AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NSX HOLDINGS, INC.

The name of the corporation is NSX Holdings, Inc. (the "*Corporation*"). The Corporation was originally incorporated under the same name, and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on December 12, 2005. Pursuant to, and being duly adopted in accordance with, Sections 242 and 245 of the General Corporation Law of the State of Delaware, this amended and restated Certificate of Incorporation hereby amends and restates the Certificate of Incorporation to read in its entirety as follows:

Name

FIRST: The name of the Corporation is NSX Holdings, Inc.

Registered Office

SECOND: The initial registered office of the Corporation in the State of Delaware is 1209 Orange Street in the City of Wilmington, State of Delaware 19801, County of New Castle, and the name of its initial registered agent at that address is Corporation Trust Company.

Purpose

THIRD: The purpose or purposes of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

Authorized Stock

FOURTH:

(a) The total number of shares of stock that the Corporation shall have authority to issue is 1,100,000 shares of common stock having a par value of $.0001 per share (of which 900,000 shares are designated as Class A Common Stock, 100,000 shares are designated as Class B Common Stock and 100,000 shares are designated as Class C Common Stock), and 100,000 shares of preferred stock having a par value of $.0001 per share.

(b) Class A Common Stock, Class B Common Stock and Class C Common Stock shall have all of the rights, preferences, privileges and limitations granted to and imposed on common stock under applicable law, this Certificate of Incorporation and the bylaws of the Corporation, except as provided herein.

(c) Class B Common Stock owned, directly or indirectly, of record or beneficially, by the Chicago Board Options Exchange, Incorporated ("*CBOE*") or any of its affiliates, (i) shall be subject to the terms, conditions and restrictions of the Termination of Rights Agreement by and between National Stock Exchange and CBOE dated as of September 27, 2004 (the "*TORA*") to the same extent, on the same terms,

as the Certificates (as defined in the TORA) that were converted into such Class B Common Stock, and (ii) shall not enjoy the right to vote on any matter on which the common stock of the Corporation shall be entitled to vote (including, but not limited to, the election of the members of the Board of Directors of the Corporation) unless such matter would alter or change the rights, preferences, privileges and limitations of the Class B Common Stock (other than the right to vote) without also altering or changing the rights, preferences, privileges and limitations of the Class A Common Stock of the Corporation in an identical manner.

Upon the transfer of any share of Class B Common Stock in accordance with the TORA to a bona fide third party purchaser unaffiliated with CBOE, each share of such Class B Common Stock so transferred shall convert automatically to one share of Class A Common Stock (and such converted shares shall no longer be subject to the terms, conditions and restrictions of the TORA). On or after the date of occurrence of any such conversion, and in any event within ten (10) business days thereof, each holder of converted shares of Class B Common Stock shall surrender the holder's certificate(s) evidencing those shares to the Corporation, and shall thereupon be entitled to receive a certificate evidencing the number of shares of Class A Common Stock into which such shares of Class B Common Stock have been converted. The holder of converted shares of Class B Common Stock shall be deemed to be a holder of Class A Common Stock immediately upon the conversion of the Class B shares, notwithstanding that the certificate(s) representing the Class B shares have not been surrendered or that a certificate representing the shares of Class A Common Stock into which the Class B shares were converted has not yet been issued or delivered to the holder.

Shares of Class B Common Stock that are converted to shares of Class A Common Stock shall be retired and may not be reissued by the Corporation.

(d) Class C Common Stock shall not enjoy the right to vote on any matter on which the common stock of the Corporation shall be entitled to vote (including, but not limited to, the election of the members of the Board of Directors of the Corporation) unless such matter would alter or change the rights, preferences, privileges and limitations of the Class C Common Stock (other than the right to vote) without also altering or changing the rights, preferences, privileges and limitations of the Class A Common Stock of the Corporation in an identical manner.

Each share of Class C Common Stock shall be convertible, at the option of the holder thereof, to one share of Class A Common Stock at any time after its issuance, but only to the extent that any such conversion does not violate the limitations set forth in Article FIFTH of this Certificate of Incorporation or applicable law. In order to convert shares of Class C Common Stock into shares of Class A Common Stock, a holder of Class C Common Stock must provide written notice to the Corporation of its election to do so, must specify the number of shares of Class C Common Stock to be converted, must surrender the certificate(s) evidencing those shares of Class C Common Stock to the Corporation and must provide evidence satisfactory to the Corporation that the conversion will not violate the limitations set forth in Article FIFTH of this Certificate of Incorporation or applicable law. Thereupon, the conversion shall be effective and the Corporation shall promptly issue a certificate evidencing the number of shares of Class A Common Stock into which the shares of Class C Common Stock have been converted. The holder of converted shares of Class C Common Stock shall be deemed to be a holder of Class A Common Stock upon the effectiveness of the

conversion, notwithstanding that the certificate evidencing the shares of Class A Common Stock into which the Class C shares were converted has not yet been issued or delivered to the holder.

Shares of Class C Common Stock that are converted to shares of Class A Common Stock shall be retired and may not be reissued by the Corporation.

(e) The Board of Directors is expressly authorized to issue from time to time one or more classes or series of preferred stock and fix by resolution any of the designations and the powers, preferences and rights and the qualifications, limitations or restrictions that are permitted by Section 151 of the General Corporation Law of Delaware in respect of any such class or classes of preferred stock or any series of any class or classes of preferred stock of the Corporation.

Subject to the rights, if any, of the holders of any class or series of preferred stock set forth in a certificate of designation, an amendment of this Certificate of Incorporation to increase or decrease (but not below the number of shares thereof then outstanding) the number of authorized shares of preferred stock may be adopted by resolution adopted by the Board of Directors of the Corporation and approved by the affirmative vote of the holders of a majority of the voting power of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law or any similar provision hereafter enacted, with such shares voting as a single class, and no vote of the holders of any class or series of preferred stock, voting as a separate class or series, shall be required therefor.

Except as otherwise required by law, holders of preferred stock, voting separately as a single class, must approve any amendment of this Certificate of Incorporation that alters or changes the powers, preferences, rights or other terms of such preferred stock.

Limitations on Transfer, Ownership and Voting

FIFTH: In addition to any limitations on the transfer of shares of the Corporation's capital stock set forth in the bylaws of the Corporation, the following shall apply to the fullest extent permitted by law:

(a) Definitions. As used in this Article FIFTH:

(i) the term "*Person*" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof;

(ii) the term "*Related Persons*" shall mean with respect to any Person: (A) any "affiliate" of such Person (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "*Act*")); (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Act) or director of such Person and, in the case of a Person that is a

partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any Person that holds a permit issued by National Stock Exchange, Inc. to trade securities on National Stock Exchange, Inc. (an "***ETP Holder***"), any Person that is associated with the ETP Holder (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Act); (E) in the case of a Person that is an individual, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of the Corporation or any of its parents or subsidiaries; (F) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (G) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable; and

(iii) the term "***beneficially own***", "***own beneficially***" or any derivative thereof shall have the meaning set forth in Rule 13d-3 under the Act.

(b) Limitations.

(i) During the first thirty (30) days immediately following the date any shares of capital stock are first issued by the Corporation to members, former members or other equity owners of National Stock Exchange (each, an "***Initial Stockholder***"), an Initial Stockholder shall not be permitted to sell, transfer, assign or pledge any shares of capital stock of the Corporation owned by such stockholder to any other Person or Persons unless the Board of Directors of the Corporation waives such restriction on sale, transfer, assignment or pledge.

(ii) For so long as the Corporation shall control, directly or indirectly, National Stock Exchange, Inc., except as provided in clause (iii) below:

(A) no Person, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than forty percent (40%) of any class of capital stock of the Corporation;

(B) no ETP Holder, either alone or together with its Related Persons, may own, directly or indirectly, of record or beneficially, shares constituting more than twenty percent (20%) of any class of capital stock of the Corporation; and

(C) no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock of the Corporation or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of the Corporation, nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the shares of capital stock of the Corporation that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to

vote, possess the right to vote or cause the voting of shares of the capital stock of the Corporation that would represent more than twenty percent (20%) of said voting power.

(iii) Subject to clauses (iv) and (v) below:

(A) the limitations in clauses (ii)(A) and (ii)(C) above shall not apply in the case of any class of stock that does not have the right by its terms to vote in the election of members of the Board of Directors of the Corporation or on other matters that may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of said class of stock); and

(B) the limitations in clauses (ii)(A) above and the limitations in clause (ii)(C) above (except with respect to ETP Holders and their Related Persons) may be waived by the Board of Directors of the Corporation pursuant to a resolution duly adopted by the Board of Directors, if, in connection with taking such action, the Board of Directors adopts a resolution stating that it is the determination of such Board that such action will not impair the ability of National Stock Exchange, Inc. to carry out its functions and responsibilities as an "exchange" under the Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and National Stock Exchange, Inc., and that it will not impair the ability of the United States Securities and Exchange Commission (the "*Commission*") to enforce the Act and the rules and regulations promulgated thereunder, and such resolution shall not be effective until it is filed with and approved by the Commission. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions that it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of National Stock Exchange, Inc.

(C) with respect to any Person that is an ETP Holder as of the date hereof, the limitations in clause (ii)(B) shall not apply to such Person with respect to any and all Class C Common Stock issued to such Person in connection with, and from the date of, the initial issuance of Class C Common Stock by the Corporation so long as such Person becomes compliant with the limitation promptly after such issuance.

(iv) Notwithstanding clauses (iii)(A), (iii)(B) and (iii)(C) above, in any case where a Person, either alone or together with its Related Persons, would own or vote more than any of the above percentage limitations upon consummation of any proposed sale, assignment or transfer of the Corporation's capital stock, such sale, assignment or transfer shall not become effective until the Board of Directors of the Corporation shall have determined, by resolution, that such Person and its Related Persons are not subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act).

