.

16.3 Member Information Confidentiality Obligation. Each Member shall hold, and shall cause its respective Affiliates and their directors, officers, employees, agents, consultants and Advisors to hold, in strict confidence, unless disclosure to an applicable regulatory authority is necessary or appropriate or unless compelled to disclose by judicial or administrative process or, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, reports, instruments, computer data and other data and information (collectively, "Member Information") concerning the other Members (or, if required under a contract with a third party, such third party) furnished it by such other Member or its representatives pursuant to this Agreement or any other Related Agreement, except to the extent that such Member Information can be shown to have been: (a) previously known by such Member on a non-confidential basis; (b) available to such Member on a non-confidential basis from a source other than the disclosing Member; (c) in the public domain through no fault of such Members; or (d) later lawfully acquired from other sources by the Member to which it was furnished, and none of the Members shall release or disclose such Member Information to any other person, except such Member's or its Affiliates respective auditors, attorneys, financial advisors, bankers, other consultants and Advisors and, to the extent permitted above, to regulatory authorities. In the event that a Member becomes compelled to disclose any

Member Information in connection with any necessary regulatory approval or by judicial or administrative process, such party shall provide the Member who provided such Member Information (the "Disclosing Member") with prompt prior written notice of such requirement so that the Disclosing Member may seek a protective order or other appropriate remedy and/or waive the terms of any applicable confidentiality arrangements. In the event that such protective order, other remedy or waiver is not obtained, only that portion of the Member Information which is legally required to be disclosed shall be so disclosed.

16.4 Ongoing Confidentiality Program.

(a) In order to ensure that the parties hereto comply with their obligations in Article 16, representatives designated by the Members and the Company shall meet from time to time as required to discuss issues relating to confidentiality and disclosure and other matters addressed by this Article 16.

(b) With respect to any disclosure by any of the parties hereto to any of their Advisors pursuant to Article 16, the representatives referred to in paragraph (a) above will institute procedures designed to maintain the confidentiality of the Confidential Information while facilitating the business activities contemplated by this Agreement and the Related Agreements.

16.5 SEC's Right to Access. Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC or BSE, to access and examine the Confidential Information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of a Member, officer, director, agent or employee of Member to disclose the Confidential Information to the SEC or BSE.

16.6 Business Opportunity. No Member, Director or any of their respective stockholders, directors, officers, members, agents or employees, shall have any obligation to bring any business opportunity to the attention of the Company.

16.7 Confidential Regulatory Information. To the fullest extent permitted by applicable law, all Confidential Information pertaining to the self-regulatory function of BSE or the BSE Equities Business (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (a) not be made available to any person (other than as provided in the proviso at the end of this sentence) other than to those officers, directors, employees and agents of the Company who have a reasonable need to know the contents thereof; (b) be retained in confidence by the Company and the officers, directors, employees and agents of the Company; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Commission or BSE to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Company to disclose such Confidential Information to the Commission or BSE.

Article 17

Intellectual Property

Intellectual Property. Except as provided otherwise in the Related Agreements, each [of the non-Executive Equity Program] Member[s] shall retain all rights, title, and interests to all of its intellectual property.

Article 18

General

18.1 Entire Agreement; Integration, Amendments. This Agreement and the Related Agreements contain the sole and entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. In the case of any conflict between the provisions of this Agreement and the provisions of the Related Agreements, the provisions of this Agreement shall govern. Subject to Section 4.4 hereof, this Agreement may only be changed, amended or supplemented by an agreement in writing that is approved by a majority of the Directors without the consent of any Member or other Person. Each of the Members further acknowledges and agrees that, in entering into this Agreement, such Member has not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement or the exhibits and schedules hereto. Any proposed amendment to this Agreement shall be submitted to the BSE Board of Directors for review and, if such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

18.2 Binding Agreement. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3 Notices. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (e.g., Federal Express), or [five (15)] days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to Members shall be addressed to the last address of record on the books of the Company; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other

address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5 Governing Law, Etc. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules. [Except for any matters governed by Article 18.6(b) herein, all disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be settled pursuant to Article 13 hereof.]

18.6 Member Books, Records, and Jurisdiction.

(a) The Members acknowledge that to the extent they are related to the Company's activities, the books, records, premises, officers, directors, agents, and employees of Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE for the purpose of and subject to oversight pursuant to the Exchange Act.