(v) Notwithstanding clauses (iii)(A), (iii)(B) and (iii)(C) above, and without giving effect to same, any ETP Holder that, either alone or together with its Related Persons, proposes to own, directly or indirectly, of record or beneficially, shares of the capital stock of the Corporation constituting more than twenty percent (20%) of the

outstanding shares of any class of capital stock of the Corporation and any Person that, either alone or together with its Related Persons, proposes to own, directly or indirectly, of record or beneficially, shares of the capital stock of the Corporation constituting more than forty percent (40%) of the outstanding shares of any class of capital stock of the Corporation, or to exercise voting rights, or grant any proxies or consents with respect to shares of the capital stock of the Corporation constituting more than twenty percent (20%) of the voting power of the then issued and outstanding shares of capital stock of the Corporation, shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than forty-five (45) days (or any shorter period to which said Board shall expressly consent), before the proposed ownership of such shares, or the proposed exercise of said voting rights or the granting of said proxies or consents, of its intention to do so.

(c) Required Notices.

(i) Any Person that, either alone or together with its Related Persons, owns, directly or indirectly (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, five percent (5%) or more of the then outstanding shares of capital stock of the Corporation (excluding shares of any class of stock that does not have the right by its terms to vote generally in the election of members of the Board of Directors of the Corporation) shall, immediately upon acquiring knowledge of its ownership of five percent (5%) or more of the then outstanding shares of such stock, give the Board of Directors written notice of such ownership, which notice shall state: (A) such Person's full legal name; (B) such Person's title or status and the date on which such title or status was acquired; (C) such Person's (and its Related Person's) approximate ownership interest of the Corporation; and (D) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise.

(ii) Each Person required to provide written notice pursuant to subparagraph (c)(i) of this Article FIFTH shall update such notice promptly after any change in the contents of that notice; provided that no such updated notice shall be required to be provided to the Board of Directors in the event of an increase or decrease in the ownership percentage so reported of less than one percent (1%) of the then outstanding shares of any class of capital stock (such increase or decrease to be measured cumulatively from the amount shown on the last such notice), unless any increase or decrease of less than one percent (1%) results in such Person owning more than twenty percent (20%) or more than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person previously owned less than such percentages) or such Person owning less than twenty percent (20%) or less than forty percent (40%) of the shares of any class of capital stock then outstanding (at a time when such Person previously owned more than such percentages).

(iii) The Board of Directors of the Corporation shall have the right to require any Person reasonably believed to be subject to and in violation of this Article FIFTH to provide the Corporation complete information as to all shares of stock of the Corporation owned, directly or indirectly, of record or beneficially, by such Person and its Related Persons and as to any other factual matter relating to the applicability or effect of this Article FIFTH as may reasonably be requested of such Person.

(d) Effect of Purported Transfers and Voting in Violation of this Article. If any stockholder purports to sell, transfer, assign or pledge to any Person, other than the Corporation, any shares of the Corporation that would violate the provisions of this Article FIFTH, then the Corporation shall record on the books of the Corporation the transfer of only that number of shares that would not violate the provisions of this Article FIFTH and shall treat the remaining shares as owned by the purported transferor, for all purposes, including without limitation, voting, payment of dividends and distributions with respect to such shares, whether upon liquidation or otherwise. If any stockholder purports to vote, or to grant any proxy or enter into any agreement, plan or other arrangement relating to the voting of, shares that would violate the provisions of this Article FIFTH, then the Corporation shall not honor such vote, proxy, agreement, plan or other arrangement to the extent that such provisions would be violated, and any shares subject to that arrangement shall not be entitled to be voted to the extent of such violation.

(e) Right to Redeem Shares Purportedly Transferred or Voted in Violation of this Article. If any stockholder purports to sell, transfer, assign, pledge, vote or own any shares of the Corporation in violation of the provisions of this Article Fifth, then the Corporation shall have the right to, and shall promptly after confirming such violation and to the extent funds are legally available, redeem such shares for a price per share equal to the par value of those shares. Written notice shall be given by the Secretary of the Corporation to the holder or holders of record with respect to the redeemable shares at the address of the holder or holders of record appearing on the books of the Corporation, which notice shall specify a date for redemption of the shares that shall be not less than ten (10) days nor more than thirty (30) days from the date of such notice. Any shares that have been so called for redemption shall not be deemed outstanding shares for the purpose of voting or determining the total number of shares entitled to vote on any matter on and after the date on which written notice of redemption has been given to the holder or holders of those shares if a sum sufficient to redeem such shares shall have been irrevocably deposited or set aside to pay the redemption price to the holder or holders of the shares upon surrender of certificates for those shares. Written notice shall be given by the Secretary of the Corporation to all holders of record appearing on the books of the Corporation of any redemption by the Corporation (including, without limitation, a redemption pursuant to this clause (e)) (in each case, a "***Redemption***") not more than ten (10) days after consummation of the Redemption, which notice shall specify the number of shares outstanding after the Redemption of each class of the Corporation's capital stock.

Board of Directors

SIXTH: (a) Number of Directors. The number of directors of the Corporation shall be not less than ten (10) nor more than sixteen (16). The initial number of directors of the Corporation shall be thirteen (13). The number of directors may be increased or decreased from time to time within the minimum and maximum number provided for in this Certificate of Incorporation by a resolution adopted by the Board of Directors, but no decrease shall have the effect of shortening the term of any incumbent director.

(b) Terms. The Board of Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number as the total number of directors then constituting the entire Board permits. The directors shall serve staggered three-year terms, with the term of office of one class expiring each

year. In order to commence such staggered three-year terms, directors in Class I shall initially hold office until the first annual meeting of stockholders of the Corporation; directors in Class II shall initially hold office until the second annual meeting of stockholders of the Corporation; and directors in Class III shall initially hold office until the third annual meeting of stockholders of the Corporation. Thereafter, the term of office for each class of directors elected at each annual meeting shall be three years from the date of their election. All directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier resignation, removal or disqualification.

(c) Election of Directors. Directors shall be elected by the stockholders of the Corporation pursuant to and in accordance with this Certificate of Incorporation and the bylaws of the Corporation. Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

(d) Removal of Directors. No director or class of directors may be removed from office by a vote of the stockholders at any time except for cause. For purposes of this section, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors

Duration

SEVENTH: The duration of the Corporation shall be perpetual.

Bylaws

EIGHTH: The Board of Directors shall have the power to adopt, amend or repeal bylaws of the Corporation. The bylaws of the Corporation may also be amended or repealed, or new bylaws of the Corporation may be adopted, by action taken by the stockholders of the Corporation. All amendments to the Corporation's bylaws must be made in accordance with procedures set out in the bylaws of the Corporation.

Limitation of Director Liability

NINTH: To the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date this Certificate of Incorporation is adopted or as such law may later be amended, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Action without Meeting

TENTH: Action may be taken by the stockholders of the Corporation, without a meeting, by written consent as and to the extent provided at the time by the General

Corporation Law of Delaware, provided that the matter to be acted upon by such written consent previously has been directed by the Board of Directors to be submitted to the stockholders for their action by written consent.

Compromise or Other Arrangement

ELEVENTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as such court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

Amendment of Certificate of Incorporation

TWELFTH. The Corporation reserves the right to amend this Certificate of Incorporation, and to change or repeal any provision of the Certificate of Incorporation, in the manner prescribed at the time by statute (provided, however, that any such amendment, change or repeal must be first approved by the Board of Directors), and all rights conferred upon stockholders in this Certificate of Incorporation are granted subject to this reservation. For so long as the Corporation shall control, directly or indirectly, National Stock Exchange, Inc., before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the Board of Directors of National Stock Exchange, Inc. and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Act and the rules and regulations promulgated thereunder by the Commission or otherwise, then the proposed changes to the Certificate of Incorporation of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

The undersigned has caused this amended and restated Certificate of Incorporation to be executed this ____ day of _____, 2006.

IN WITNESS WHEREOF,

NSX HOLDINGS, INC.

By:_____
Name:_____
Title:_____

AMENDED AND RESTATED BY-LAWS
OF
NSX HOLDINGS, INC.
(a Delaware corporation)

ARTICLE I

REGISTERED AGENT AND OFFICE; OFFICES

Section 1.1 Registered Office and Registered Agent. NSX Holdings, Inc. (the "*Corporation*") shall maintain a registered office in the State of Delaware at such location as shall from time to time be determined by the Board of Directors. The registered agent of the Corporation in the State of Delaware shall be such person or entity as shall from time to time be determined by the Board of Directors.

Section 1.2 Other Offices. The Corporation may also have offices at such other locations both within and without the State of Delaware as the Board of Directors may from time to time determine or the business or purposes of the Corporation may require.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Powers. The business and affairs of the Corporation shall be managed by the Board of Directors of the Corporation, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board established pursuant to these By-Laws.

Section 2.2 Number, Term of Office and Qualifications. (a) Subject to the certificate of incorporation of the Corporation, the number of directors shall be determined, and may be increased or decreased, from time to time by a resolution adopted by the Board of Directors, but no decrease shall have the effect of shortening the term of any incumbent director. Directors need not be stockholders of the Corporation. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended (the "*Act*")) may be a director of the Corporation.

(b) At all times the Board of Directors shall consist of one (1) director who is the Chief Executive Officer of the Corporation and such other directors as are elected to those positions.

(c) As set forth in the certificate of incorporation of the Corporation, the Board of Directors shall be divided into three classes, designated Class I, Class II and Class III, which shall be as nearly equal in number as the total number of directors then constituting the entire Board permits. The directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, directors in Class I shall initially hold office until the first annual meeting of stockholders of the Corporation; directors in Class II shall initially hold office until the second annual meeting of stockholders of the Corporation; and directors in Class III shall initially hold office until the third annual meeting of

stockholders of the Corporation. Thereafter, the term of office for each class of directors elected at each annual meeting shall be three years from the date of their election. All directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.

Section 2.3 Chairman. (a) The Board of Directors shall elect a Chairman of the Board from among the directors of the Corporation, and may elect a vice-chairman of the Board to perform the functions of the Chairman in his or her absence or inability to act.

(b) Unless another director is appointed by the Board of Directors for such purpose in the Chairman's absence, the Chairman shall preside at all meetings of the stockholders and the Board of Directors and, subject to the approval of the Board of Directors, shall appoint members of the committees of the Board. The Chairman shall also have such other duties, authority and obligations as may be given to him or her by these By-Laws or by the Board of Directors.

Section 2.4 Vacancies. (a) Any vacancy on the Board of Directors resulting from the death, retirement, resignation, disqualification or removal of a director, as well as any newly-created directorships resulting from an increase in the number of directors that occurs between annual meetings of the stockholders at which directors are elected, shall be filled by the directors then in office, even if less than a quorum, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Any person chosen to fill a vacancy or newly-created directorship shall have the same qualifications, as set forth in these By-Laws or the certificate of incorporation of the Corporation, as those of the replaced director. The person selected to fill a vacancy or newly-created directorship shall hold office until the expiration of the term of office of the replaced director or the end of a term for a newly-created directorship, as the case may be. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(b) In the event any director fails to maintain any of the qualifications for such director set forth in these By-Laws or the certificate of incorporation of the Corporation, of which failure the Board of Directors shall be the sole judge, such director shall, upon determination of the Board that such director is no longer qualified, cease to be a director, such director's office shall be deemed vacant and (effective upon the expiration of any grace period for re-qualification permitted by the Board of Directors pursuant to Section 2.4(c) below) the vacancy may be filled by the Board with a person who so qualifies for such director's position.

(c) The Board of Directors may in its discretion institute a grace period for re-qualification for a director who ceases to be a director pursuant to Section 2.4(b) above. If any such grace period is instituted, during such period up until the time when the director re-qualifies, the director shall be deemed not to hold office and the director position formerly held by the director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether a director has re-qualified.

Section 2.5 Removal. As set forth in the certificate of incorporation of the Corporation, no director or class of directors may be removed from office by a vote of the

stockholders at any time except for cause. For purposes of this Section 2.5, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Section 2.6 Place of Meetings; Mode. Any meeting of the Board of Directors may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Corporation. Members of the Board of Directors or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 2.7 Regular Meetings. Regular meetings of the Board of Directors may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

Section 2.8 Special Meetings. (a) Special meetings of the Board of Directors may be called on a minimum of two (2) days notice to each director by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) directors then in office.

(b) The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting. Notice of any special meeting shall be given to each director at his or her business address or such other address as he or she may have advised the Secretary of the Corporation to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the director to be notified. If mailed, such notice shall be deemed to be given five (5) business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the director to be notified.

Section 2.9 Voting; Quorum and Action by the Board. Each director shall be entitled to one (1) vote. At all meetings of the Board of Directors, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business. 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 of Directors except as may be otherwise specifically provided by statute, the certificate of incorporation or these By-Laws.

Section 2.10 Waiver of Notice. A written waiver of notice, signed by a director entitled to notice of a meeting of the Board of Directors, whether before or after the time of the meeting stated in the notice, shall be deemed equivalent to the giving of such notice to that director. Attendance of a director at a meeting of the Board of Directors or

of a committee of the Board of which the director is a member shall constitute a waiver of notice of such meeting, except when the 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 2.11 Presumption of Assent. A director of the Corporation who is present at a duly convened meeting of the Board of Directors or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Section 2.12 Action in Lieu of Meeting. Unless otherwise restricted by statute, the certificate of incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

Section 2.13 Compensation. The directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board of Directors and at each meeting of a committee of the Board of Directors of which they are members. The Board of Directors, irrespective of any personal interest of any of its members, shall have authority to fix compensation of all directors for services to the Corporation as directors, officers or otherwise.

Section 2.14 Interpretation of By-Laws. The Board of Directors shall have the power to interpret these By-Laws and any interpretation made by it shall be final and conclusive.

ARTICLE III

SRO FUNCTION OF NATIONAL STOCK EXCHANGE, INC.

Section 3.1 Non-Interference. For so long as the Corporation shall control National Stock Exchange, Inc., the Board of Directors, officers and employees of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of National Stock Exchange, Inc. and to its obligations to investors and the general public and shall not take actions which would interfere with the effectuation of decisions by the Board of Directors of National Stock Exchange, Inc. relating to its regulatory functions (including disciplinary matters) or which would interfere with National Stock Exchange, Inc.'s ability to carry out its responsibilities under the Act. No present or past stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other Person shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section 3.1

Section 3.2 Confidentiality. All books and records of National Stock Exchange, Inc. reflecting confidential information pertaining to the self-regulatory function of National Stock Exchange, Inc. (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of the Corporation, and the information contained in those books and records, shall be retained in confidence by the Corporation and the members of the Board of Directors, officers, employees and agents of the Corporation and shall not be used for any non-regulatory purposes.

Section 3.3 Books and Records, etc. All books and records of the Corporation shall be maintained at a location within the United States. To the extent they are related to the activities of National Stock Exchange, Inc., the books, records, premises, officers, directors, agents, and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors, agents and employees of National Stock Exchange, Inc. for the purposes of, and subject to oversight pursuant to, the Act.

Section 3.4 Compliance with Securities Laws; Cooperation with the Securities and Exchange Commission. The Corporation shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the United States Securities and Exchange Commission (the "Commission") and National Stock Exchange, Inc. pursuant to and to the extent of their respective regulatory authority. The officers, directors, employees and agents of the Corporation, by virtue of their acceptance of such position, shall be deemed to agree to cooperate with the Commission and National Stock Exchange, Inc. in respect of the Commission's oversight responsibilities regarding National Stock Exchange, Inc. and the self-regulatory functions and responsibilities of National Stock Exchange, Inc., and the Corporation shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate. No present or past stockholder, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof) or other Person shall have any rights against the Corporation or any director, officer, employee or agent of the Corporation under this Section 3.4

Section 3.5 Consent to Jurisdiction. The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and National Stock Exchange, Inc., for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of National Stock Exchange, Inc., and by virtue of their acceptance of any such position, shall be deemed to 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 it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or National Stock Exchange, Inc., 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 of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of National Stock Exchange, Inc.

Section 3.5 Consent to Application. The Corporation shall take reasonable steps necessary to cause its officers, directors and employees, prior to accepting a

position as an officer, director or employee, as applicable, of the Corporation to consent in writing to the applicability to them of this Article III, as applicable, with respect to their activities related to National Stock Exchange, Inc.

ARTICLE IV

STOCKHOLDERS

Section 4.1 Annual Meeting. The annual meeting of the stockholders shall be held at such place and time as determined by the Board of Directors, for the purpose of electing directors and for conducting such other business as may properly come before the meeting.

Section 4.2 Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board of Directors or the Chief Executive Officer, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Corporation entitled to vote. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

Section 4.3 Place and Conduct of Meetings. (a) Meetings of stockholders of the Corporation may be held at such place, within or without the State of Delaware, as the Board of Directors designates in the notice of each meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Corporation.

(b) Meetings of stockholders shall be presided over by the Chairman or, in his absence, by the Chief Executive Officer or, in the absence of both the Chairman and the Chief Executive Officer, by such other presiding officer designated by the Board of Directors. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of the meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the presiding officer of any meeting of stockholders shall have the right and authority to prescribe such rules and regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the conduct of the meeting. Unless and to the extent otherwise determined by the Board of Directors or the presiding officer of the meeting, meetings of stockholders shall not be required to be held in accordance with any rules of parliamentary procedure.

Section 4.4 Notice of Meetings. Unless otherwise prescribed by statute or by the certificate of incorporation, notice of each annual or special meeting of the stockholders, stating the date, time and place of the meeting of the stockholders and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder of record entitled to vote at the meeting, not less than 10 nor more than 60 days before the date of the meeting (or in the case of a meeting called for the purpose of acting upon a merger or consolidation not less than 20 days before the meeting). Only matters stated in the notice of a stockholder meeting shall be brought before that meeting. Notice shall be given by or at the direction of the Secretary. If mailed, this notice shall be deemed to be given when deposited in the United States mail, postage prepaid, addressed to the stockholder at such stockholder's address as it

appears on the records of the Corporation. If delivered (rather than mailed) to the stockholder's address, the notice shall be deemed to be given when delivered. When a meeting is adjourned to another date, place or time, notice need not be given of the adjourned meeting if the date, time and place are announced at the meeting at which the adjournment is taken, unless the adjournment is for more than 30 days after the date for which the meeting was originally noticed or unless a new record date is fixed for the adjourned meeting.

Section 4.5 Waiver of Notice. A waiver of notice in writing signed a stockholder entitled to such notice, whether before or after the time of the meeting stated in the notice, shall be deemed equivalent to the giving of such notice. Attendance of a stockholder in person or by proxy at a meeting of stockholders shall constitute a waiver of notice of such meeting except when the stockholder or his proxy 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 4.6 Record Dates. (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment of such a meeting, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting (or less than 20 days if a merger or consolidation is to be acted upon at such a meeting). If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the certificate of incorporation of the Corporation or by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered in the manner required by law to the Corporation at its registered office in the State of Delaware or at its principal place of business or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the Corporation's stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the certificate of incorporation or by statute, the record date for determining stockholders entitled to consent to corporate action in writing, without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to that purpose.

(d) Only those who shall be stockholders of record on the record date fixed pursuant to the provisions in this Section 4.6 shall be entitled to such notice of, and to vote at, such meeting and any adjournment of that meeting, or to consent to such corporate action in writing receive payment of such dividend or other distribution, or to receive such allotment of rights, or to exercise such rights, as the case may be, even if stock is transferred on the books of the Corporation after the applicable record date.

Section 4.7 List of Stockholders. The Secretary of the Corporation, or such other person designated by the Secretary or the Board of Directors, shall have charge of the stock ledger of the Corporation and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting and may be inspected by any stockholder who is present.