(b) The Company and its Members, officers, directors, agents, and employees, as well as the officers, directors, agents and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, the SEC, and the BSE, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or[,] the rules or regulations thereunder, arising out of, or relating to, the Company's activities or [Article]Section 18.6(a) (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of the Company), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, SEC, or BSE, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency, and, to the fullest extent permitted by laws, waive the defense or application of any foreign secrecy or blocking statutes or regulations with respect to the Members, their officers, directors, agents and employees, that relate to the Company's activities or their participation therein or in connection therewith.

(c) With respect to [this] Article 16 and Sections 4.2(a), 12.1 and 18.6, [the Boston Stock Exchange] BSE and each Member shall take such action as is necessary to insure that such Member's officers, directors, agents, and employees consent in writing to the applicability of [this] these provisions with respect to the Company related activities. [Consent in writing to this provision 18.6(c) extends to the confidentiality provisions of Article 16 herein.]

18.7[.] Reserved [Matters Relating to Initial Public Offering. If the Board determines that conditions may be favorable for the Company to make an initial public offering (“IPO”), the Company may be reorganized as a Delaware corporation (whether pursuant to a plan of conversion, merger, consolidation, transfer of assets or otherwise and subject to Section 4.4(b)(i)), in connection therewith, the Units may be reclassified as shares of stock in such corporation on such terms and conditions as are approved by at least four (4) of the Founding Members without the consent of any Member or other Person. Prior to any IPO, the Company and each Member shall enter into a registration rights agreement (the “Registration Rights Agreement”). The Registration Rights Agreement shall provide, among other things, that the Members will have piggyback registration rights. The Registered Rights Agreement will contain other customary terms and conditions, including provisions concerning cutbacks, black-out periods, market standoff, assignment of registration rights and indemnification. If the Company is reorganized as a corporation, the Board shall use its best efforts to ensure that, for purposes of Rule 144(d), the holding period for Members tacks to the date on which the Units are issued.]

18.8[.] Waiver of Certain Damages. EACH OF THE MEMBERS, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHTS THAT THEY MAY HAVE TO PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY RELATED AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OF ANY OF THEM RELATING THERETO. [Notwithstanding, this Section does not apply to claims arising from or relating to, Related Agreements for employment of Executive Equity Program Members.]

18.9[.] Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.10[.] Severability. The invalidity or unenforceability of any particular provision of this Agreement or any Related Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.11[.] Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.12[.] Survival. The provisions of Articles [13,] 14, 16, 17, and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon the termination of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of [March 13, 2007] _____, 2008.

BOSTON STOCK EXCHANGE, INC.
an authorized person

By: _____
Name:
Title:

[CITIGROUP FINANCIAL STRATEGIES INC.,]
THE NASDAQ OMX GROUP, INC.
an authorized person

By: _____
Name:
Title:

[CREDIT SUISSE FIRST BOSTON NEXT FUND INC.,
an authorized person

By: _____
Name:
Title:]

[LB 1 GROUP INC.,
an authorized person

By: _____
Name:
Title:]

[FIDELITY GLOBAL BROKERAGE
GROUP, INC.,
an authorized person

By: _____
Name:

Title:]

[MERRILL LYNCH L.P. HOLDINGS INC.,
an authorized person

By: _____

Name:

Title:]

EXHIBIT 1
Certificate of Formation

Attached.

[EXHIBIT 2

Allocation of Funds]

Exhibit 2 contains business confidential information, and is being deleted in its entirety.

SCHEDULE 1

Schedule 1 contains business confidential information, and is being deleted in its entirety and replaced with the following:

Capital Contributions

<u>Member</u>	<u>Cash Contribution</u>	<u>Other Contribution</u>	<u>Date of Contribution</u>	<u>Additional Capital</u> <u>on</u> <u>3/14/2007</u>	<u>Total Contribution</u>
<u>BSE</u>		<u>\$35,000,000</u>	<u>Initial Funding Date</u>	<u>Business Confidential</u>	<u>Business Confidential</u>
<u>NASDAQ</u> <u>OMX</u>	<u>Business Confidential</u>		<u>, 2008</u>		<u>Business Confidential</u>
<u>Total:</u>		<u>\$35,000,000</u>		<u>Business Confidential</u>	<u>Business Confidential</u>