Section 4.8 Quorum and Vote Required for Action. Except as may otherwise be provided by statute or in the certificate of incorporation of the Corporation, the holders of stock of the Corporation having a majority of the total votes which all of the outstanding stock of the Corporation would be entitled to cast at the meeting, when present in person or by proxy, shall constitute a quorum at any meeting of the stockholders; provided, however, that where a separate vote by a class or classes of stock is required, the holders of stock of such class or classes having a majority of the total votes which all of the outstanding stock of such class or classes would be entitled to cast at the meeting when present in person or by proxy, shall constitute a quorum entitled to take action with respect to the vote on the matter. Unless a different number of votes is required by statute or the certificate of incorporation of the Corporation, (a) if a quorum is present with respect to the election of directors, directors shall be elected by a plurality of the votes cast by those stockholders present in person or represented by proxy at the meeting and entitled to vote on the election of directors, and (b) in all matters other than the election of directors, if a quorum is present at any meeting of the stockholders, a majority of the votes entitled to be cast by those stockholders present in person or by proxy shall be the act of the stockholders except where a separate vote by class or classes of stock is required, in which case, if a quorum of such class or classes is present, a majority of the votes entitled to be cast by those stockholders of such class or classes present in person or by proxy shall be the act of the stockholders of such

class or classes. If a quorum is not present at any meeting of stockholders, then holders of stock of the Corporation who are present in person or by proxy representing a majority of the votes cast may adjourn the meeting from time to time without further notice and, where a separate vote by a class or classes of stock is required on any matter, then holders of stock of such class or classes who are present in person or by proxy representing a majority of the votes of such class or classes cast may adjourn the meeting with respect to the vote on that matter from time to time without further notice. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting. Withdrawal of stockholders from any meeting shall not cause failure of a duly constituted quorum at that meeting.

Section 4.9 Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no proxy shall be valid after three (3) years from its date unless otherwise provided in the proxy. Such proxy shall be in writing and shall be filed with the Secretary of the Corporation before or at the time of the meeting or the giving of such written consent, as the case may be.

Section 4.10 Voting of Shares. Each stockholder of the Corporation shall be entitled to such vote (in person or by proxy) for each share of stock having voting power held of record by such stockholder as shall be provided in the certificate of incorporation of the Corporation or, absent provision in the certificate of incorporation fixing or denying voting rights, shall be entitled to one vote per share.

Section 4.11 Voting by Ballot. As set forth in the certificate of incorporation of the Corporation, election of directors need not be by written ballot unless these By-Laws shall so provide. Any question or any election at a meeting of the stockholders may be decided by voice vote unless the presiding officer shall order that voting be by ballot or unless otherwise provided in the certificate of incorporation of the Corporation or required by statute.

Section 4.12 Inspectors. At any meeting of the stockholders, the presiding officer may appoint one or more persons as inspectors for such meeting. Such inspectors shall ascertain and report the number of shares represented at the meeting based upon their determination of the validity and effect of proxies; count all votes and report the results; and do such other acts as are proper to conduct the election and voting with impartiality and fairness to all the stockholders. Each report of an inspector shall be in writing and signed by him or a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 4.13 Action in Lieu of Meeting. As set forth in the certificate of incorporation of the Corporation, any action upon which a vote of stockholders is required or permitted 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 capital 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 and shall be delivered to the Corporation in the manner required by law, provided that the matter to be acted upon by such written consent previously has been directed by the Board of Directors to be submitted to the stockholders for their action by written consent. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to in the consent unless, within sixty (60) days of the earliest dated consent delivered to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation as required by these By-Laws or by applicable law. 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 so consented in writing.

ARTICLE V

COMMITTEES

Section 5.1 Number of Committees. The committees of the Board of Directors shall consist of an Audit Committee, a Governance and Nominating Committee, and such other committees as may be from time to time established by the Board of Directors.

Section 5.2 Appointment; Vacancies; and Removal. The Chairman of the Board of Directors, with the approval of the Board, shall appoint the members of all committees of the Board (each committee to consist of one or more directors) and the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board. Any vacancy occurring in a committee shall be filled by the Chairman for the remainder of the term, with the approval of the Board.

Section 5.3 Powers and Duties of Committees. To the extent not prohibited by law, all committees shall have such duties and may exercise such authority as may be prescribed for them in these By-Laws or by the Board of Directors.

Section 5.4 Conduct of Proceedings. Except as otherwise provided in the certificate of incorporation of the Corporation, these By-Laws or by the Board of Directors, each committee may determine the manner in which its proceedings shall be conducted. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if a written consent to the action is signed by all of the members of the committee and the written consent is filed with the minutes of the proceedings of the committee.

ARTICLE VI

OFFICERS

Section 6.1 Officers of the Corporation. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers as the Board of Directors may determine. The officers of the Corporation shall exercise such powers and perform such duties as shall be described in these By-Laws or determined from time to time by the Board of Directors. Any two or more offices may be held by the same person, except that the Secretary may not hold the office of

the Chief Executive Officer or the President. No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act) may be an officer of the Corporation.

Section 6.2 Compensation. The compensation of all of the officers of the Corporation shall be fixed from time to time by the Board of Directors or a committee thereof designated by the Board of Directors.

Section 6.3 Term of Office; Removal; Vacancies. Each officer of the Corporation shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, resignation or removal. Any officer of the Corporation may be removed at any time by the Board of Directors, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Vacancies in any office of the Corporation may be filled by the Board of Directors.

Section 6.4 Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall be responsible to the Board of Directors for the management of the Corporation's business affairs. The office shall be his principal occupation to which he shall devote his full time except with approval of the Board. The Chief Executive Officer shall be appointed by the Board of Directors to serve at its pleasure and for such compensation as it may from time to time fix. The Chief Executive Officer shall have the power and duty, except as otherwise provided in the Corporation's certificate of incorporation or these By-Laws, to execute and carry out all orders and directions of the Board of Directors and any committee of the Corporation; to enforce the provisions of these By-Laws; and to promote the welfare and interests of the Corporation. He may call special meetings of the Board of Directors or of any committee and special meetings of the stockholders. He shall in general have all powers and duties usually incident to the office of chief executive officer and such other powers and duties as may be prescribed by these By-Laws or by the Board of Directors from time to time. He may delegate such powers, or any of them, to any other officer of the Corporation, to be exercised under his supervision and control. In case of the Chief Executive Officer's temporary absence or inability to act, the Board of Directors may designate an officer to perform the functions and duties of the Chief Executive Officer. When the Chief Executive Officer returns, or is again able to act, he shall resume his duties.

Section 6.5 President. The President shall have such powers and duties as may be prescribed by these By-Laws, the Board of Directors or the Chief Executive Officer, under whose supervision he or she shall be.

Section 6.6 Secretary. The Secretary shall act as secretary of the Corporation and shall keep and have charge of all records and papers of the Corporation. The Secretary shall record all proceedings of the meetings of stockholders and the Board of Directors in a book to be kept for that purpose and shall perform like duties for the committees of the Board of Directors when required. Reports and notices shall be properly filed when delivered to the Secretary or, in the Secretary's absence, to another officer of the Corporation. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer, under whose supervision he or she shall be.

Section 6.7 Treasurer. The Treasurer shall receive and take charge of all moneys and securities of the Corporation and make disbursement thereof, and shall

keep full and accurate records with respect thereto. The Treasurer shall report to the Board at such time or times as the Board may require and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer, under whose supervision he or she shall be.

ARTICLE VII

INDEMNIFICATION

Section 7.1 Extent of Indemnification. The Corporation shall, to the maximum extent not prohibited by the General Corporation Law of Delaware or any other applicable laws, as may from time to time be in effect, indemnify and hold harmless any person who was or is made or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (each, individually an "*Indemnified Person*"), against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding. The Corporation shall be required to indemnify an Indemnified Person in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors of the Corporation.

As set forth in the certificate of incorporation of the Corporation, to the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date that the certificate of incorporation of the Corporation is adopted or as such law may later be amended, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Section 7.2 Expenses. Expenses (including attorneys' fees) incurred by an Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding, including appeals, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified as authorized by the General Corporation Law of the State of Delaware.

Section 7.3 Contract. The provisions of this Article VII shall be deemed to be a contract between the Corporation and each Indemnified Person at any time while this Article and the relevant provisions of the General Corporation Law of Delaware or other applicable law, if any, are in effect, and any repeal or modification of any such law or of this Article VII shall not affect and rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 7.4 Discretionary Indemnification Coverage. Persons not expressly covered by the foregoing provisions of this Article VII, such as those who are or were

directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Corporation was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board of Directors.

Section 7.5 Continuity of Indemnification and Non-Exclusivity. The indemnification provided or permitted hereunder shall not be deemed exclusive of any other rights to which those indemnified now or hereafter may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent entitled to such indemnification and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 7.6 Insurance. The Corporation may 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 or other enterprise against any liability asserted against 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.

Section 7.7 Corporation Not Liable. The Corporation shall not be liable for any loss or damage sustained by any current or former member or trading permit holder (each, an "*ETP Holder*") of National Stock Exchange, Inc. (or any predecessor or successor thereof) growing out of the use or enjoyment by such member or ETP Holder of the facilities afforded by the Corporation or its subsidiaries, including, without limitation, the National Stock Exchange, Inc.