SCHEDULE 2

Schedule 2 contains business confidential information, and is being deleted in its entirety and replaced with the following:

Name and Address of Members, Number of Units, and Percentage Interests

Name and Address of Member	Number of Units	Percentage Interest
<u>Boston Stock Exchange, Inc.</u>	<u>69,095</u>	<u>53.21%</u>
<u>100 Franklin Street</u>		
<u>Boston, Massachusetts 02110</u>		
<u>The NASDAQ OMX Group, Inc.</u>	<u>60,765</u>	<u>46.79%</u>
<u>One Liberty Plaza</u>		
<u>New York, New York 10006</u>		
<u>Total:</u>	<u>129,860</u>	<u>100%</u>

SCHEDULE 3

BSE CONTRIBUTION SCHEDULE

1. CONTRIBUTION.

1.1. Contribution. Pursuant to the terms and conditions contained herein, the BSE shall assign, transfer and convey to the Company as a contribution to capital (the valuation of \$35,000,000 includes items (a) – (d):

BSE's existing book of business and customer base related to the BSE Equities Business (the "Book of Business").

All assets and liabilities related to the BSE Equities Business, excluding BOX Units, and assets and liabilities related to the BSE's SRO and regulatory function ("Contributed BSE Equities Business Items").

All goodwill, contract rights and intangible property (including any intellectual property rights that the BSE may have in its BEACON System) related to the BSE Equities Business, excluding items related to the BSE's SRO and regulatory function ("Contributed Intangibles").

The exclusive right to operate a Facility for the trading of equity securities at the BSE pursuant to the terms and conditions contained in the BSE Facility Services Agreement (the "Exclusive Facility Right").

Pursuant to the terms and conditions contained in the BSE Facility Services Agreement, commencing on the Initial Funding Date and extending for the duration of the BSE Facility Services Agreement, the BSE agrees to transfer to the Company (i) all revenue streams resulting directly from the BSE's participation in the CTA Plan, the CQS Plan, the Nasdaq UTP Plan, the ITS Plan or any other national market plan related to the BSE Equities Business or BeX Market from time to time to the extent that they relate to any equity securities, and (ii) all other revenue streams and other benefits or items of value generated by or through the BSE Equities Business (excluding items related to the BSE's SRO and regulatory function) (the "Transferred Revenue Streams").

2. REPRESENTATIONS AND WARRANTIES OF BSE.

2.1. Corporate Organization and Qualification. The BSE is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite power and authority to carry on its business as presently conducted and is in good standing in each jurisdiction where the properties owned, leased or operated, or the business conducted, by it require such qualification, except for any failure to be so organized, existing, in good standing or to have such power and authority or to so qualify, that, when taken together with all such other failures, is not reasonably likely, individually or in the aggregate, (a) to have a material adverse effect (i) on the business, properties, operations or results of operations, condition (financial or otherwise) or prospects of the BSE and its subsidiaries taken as a whole, (ii) on the BSE Equities Business, (iii) on the BeX Market or (iv) on the authority of the BSE to continue as a national securities exchange and self-regulatory organization (as registered under Section 6 and as defined in Section 3(a)(26), respectively, of the Exchange Act) or (b) to prevent or to limit or restrict in any material respect the BSE from performing their respective obligations under this Agreement or any of the Related Agreements or consummating any of the transactions contemplated hereunder and thereunder (any such material adverse effect, prevention, limitation or restriction, a "BSE Material Adverse Effect").

2.2. Authorization and Validity of Agreements. The BSE has the requisite power and authority and has taken or will use best efforts to promptly take all corporate action necessary in order to authorize, execute and deliver this Agreement and the Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby and to perform the acts contemplated on its part hereunder and thereunder.

2.3. Regulatory Approval. The BSE will use best efforts to promptly obtain all authorizations, consents, approvals, orders, permits, notices, reports, filings, registrations, qualifications, exemptions of, with or from, or other actions required to be made by the BSE or any of its subsidiaries, or obtained by the BSE or any of its subsidiaries from, the SEC, any Governmental Authority or any third party required to effect the restructuring of the BSE's equities trading business as described and contemplated herein, including, without limitation, the transfer of the equities trading business of the BSE to the Company.

2.4. No Conflict. Neither the execution and delivery by the BSE of this Agreement or the BSE Facility Services Agreement, the compliance by it with all of the provisions of and the performance by it of its obligations under this Agreement and the BSE Facility Services Agreement nor the consummation of the transactions herein or therein contemplated will conflict with or result in a breach or violation of, or otherwise constitute a default under, any provision of any contract to which it is a party or by which it or any of its assets are bound.

2.5. Litigation and Liabilities. Except as set forth in the BSE Disclosure Letter, there are no (a) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending or, to the knowledge of BSE, threatened against the BSE or any of its subsidiaries, with respect to activities on the trading floor of the BSE or any of its subsidiaries, (b) orders, judgments, decrees, injunctions or rules of any Governmental Authority to which the BSE or any of its subsidiaries is subject, or (c) except as set forth in the BSE Financial Statements (including the notes thereto), obligations or liabilities, whether or not accrued, contingent or otherwise, or, to the knowledge of BSE any other facts or circumstances that could result in any claims against or obligations or liabilities of the BSE or any of its subsidiaries, that, individually or in the aggregate, are reasonably likely to have a BSE Material Adverse Effect.

2.6. Compliance. Neither the BSE nor any of its subsidiaries is in conflict with, or in default or violation of, (a) any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, writ, franchise, variance, exemption, approval, license or permit of any Governmental Authority or Self-Regulatory Organization applicable to the BSE or any of its subsidiaries or by which its or any of their respective properties is bound or affected, or (b) any agreement to which the BSE or any of its subsidiaries is a party or by which the BSE or any of its subsidiaries or its or any of their respective properties is bound or affected, except for any such conflicts, defaults or violations that, individually or in the aggregate, are not reasonably likely to have a BSE Material Adverse Effect. To the best knowledge of the BSE, the BSE Disclosure Letter lists all current and material investigations, proceedings, or inquiries by the SEC and any other Governmental Authority in connection with the BSE Equities Business.

2.7. Contributed BSE Equities Business Items and Contributed Intangibles. (a) Each of the Contributed BSE Equities Business Items and Contributed Intangibles are legally owned by the BSE free and clear of all liens. The BSE will be assigning,

transferring and conveying to the Company good and valid title to the Contributed BSE Equities Business Items and Contributed Intangibles free and clear of all liens

(b) There are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending, (ii) orders, judgments, decrees, injunctions or rules of any Governmental Authority, or (iii) obligations or liabilities, whether or not accrued, contingent or otherwise, or, to the knowledge of BSE any other facts or circumstances that could result in any claims against or obligations or liabilities of the BSE or any of its subsidiaries, to which the Contributed Intangibles or Contributed BSE Equities Business Items are subject.

2.8. Transferred Revenue Streams. (a) The transfer of the Transferred Revenue Streams by the BSE to the Company will not (i) conflict with or result in a breach or violation of, or result in any acceleration of any rights or obligations under or other encumbrance on assets pursuant to, or permit any other party any improvement in rights with respect to or permit it to exercise, or otherwise constitute a default under, any provision of any agreement or result in any change in the rights or obligations of any party under any agreement, or (ii) result in any breach or violation, or a default under, the provisions of the organizational documents of the BSE or any of its subsidiaries or any law, order, judgment, decree, ordinance, award, governmental or non-governmental permit or license, rule or regulation or subject the Company, the BSE or any of its subsidiaries to any penalty or sanction.

(b) There are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending, (ii) orders, judgments, decrees, injunctions or rules of any Governmental Authority, or (iii) obligations or liabilities, whether or not accrued, contingent or otherwise, or, to the knowledge of the BSE any other facts or circumstances that could result in any claims against or obligations or liabilities of the BSE or any of its subsidiaries, to which the Transferred Revenue Streams are subject.

3. COVENANTS.

3.1. Transfer of Other Items. From and after the date hereof, BSE shall use its best efforts to obtain all necessary consents and approvals for the assignment, transfer and conveyance of the contributions set forth in Sections 1.1(a) – (c), and (e). The transfer shall be made on the Initial Funding Date.