ARTICLE VIII

AMENDMENTS

As set forth in the certificate of incorporation of the Corporation, the Board of Directors shall have the power to adopt, amend or repeal By-Laws of the Corporation. The By-Laws of the Corporation may also be amended or repealed, or new By-Laws of the Corporation may be adopted, by action taken by the stockholders of the Corporation. For so long as this Corporation shall control, directly or indirectly, National Stock Exchange, Inc., before any amendment to or repeal of any provision of the By-Laws of this Corporation shall be effective, those changes shall be submitted to the Board of Directors of National Stock Exchange, Inc. and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Act and the rules promulgated under that Act by the Commission or otherwise, then the proposed changes to the By-Laws of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

ARTICLE IX

CERTIFICATES OF STOCK AND THEIR TRANSFER

Section 9.1 Form and Execution of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of, the Corporation by the Chairman or a vice-chairman or the President or a vice president and by the Secretary or an assistant secretary or the Treasurer or an assistant treasurer of the Corporation, certifying the number of shares owned. Any and all signatures on a certificate may be facsimiles. Such certificates shall be in such form as may be determined by the Board of Directors. During any period that more than one class or series of stock of the Corporation is authorized there will be set forth on the face or back of the certificates that the Corporation shall issue to represent each class or series of stock a statement that the Corporation will furnish, without charge to each stockholder who so requests, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. In case any officer, transfer agent or registrar of the Corporation who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer, transfer agent or registrar of the Corporation before such certificate is issued by the Corporation, such certificate may nevertheless be issued and delivered by the Corporation with the same effect as if the officer, transfer agent or registrar who signed, or whose facsimile signature was placed upon, such certificate had not ceased to be such officer, transfer agent or registrar.

Section 9.2 Replacement Certificates. The Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates evidencing shares of stock of the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to advertise the same in such manner as it shall require and require such owner to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed. The Corporation may delegate its authority to direct the issuance of replacement stock certificates to the transfer agent or agents of the Corporation.

Section 9.3 Notice on Certificates. Each certificate evidencing shares of stock of the Corporation shall include a clear and conspicuous notice of the restrictions and limitations on the transfer of the shares evidenced by such certificate, in form and substance similar to the following:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY BE TRANSFERRED ONLY PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.

THE SALE, TRANSFER, ASSIGNMENT, PLEDGE OR OTHER DISPOSITION, AND THE OWNERSHIP AND VOTING, OF THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO LIMITATIONS AND RESTRICTIONS CONTAINED IN THE CERTIFICATE OF INCORPORATION AND THE BY-LAWS OF THE CORPORATION, COPIES OF WHICH ARE ON FILE AT THE OFFICE OF THE CORPORATION. THE CORPORATION WILL MAIL WITHOUT CHARGE TO ANY STOCKHOLDER COPIES OF THE CERTIFICATE OF INCORPORATION AND THE BY-LAWS WITHIN FIVE (5) DAYS AFTER RECEIPT OF A WRITTEN REQUEST THEREFOR."

Section 9.4 Amount of Shares Transferable. Unless waived by the Board of Directors, no stockholder of the Corporation shall voluntarily, involuntarily, or by operation of law, give, bequeath, sell, convey, transfer, pledge, encumber, assign or otherwise dispose (each, a "*Transfer*") of any shares of common stock of the Corporation (other than pursuant to a Redemption (as defined in the certificate of incorporation of the Corporation)) except in an aggregate amount equal to the lesser of: (i) 1,000 shares of common stock of the Corporation or (ii) all shares of common stock of the Corporation owned, directly or indirectly, of record or beneficially, by the stockholder. Any Transfer of stock of the Corporation not in full compliance with this Section 9.4 shall be null, void and of no legal force or effect.

Section 9.5 Conditions to Transfer. (a) No Transfer of stock of the Corporation shall be effected except (i)(A) pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*") and in accordance with all applicable state securities laws or (B) upon delivery to the Corporation of an opinion of counsel satisfactory to the counsel for the Corporation that such Transfer may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws and (ii) upon delivery to the Corporation of such certificates or other documentation as counsel to the Corporation shall deem necessary or appropriate in order to ensure that such Transfer complies with the Securities Act and all applicable state securities laws.

(b) No Transfer of stock of the Corporation (other than pursuant to a Redemption (as defined in the certificate of incorporation of the Corporation)) shall be effected by any holder of that stock until all amounts due and owing by such holder to National Stock Exchange, Inc. have been paid.

(c) Unless waived in writing by the Board of Directors, no Transfer of stock of the Corporation shall be effected by any holder of that stock if such Transfer would cause the Corporation to be required to register any of its stock under the Act or the Securities Act or to become subject to the reporting requirements of the Act.

(d) Any Transfer of stock of the Corporation not in full compliance with this Section 9.5 shall be null, void and of no legal force or effect.

Section 9.6 Rights of First Refusal. (a) No stockholder shall Transfer or purport to Transfer any shares of the stock of the Corporation except as specifically permitted by this Section 9.6 or otherwise by these By-Laws or unless such stockholder receives a written waiver of this Section 9.6 from the Board of Directors. Any Transfer or purported Transfer not in full compliance with this Section 9.6 shall be null, void and of no legal force or effect.

(b) Subject to the limitations and restrictions in the certificate of incorporation of the Corporation and elsewhere in these By-Laws, a stockholder of the Corporation may Transfer shares of capital stock of the Corporation ("*Shares*") free of the requirements of this Section 9.6 to: (i) any other then record holder of shares of the same class of capital stock of the Corporation or (ii) an Affiliate of the transferring stockholder.

For the purpose of this Section 9.6, "*Affiliate*" shall mean, with respect to the transferring stockholder, (i) any person directly or indirectly controlling, controlled by, or under common control with such transferring stockholder or (ii), if the transferring stockholder is a natural person (x) any parent, spouse, or lineal descendent of such transferring stockholder, or (y) a trust for the primary benefit of one or more of the transferring stockholder or family members described in the preceding clause (x). For purposes of this definition, the terms "controls," "is controlled by," or "is under common control with" means the ownership, directly or indirectly, of record or beneficially, of more than 50% of the outstanding equity interests of a person or entity entitled to vote on any and all matters in which any equity interest of such person or entity is entitled to vote.

(c) If a stockholder desires to Transfer any Shares and solicits or receives a bona fide offer to acquire such Shares that such stockholder desires to accept (an "*Offer*"), then such stockholder shall promptly, but not less than five (5) business days after receipt of the Offer, give the Corporation written notice of the Offer (the "*Notice*"). The Notice shall specify: (i) the number of Shares that are the subject of the Offer (the "*Offered Shares*"); (ii) the identity, residence address and resume of the proposed purchaser of the Offered Shares and of each person or entity that will have a legal or beneficial interest in the Offered Shares (collectively, the "*Proposed Purchasers*"); (iii) all terms of the transaction that is proposed by the Offer; (iv) the price per Share for the Offered Shares, including a detailed description of the terms of payment and of any non-cash consideration to be received by such stockholder (the "*Offer Price*"); and (v) the proposed time and date of closing of the Offer transaction, which shall not be sooner than thirty-one (31) days after receipt by the Corporation of the Notice (the "*Proposed Closing Time*").

(d) Beginning on the date the Corporation receives an effective Notice and ending fifteen (15) days thereafter (the "*Corporation Option Period*"), the Corporation shall have the exclusive right (but not the obligation) to acquire the Offered Shares for the Offer Price upon the terms and conditions proposed in the Offer. The Corporation may exercise its option by delivering, within the Corporation Option Period, to the stockholder who has given Notice a writing stating that the Corporation has elected to acquire the Offered Shares (the "*Notice of Corporation Option Exercise*"). The Board of Directors of the Corporation shall decide whether the Corporation exercises its option. The Notice of Corporation Option Exercise shall stipulate a closing date for the Corporation's acquisition of the Offered Shares that shall be on or before the later of (i) thirty (30) days after the date on which the Corporation received an effective Notice or (ii) the Proposed Closing Time.

(e) If the Offer Price includes non-cash consideration, the Corporation may substitute cash in an amount equal to the approximate fair market value (as reasonably determined by the Board of Directors) of the non-cash consideration. If the Offer contains any terms or provisions that the Board of Directors determines will be more onerous to the Corporation than to the Proposed Purchasers ("*Evasion Terms*"),

the Board of Directors may permit the Corporation to exercise its option described herein and to acquire the Offered Shares without complying with such Evasion Terms; provided, however, the Board of Directors shall not be permitted to reduce, or to extend the time for payment of, cash consideration included in the Offer Price which is (i) not contingent, (ii) fixed in amount, and (iii) payable on a date fixed by the Offer. The provisions of this Section 9.6(e) shall not be avoided by the inclusion in any Offer of terms and provisions that would have the effect (actual or potential) of making the Offer more onerous or expensive if consummated by the Corporation than if consummated by the Proposed Purchasers.

(f) If the Corporation Option Period expires without the election by the Corporation to acquire the entire Offered Shares, then, upon satisfaction of all other conditions to and limitations on the Transfer of the Offered Shares and receipt by the Corporation, at its option, of an opinion of counsel acceptable to the Corporation that the Transfer of the Offered Shares pursuant to the Offer complies with all applicable federal and state securities laws and these By-Laws and the certificate of incorporation of the Corporation, the stockholder who has given the Notice shall be free to transfer the Offered Shares to the Proposed Purchasers by the Proposed Closing Time on the exact terms and conditions set forth in the Offer. Any variation of or amendment, modification, or supplement to such terms and conditions shall create a new offer subject to the provisions of this Section 9.6, and if the Offer transaction is not consummated by the Proposed Closing Time, it shall be a new Offer subject to the provisions of this Section 9.6.

(g) The rights of first refusal set forth in this Section 9.6 shall not apply to a Transfer if such Transfer is by bequest, operation of law or judicial decree upon (i) the death or legal disability of a stockholder (or the spouse of any such stockholder if such stockholder's stock constitutes "community property" under applicable law which grants the deceased spouse (or his or her legal representatives) an interest in or power to dispose of an interest in such stock); (ii) the bankruptcy of a stockholder (or the spouse of any stockholder if such stockholder's stock constitutes "community property" under applicable law); or (iii) the divorce of a stockholder or the annulment or dissolution of a stockholder's marriage solely and to the extent necessary to reflect the community interest of such stockholder's divorced spouse in such stock to the extent such stock constitutes "community property" of the stockholder and his or her spouse under applicable law.

(h) The rights of first refusal set forth in this Section 9.6 shall expire on December 31, 2010, provided, however, this Section 9.6(h) shall not limit or prejudice the rights of first refusal set forth in this Section 9.6 on any Offered Shares as to which a stockholder has provided Notice prior to such date.