SCHEDULE 4
MATERIAL TERMS & CONDITIONS
BSE FACILITY SERVICES AGREEMENT

1. The Company shall have the exclusive right to operate a Facility for the trading of equity securities at the BSE for so long as the BSE owns five percent (5%) or more of the outstanding Units of the Company (the “Exclusive Facility Right”). Notwithstanding the foregoing, the Exclusive Facility Right shall be effective for a minimum of five (5) years after the Launch Date.
2. The BSE shall provide the Company with SRO services for a 5-year term with 5-year auto-renewals. The fees throughout the initial term shall be for cost plus a markup which will be negotiated on an annual basis. Fees for any subsequent terms shall be negotiated and comparable to prevailing market rates.
3. During the term of the Facility Services Agreement, the BSE shall not provide SRO services to any Competitor of the Company. “Competitor” shall mean any securities market that derives 25% or more of its revenue from the trading of U.S. Equities. Notwithstanding the foregoing, in the event that the BeX Market’s share in U.S. Equities does not reach 5% by the date which is 2 years after Launch Date, the foregoing restriction shall no longer apply.
4. During the term of the Facility Services Agreement, the BSE Board of Governors and the BSE Regulatory Oversight Committee shall at all times have overriding regulatory responsibility for the BeX Market.

[SCHEDULE 5
PROPOSED TERM SHEET FOR
SERVICE PROVIDER AGREEMENT
WITH ATOS-EURONEXT]

Schedule 5 contains business confidential information, and is being deleted in its entirety.

[SCHEDULE 6.1 and 6.2
PROPOSED TERM SHEET FOR
SERVICE PROVIDER AGREEMENT
WITH LAVA TRADING]

Schedule 6.1 and 6.2 contains business confidential information, and is being deleted in its entirety.

E. The Exchange is proposing to adopt the following new rules:

Chapter XXXIX – Affiliation with The NASDAQ OMX Group, Inc.

Section 1. Nasdaq Ownership Restriction

(a) No member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of The NASDAQ OMX Group, Inc.

(b) For purposes of this rule, any calculation of the number of shares of common stock outstanding at any particular time shall be made in accordance with the last sentence of SEC Rule 13d-3(d)(1)(i)(D). The term "beneficial owner" shall have the meaning set forth in the Restated Certificate of Incorporation of The NASDAQ OMX Group, Inc.

Section 2. Restrictions on Affiliation

(a) Except as provided in paragraph (b):

(1) the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act; and

(2) an Exchange member shall not be or become an affiliate of the Exchange, or an affiliate of an entity affiliated with the Exchange, in the absence of an effective filing under Section 19(b) of the Act.

The term "affiliate" shall have the meaning specified in Rule 12b-2 under the Act; provided, however, that for purposes of this Rule, one entity shall not be deemed to be an affiliate of another entity solely by reason of having a common director. The term "business venture" means an arrangement under which

(A) the Exchange or an entity with which it is affiliated, and

(B) an Exchange member or an affiliate of an Exchange member, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

(b) Nothing in this rule shall prohibit, or require a filing under Section 19(b) of the Act, for:

(1) an Exchange member or an affiliate of an Exchange member acquiring or holding an equity interest in The NASDAQ OMX Group, Inc. that is

permitted by the ownership limitations contained in Chapter XXXIX, Section 1, or

(2) the Exchange or an entity affiliated with the Exchange acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of an Exchange member if:

(A) there are information barriers between the member and the Exchange and its facilities, such that the member

(i) will not be provided an informational advantage concerning the operation of the Exchange and its facilities, and will not be provided changes or improvements to the trading system that are not available to the industry generally or other Exchange members;

(ii) will not have any knowledge in advance of other Exchange members of proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities, including advance knowledge of Exchange filings pursuant to Section 19(b) of the Act;

(iii) will be notified of any proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities in the same manner as other Exchange members are notified; and

(iv) will not share employees, office space, or databases with the Exchange or its facilities, The NASDAQ OMX Group, Inc., or any entity that is controlled by The NASDAQ OMX Group, Inc.; and

(B) the Exchange's Regulatory Oversight Committee certifies, on an annual basis, to the Director of the Division of Trading & Markets that the Exchange has taken all reasonable steps to implement the requirements of this rule and is in compliance therewith.