Section 9.7 Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares of stock of the Corporation duly endorsed or accompanied by proper evidence of succession, assignment or other authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled to the new certificate, cancel the old certificate and record the transaction upon its books, provided the Corporation or a transfer agent of the Corporation shall not have received a notification of adverse interest and that the conditions of Section 8-401 of Title 6 of the Delaware Code have been met.

Section 9.8 Registered Stockholders. The Corporation shall be entitled to treat the holder of record (according to the books of the Corporation) of any share or shares of its stock as the holder in fact of those shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other party whether or not the Corporation shall have express or other notice of that claim or interest, except as expressly provided by the laws of the State of Delaware.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 Fiscal Year. The fiscal year of the Corporation shall be as determined from time to time by the Board of Directors.

Section 10.2 Dividends. Subject to any provisions of any applicable statute or of the certificate of incorporation, dividends may be declared upon the capital stock of the Corporation by, and in the absolute discretion of, the Board of Directors; and any such dividends may be paid in cash, property or shares of stock of the Corporation, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

Section 10.3 Reserves. Before payment of any dividends, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Board of Directors shall determine to be conducive to the interests of the Corporation, and the Board may modify or abolish any such reserve in the manner in which it was created.

Section 10.4 Subsidiaries. The Board of Directors may constitute any officer of the Corporation its proxy, with power of substitution, to vote the equity interests of any subsidiary of the Corporation and to exercise, on behalf of the Corporation, any and all rights and powers incident to the ownership of those equity interests, including the authority to execute and deliver proxies, waivers and consents.

Section 10.5 Power to Vote Stock. (a) Unless otherwise instructed by the Board of Directors, and subject to Section 10.5(b) below, the Chief Executive Officer of the Corporation shall have the power and authority on behalf of the Corporation to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity (including National Stock Exchange, Inc.) in which the Corporation may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Corporation in connection with the exercise by the Corporation of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board of Directors and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

(b) At any meeting of the stockholders of National Stock Exchange, Inc. held for the purpose of electing directors of National Stock Exchange, Inc., or in the event written consents are solicited or otherwise sought from the stockholders of National Stock Exchange, Inc. with respect thereto, the Corporation shall cause all outstanding shares of National Stock Exchange, Inc. owned by the Corporation and entitled to vote at an election of directors to be voted in favor of only those ETP Holder Directors and CBOE Directors (as such terms are defined in the By-Laws of National Stock Exchange, Inc.) nominated in accordance with the certificate of incorporation and By-Laws of National Stock Exchange, Inc. and, with respect to any such written consents, shall cause to be validly executed only such written consents electing only such directors.

Section 10.6 Severability. If any provision of these By-Laws, or the application of any provision of these By-Laws to any person or circumstances, is held invalid, the remainder of these By-Laws and the application of such provision to other persons or circumstances shall not be affected.

AMENDED [ARTICLES] AND RESTATED CERTIFICATE OF INCORPORATION
OF
NATIONAL STOCK EXCHANGE, INC.

[ARTICLE I.**]** The name of the corporation is National Stock Exchange, Inc. (the "Corporation"). The Corporation was originally incorporated under the name NSX Delaware Merger Sub, Inc., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on December 12, 2005. Pursuant to, and being duly adopted in accordance with, Sections 242 and 245 of the General Corporation Law of the State of Delaware, this amended and restated Certificate of Incorporation hereby amends and restates the Certificate of Incorporation of this Corporation to read in its entirety as follows:

Name

FIRST: The name of the Corporation is NATIONAL STOCK EXCHANGE, INC.

Registered Office

[ARTICLE II.**]** SECOND: The **[**principal office**]** address of the initial registered office of the Corporation in **[**Ohio**]** the State of Delaware is 1209 Orange Street, in the City of **[**Cincinnati, Hamilton County, Ohio**]** Wilmington, State of Delaware 19801, County of New Castle, and the name of its initial registered agent at that address is The Corporation Trust Company.

Purpose

[ARTICLE III.**]** THIRD: The purpose or purposes **[**for which**]** of the Corporation is **[**formed are:**]**

[1. To maintain and provide a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood.**]**

[2. To**]** to engage**[**, in furtherance of the foregoing,**]** in any lawful act or activity for which corporations **[**not for profit**]** may be organized under the **[**law of the State of Ohio**]** General Corporation Law of Delaware.

[ARTICLE IV. These Amended Articles of Incorporation supersede the existing Articles of Incorporation of the Corporation.**]**

Authorized Stock

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock having a par value of $.01 per share. At all times, all of the voting stock of the Corporation shall be owned by NSX Holdings, Inc., a Delaware corporation.

Board of Directors

FIFTH: (a) *General*. The Corporation shall be managed by the Board of Directors which shall exercise all powers conferred to it by the laws of the State of Delaware. In furtherance of and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt the bylaws and the rules of the Corporation and to amend or repeal any provision thereof subject to such conditions as the bylaws or rules may provide. Directors shall be elected by the stockholders of the Corporation. Elections of directors of the Corporation need not be by written ballot unless the bylaws so provide.

(b) *Removal of Directors*. No director or class of directors may be removed from office by a vote of the stockholders at any time except for cause. For purposes of this section, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Duration

SIXTH: The duration of the Corporation shall be perpetual.

Bylaws

SEVENTH: Except as may be expressly provided otherwise in the bylaws of the Corporation, the Board of Directors shall have the power to adopt, amend or repeal bylaws and rules of the Corporation. The bylaws of the Corporation may also be amended or repealed, or new bylaws of the Corporation may be adopted, by action taken by the stockholders of the Corporation. Any change to the bylaws that is required to be approved by or filed with the United States Securities and Exchange Commission (the "Commission") before it may become effective shall not become effective until the procedures of the Commission necessary to make it effective shall have been satisfied.

Limitation of Director Liability

EIGHTH: To the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date this Certificate of Incorporation is adopted or as such law may later be amended, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Action without Meeting

NINTH: Action may be taken by the stockholders of the Corporation, without a meeting, by written consent as and to the extent provided at the time by the General Corporation Law of Delaware, provided that the matter to be acted upon by

such written consent previously has been directed by the Board of Directors to be submitted to the stockholders for their action by written consent.

Compromise or Other Arrangement

TENTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as such court directs. If a majority in number representing three fourths in value of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors and/or on all the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

Amendment of Certificate of Incorporation

ELEVENTH: The Corporation reserves the right to amend this Certificate of Incorporation, and to change or repeal any provision of the Certificate of Incorporation, in the manner prescribed at the time by statute (provided, however, that any such amendment, change or repeal must be first approved by the Board of Directors), and all rights conferred upon stockholders in this Certificate of Incorporation are granted subject to this reservation. Any change to the Certificate of Incorporation that is required to be approved or filed with the Commission before it may become effective shall not become effective until the procedures of the Commission necessary to make it effective shall have been satisfied.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Incorporation to be executed this _____ day of _____, 2006.

NATIONAL STOCK EXCHANGE, INC.

By: _____
Name: _____
Title: _____

[CODE OF REGULATIONS (] AMENDED AND RESTATED BY-LAWS[)]
OF
NATIONAL STOCK EXCHANGE, INC.
(a Delaware corporation)

ARTICLE I[. Definitions]

DEFINITIONS

[Section 1.] Section 1.1. Definitions. When used in **[**this Code of Regulations (**]** these By-Laws**[)]**, unless the context otherwise requires **[**—**]**:

A.

[(a) The term "Access Participant Member" means either a person who was an access nonmember prior to the effective date of these By-Laws or a person who, pursuant to the provisions of Article II of these By-Laws, has applied for, and been admitted to, membership as an access participant subsequent to the effective date of these By-Laws.**]**

Act

[(b)**]** (1) The term "Act" shall mean**[**s**]** the Securities Exchange Act of 1934, as amended.

[(c) The term "adverse action" means any action taken by the Exchange which affects adversely the rights of any member, applicant for membership or person associated with a member (including the denial of membership and the barring of any person from becoming associated with a member thereof) and any prohibition or limitation by the Exchange imposed on any person with respect to access to services offered by the Exchange, or a member thereof. This term does not include disciplinary actions for violations of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of these By-Laws or Exchange Rules or any interpretation thereof or resolution or order of the Board or appropriate Exchange committee which has been filed with the Commission pursuant to Section 19(b) of the Act and has become effective thereunder. Review of disciplinary actions is provided for in Chapter VIII of the Exchange Rules.**]**

B.

Board

[(d)**]** (1) The term "Board" shall mean**[**s**]** the Board of Directors of the Exchange.

[(e)**]** (2) The term "By-Laws" shall mean**[**s**]** the **[**Code of Regulations (By-Laws)**]** bylaws of the Exchange.

C.

CBOE

[(f)**]** (1) The term "CBOE" shall mean the Chicago Board Options Exchange, Incorporated.

CBOE member(s)

[(g)**]** (2) The term "CBOE member(s)" shall mean an individual CBOE member or a CBOE member organization that is a regular member of CBOE as described in **[**Article II, Section 2.1(b) of**]** the CBOE Constitution or that is a special member of CBOE as described in **[**Article II Section 2.1(d) of**]** the CBOE Constitution as such CBOE members may exist from time to time.

Commission

[(h)**]** (3) The term "Commission" shall mean**[**s**]** the United States Securities and Exchange Commission.

D. Reserved

E.

ETP Holder

(1) The term "ETP Holder" shall mean any individual, corporation, partnership, limited liability company or other entity that holds an equity trading permit issued by the Exchange to trade securities on the market operated by the Exchange. An ETP Holder will have the status of a "member" of the Exchange as that term is defined in Section 3 of the Act.

ETP Holder Director

(2) The term "ETP Holder Director" shall mean a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is an ETP Holder.

Exchange

[(i)**]** (3) The term "Exchange" shall mean**[**s**]** National Stock Exchange, Inc., a Delaware Corporation.

[(j) The term "Exchange Rules" means those rules adopted by the Exchange pursuant to the provisions of Article X of these By-Laws.**]**

F. – H. Reserved

I.

Independent Director

[(k)**]** (1) The term "Independent Director" shall mean**[**s**]** a member of the Board that the Board has determined to have no material relationship with the Exchange or any

affiliate of the Exchange, or any **[**member**]** ETP Holder **[**of the Exchange**]** or any affiliate of any such **[**member**]** ETP Holder, other than as a member of the Board.

J. – O. Reserved

P.

Person

[(l)**]** (1) The term "person" shall mean**[**s**]** a natural person, **[**company**]** partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

[(m) The terms "person associated with a member" or "associated person of a member" mean any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with the member, of any employee of such member, except that any person associated with a member whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.

(n) The term "Proprietary Member" means a person who was a "Regular Member" prior to the effective date of these By-Laws or a person who, pursuant to the provisions of Article II of these By-Laws, has applied for, and been admitted to, membership as a proprietary member subsequent to the effective date of these By-Laws.

(o) The term "statutory disqualification" shall mean any statutory disqualification as defined in the Act.**]**

Q. Reserved

R.

Rules

(1) The term "Rules" or "Exchange Rules" shall mean the rules of the Exchange adopted by the Exchange pursuant to Section 3.1(b) of the By-Laws.

S.

Securities Act

(1) The term "Securities Act" shall mean the Securities Act of 1933, as amended.

Subsequent Closing

(2) The term "Subsequent Closing" shall have the meaning given to it in the Termination of Rights Agreement between CBOE and National Stock Exchange (a predecessor in interest to the Exchange) dated as of September 27, 2004.

ARTICLE II[. Exchange Membership

Section 1. Classes of Exchange Members

The membership of the Exchange shall be comprised of two classes of members:

(i) Proprietary Members

(ii) Access Participant Members ("Access Participants")

Section 2. Rights, Privileges and Duties of Members

(a) Each class of members shall enjoy the customary incidents of exchange membership and shall have all the same rights, privileges and duties of any other member of the Exchange, except those rights, privileges and duties which are specifically denied a particular class of members by these By-Laws or Exchange Rules.

(b) Except as otherwise provided in the Rules of the Exchange, Access Participants shall be permitted to execute transactions on the Exchange only through the facilities of a Proprietary Member.

Section 3. Obligations of Exchange Members and the Exchange

In addition to all other obligations of Exchange membership, all members, as a condition of membership, shall agree to be regulated by the Exchange and shall recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of these By-Laws, Exchange Rules and with the provisions of the Act and regulations thereunder, and that, subject to orders and rules of the Commission, the Exchange is required to discipline members and persons associated with members for violations of the provisions of these By-Laws, Exchange Rules and the Act and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fines, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Section 4. Membership Eligibility

Except as hereinafter provided, any registered broker or dealer or any natural person associated with a registered broker or dealer shall be eligible to be a member of the Exchange. Any person may become an associated person of a member of the Exchange.

Section 5. Restrictions on Admittance to or Continuance in Membership and Association

5.1. General Restrictions

(a) No person may become a member of the Exchange or continue as a member in any capacity on the Exchange where:

(1) such person is other than a natural person and is not a registered broker or dealer;

(2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer; or

(3) such person is subject to a statutory disqualification, except that a person may become a member of the Exchange or continue as a member where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become a member.

(b) No natural person or registered broker or dealer shall be admitted as, or be entitled to continue as, a member or an associated person of a member unless such person or broker or dealer meets the standards of training, experience and competence as the Exchange may prescribe. Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person applying for registration with the Exchange as an associated person of the member.

(c) No registered broker or dealer shall be admitted as, or be entitled to continue as, a member of the Exchange if such broker or dealer

(i) fails to comply with either the financial responsibility requirements established by Rule 15c3-1 under the Act, except that in no case shall a member maintain net capital less than $250,000, or such other financial responsibility and operational capability requirements as may be established by Exchange Rules; or

(ii) fails to adhere to the Rules of the Exchange relating to the maintenance of books and records or those rules of other self-regulatory organizations of which such broker or dealer is or was a member; or

(iii) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than six months; or

(iv) has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years; or

(v) has engaged in an established pattern of failure to pay just debts.

(d) No person shall be admitted as a member or as an associated person of a member where it appears that such person has engaged, and there is a reasonable likelihood that such person again may engage, in acts or practices inconsistent with just and equitable principles of trade.

(e) No person shall become an associated person of a member unless such person agrees:

(i) to supply the Exchange with such information with respect to such person's relationships and dealings with the member as may be specified by Exchange Rules; and

(ii) to permit examination of such person's books and records by the Exchange to verify the accuracy of any information so supplied.

Interpretations and Policies

.01 (a) The Exchange requires the successful completion of a written proficiency examination to enable it to examine and verify that prospective members and associated persons of members have adequate training, experience and competence to comply with the Rules and policies of the Exchange.

(b) The Exchange may, in exceptional cases and where good cause is shown, waive such proficiency examinations as are required by the Exchange upon written request of the applicant and accept other standards as evidence of an applicant's qualifications. Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.

(c) The Exchange requires the General Securities Representative Examination ("Series 7") in qualifying persons seeking registration as general securities representatives.

.02 The Exchange uses the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), revised to include service of process consent language, as part of its procedure for registration and oversight of its member firm personnel.

.03 An Exchange member may only give-up its own or another Exchange member's clearing number when executing a transaction on the Exchange; provided, however, that a member may give-up a non-member’s clearing number when executing a transaction on the Exchange if (i) the non-member (a) is a registered broker-dealer and is a self-clearing member of the National Securities Clearing Corporation (“NSCC”) and (b) consents to the disciplinary jurisdiction of the Exchange and agrees to adhere to all applicable Exchange By-Laws and Rules; and (ii) the executing member’s guaranteeing clearing firm, who must be an Exchange member, agrees to accept financial responsibility for all transactions given-up to the non-member, including but not limited to, responsibility to clear and settle the non-member’s trades in the event that the non-member or the NSCC does not accept any such trades.

5.2. Certain Restrictions Applicable to Proprietary Members Only

(a) No applicant for proprietary membership who fails to purchase and own a certificate of proprietary membership after the Exchange has approved such person's application shall become a Proprietary Member of the Exchange. A CBOE member who became a Proprietary Member without certificate prior to the effective date of this provision of these By-Laws "CBOE Exerciser Member") shall have ninety days from such effective date to purchase a certificate of proprietary membership. During such ninety day period, a CBOE Exerciser Member who has not yet purchased a certificate of proprietary membership shall have the rights and obligations of a Proprietary Member without certificate as such rights and obligations were in effect prior to the effective date of this provision of these By-Laws. At the conclusion of the ninety day period, any CBOE Exerciser Member who does not then own a certificate of proprietary membership shall cease to be a Proprietary Member of the Exchange, and may not again become a Proprietary Member of the Exchange without first complying with all of the procedures and requirements for proprietary membership set forth in these By-Laws and the Exchange Rules.

(b) The maximum number of certificates of proprietary membership authorized is 275, of which not less than 15 shall be issued and outstanding at all times.

Section 6. Application Procedures for Admission as a Member or as an Associated Person of a Member

(a) Application for membership in any capacity on the Exchange shall be made to the Exchange's Secretary and shall contain the following:

(1) An agreement to abide by, comply with, and adhere to the provisions of the Exchange's Amended Articles of Incorporation, these By-Laws, the Rules of the Exchange and all orders and decisions of the Exchange's Board and penalties imposed by the Board, and any duly authorized committee; provided, however, that such agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act.

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Exchange.

(3) An agreement that the Exchange and its officers, employees and members of its Board and of any committee shall not be liable, except for willful malfeasance, to the applicant or to any other person, for any action taken by such Director, officer or member in his official capacity, or by any employee of the Exchange while acting within the scope of his employment, in connection with the administration or enforcement of any of the provisions of these By-Laws, Rules of the Exchange or any penalty imposed by the Exchange, its Board or any duly authorized committee.

(4) An agreement to maintain and make available to the Exchange, its authorized employees and its Board or committee members such books and records as may be required to be maintained by the Commission or Exchange Rules.

(5) Such other reasonable information with respect to the applicant as the Exchange may require.

(b) Applications for association with a member shall be made on Commission Form U-4, 17 CFR 249.502, and such other forms as the Exchange may prescribe.

(c) Applications received by the Exchange's Secretary shall be referred to the Exchange's Membership Committee and, if a majority of the Committee is satisfied that the applicant is qualified for membership pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the applicant of the Committee's determination, and the applicant shall be admitted to membership.

(d) If a majority of the Membership Committee is not satisfied that the applicant is qualified for membership pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the Board and the applicant of the grounds for denying membership. Within 30 days of such notification, the Board may reverse the determination of the Membership Committee that the applicant is not qualified for membership; provided, however, that if at the end of the 30-day period a majority of the Board has not specifically reversed the Committee's determination, the Secretary of the Exchange shall promptly notify the applicant, in writing, of the grounds for denying membership. If during the 30-day period of majority of the Board specifically determines to reverse the Membership Committee's determination to deny membership, the Board shall promptly notify the Secretary of the Exchange who shall promptly notify the applicant that the Board has granted the applicant's admission to membership.

(e) In considering applications for membership, the Membership Committee, the Board and the Exchange's Secretary shall adhere to the following procedures:

(1) The Membership Committee shall act upon the application within 90 days of receipt of such application.

(2) Where a membership application is granted by the Board the Exchange's Secretary shall promptly notify the applicant.

(3) The applicant shall be afforded an opportunity to be heard on the denial of membership pursuant to the provisions of Exchange Rules governing adverse action.

(f) Except where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to review and act upon applications for associated persons of a member, the procedure set forth in this Article shall govern the processing of any such applications.

Section 7. Procedures for Discontinuance of Exchange Membership or Association with a Member

Members or associated persons of members may maintain membership in the Exchange or association with a member only so long as they possess all the qualifications for membership or association. Except where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to monitor the continued qualifications of a member or an associated person of a member, when the Membership Committee has reason to believe that a member or associated person of a member fails to meet such qualifications, the Committee may act to revoke such person's membership or association. Such action shall be instituted under and governed by the provisions of Exchange Rules governing adverse action.

Section 8. Voluntary Termination of Membership

An Exchange member may voluntarily terminate such person's membership only by a written resignation addressed to the Exchange's Secretary. Such resignation shall not take effect until 30 days after receipt thereof and until all indebtedness due the Exchange shall have been paid in full and until any Exchange disciplinary action brought against the member has reached a final disposition and any examination of such member in process is completed; provided, however, that the Board may declare a resignation effective at any time.

Section 9. Transfer, Cancellation or Sale of Membership

9.1. Transfer and Cancellation

Access Participants may not transfer or sell or encumber their memberships or any interest therein.

9.2. Proprietary Membership Lien

Every certificate of proprietary membership shall be subject to a lien, prior to any others, to secure, first, payment in full of all indebtedness of the member to the Exchange, and second, payment in full of all indebtedness of the member to any member of the Exchange to the extent allowed by the Board.

9.3. Sales of Certificates of Membership

A certificate of proprietary membership may be sold by a Proprietary Member or, in the event of the death of a Proprietary Member, his legal representative, to a person whose application for proprietary membership has been approved by the Exchange, provided that the Proprietary Member or his legal representative, as the case may be, has paid in full

(1) all dues, assessments, fines and other obligations to the Exchange; and

(2) all claims of creditors who are members of the Exchange whose claims arise from transactions in securities, whether or not effected on the Exchange (but claims arising out of Exchange transactions shall have priority), if such claims are both filed with the Board prior to Exchange approval of the applicant and allowed by the Board. In addition, with Board approval, a registered national securities exchange may purchase, hold or resell certificates of proprietary membership but may not become a member of the Exchange.

Section 10. Membership Meetings

10.1. Annual Meeting

(a) The annual meeting of the membership shall be held on the second Monday in January in each year, or as soon thereafter as practicable, and shall be held at a place and time determined by the Board.

(b) The written notice of the annual meeting shall state the time and place thereof and shall be given to all members by personal delivery or by mail not less than five days before the date of the meeting.

10.2. Special Meetings

(a) A special meeting of the membership may be held

(i) upon written call of the Chairman of the Board, or the President, or, in case of the President's absence, death or disability, the vice President, authorized to exercise the authority of the President, or a majority of the Board, or

(ii) by a petition of one-third of the total Proprietary Members of the Exchange filed with the Secretary of the Exchange.

(b) The written notice of a special meeting shall state the time, place and purpose thereof and shall be given to all members by personal delivery or by mail not less than five days before the date of the meeting.

10.3. Quorum

The presence in person or by proxy of one-half of the total voting membership of the Exchange shall constitute a quorum at any meeting.

10.4. Voting at Membership Meetings

Except as otherwise provided in these By-Laws, each Proprietary Member shall be entitled to one vote at membership meetings. Access Participants shall not be entitled to vote. In all instances, members shall act by majority vote of those members present (in person or by proxy) and entitled to vote at any duly called meeting at which a quorum is present.

10.5. Proxies

Voting at elections and on other matters may be conducted by mail. A person entitled to vote may cast his vote in person or may otherwise act by proxy or proxies appointed by a writing signed by such person. A telegram or cablegram appearing to have been transmitted by such person, or a photograph or photostat or similar reproduction of a writing appointing a proxy, shall be a sufficient writing.

10.6. Action Without a Meeting

(a) Any action which may be authorized or taken at a meeting may be authorized or taken without a meeting with the written consent of the majority of those members entitled to vote.

(b) Written notice of any action taken without a meeting shall be given to those members entitled to vote thereon who have not consented thereto by personal delivery or by mail not less than five days after such action has been taken.**]**

REGISTERED OFFICE AND AGENT; OFFICES

Section 2.1. Registered Office and Registered Agent. The Exchange shall maintain a registered office in the State of Delaware at such location as shall from time to time be determined by the Board. The registered agent of the Exchange in the State of Delaware shall be such person or entity as shall from time to time be determined by the Board.

Section 2.2. Other Offices. The Exchange may also have offices at such other locations both within and without the State of Delaware as the Board may from time to time determine or the business or purposes of the Exchange may require.

ARTICLE III[. Dues, Assessments and Other Charges

The Exchange may prescribe such reasonable assessments, dues or other charges as it may, in its discretion, deem appropriate. Such assessments and charges shall be equitably allocated among members, issuers and other persons using the Exchange's facilities.

A**RTICLE IV. Securities Listed on the Exchange**

Section 1. Listing of Securities

1.1. Applications

All applications for listing on the Exchange will be submitted to the Exchange's Secretary on a form prescribed by the Exchange.

1.2. Procedure

The Secretary of the Exchange shall refer such applications to the Exchange's Securities Committee. In passing on applications, the Securities Committee shall determine whether the applicant meets the requirements for listing and, in making such determination, the Committee shall adhere to the following procedures:

(a) Applications received by the Exchange's Secretary shall be referred to the Securities Committee and, if a majority of the Committee is satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the applicant of the Committee's determination, and the applicant will be approved for listing on the Exchange.

(b) If a majority of the Securities Committee is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Article, the Committee shall promptly notify the Secretary of the Exchange of such determination, and the Secretary shall promptly notify, in writing, the Board and the applicant of the grounds for denying listing. Within 30 days of such notification, the Board may reverse the determination of the Securities Committee that the applicant is not qualified for listing; provided, however, that if at the end of the 30-day period a majority of the Board has not specifically reversed the Committee's determination, the Secretary of the Exchange shall promptly notify the applicant, in writing, of the grounds for denying listing. If during the 30-day period a majority of the Board specifically determines to reverse the Securities Committee's determination to deny listing, the Board shall promptly notify the Secretary of the Exchange who shall promptly notify the applicant that the Board has granted the applicant's application for listing.

(c) In considering applications for listing, the Securities Committee, the Board and the Exchange's Secretary shall adhere to the following procedures:

(1) The Securities Committee shall act upon the application within 90 days of receipt of such application.

(2) Where a listing application is granted by the Board, the Secretary shall promptly notify the applicant.

(3) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to the provisions of Exchange Rules governing adverse action.

(4) The applicant must satisfy the requirements of subsection 1.4 of this Article IV, including any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.

1.3. Requirements

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

(a) In the case of common stock have:

(1) net tangible assets of at least $2,000,000;

(2) at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;

(3) outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;

(4) demonstrated net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income; and

(5) been actively engaged in business and have been so operating for at least three (3) consecutive years.

(b) In the case of preferred stock:

(1) The listing of issues is considered on a case by case basis, in light of the suitability of the issue for trading on the Exchange. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act.

(2) An issuer applying for listing of a preferred stock is expected to meet the following criteria:

(i) The issuer appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in paragraph 1.3(a) above.

(ii) In the case of an issuer whose common stock is listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act, the following guidelines apply:

Shares Publicly Held..... 100,000
Aggregate Market Value/Price..... $2,000,000/$10

For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

Preferred Shares Publicly Held..... 400,000
Public Round-Lot Holders..... 800
Aggregate Market Value/Price..... $4,000,000/$10

(iii) The Exchange will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(c) In the case of warrants:

(1) at least 250,000 outstanding, exclusive of the holdings of officers and directors; and

(2) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(d) In the case of bonds:

(1) a principal amount outstanding of at least $2,000,000;

(2) have at least an aggregate market value of at least $2,000,000;

(3) have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; and

(4) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(e) In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections or in the Exchange Rules, provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

(1) the issuer has assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in paragraph (a), the Exchange generally will require the issuer to have the following:

(i) assets in excess of $200 million and stockholders' equity of at least $10 million; or

(ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(2) the issue have a minimum public distribution of one million trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;

(3) the issue have a principal amount/aggregate market value of not less than $20 million;

(4) where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; and

(5) where the instrument contains redemption provisions, the redemption price may not be below $3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection e, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member compliance responsibilities when handling transactions in such securities.

(f) Limited Partnerships - No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(1) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended; and

(2) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

1.4. Listing Standards Relating to Audit Committees

(a) In addition to the requirements contained in subsection 1.3, each issuer must have an audit committee. The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this subsection 1.4 or any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A-3 of the Act:

(1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.

(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:

(i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and

(ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:

(1) any determination that the issuer has made regarding the independence of its audit committee members;

(2) the financial literacy of the audit committee members;

(3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(4) the annual review and reassessment of the adequacy of the audit committee charter.

(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A-3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.

(d) For securities listed on the Exchange prior to November 25, 2003, an issuer shall have until the earlier of its first annual shareholders meeting after January 15, 2004, or October 31, 2004, to cure any defects that would be the basis for a prohibition from continued listing.

(e) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this subsection 1.4 or Rule 10A-3 of the Act.

(f) In connection with a review of standards designed to ensure independence and strengthen corporate governance practices, the Exchange intends in the near future to adopt additional listing policies and requirements pertaining to issuer corporate governance, including standards for independence of board directors, independence and

responsibilities of nominating, compensation and other board committees, codes of conduct, and shareholder approval of equity compensation plans. These additional policies and requirements will be reflected within the Exchange Rules.

Section 2. Unlisted Trading Privileges

Notwithstanding the requirements for listing set forth in Section 1.3 of this Article IV, the Exchange may seek and continue unlisted trading privileges on any security as to which unlisted trading privileges may be extended in accordance with Section 12(f) of the Act and the rules thereunder.

Section 3. Delisting of Securities

3.1. Suspension and/or Delisting by Exchange

(a) The Board may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security. Any issuer or any other person aggrieved by such action may seek relief pursuant to the Exchange Rules governing adverse action.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) failure to comply with the listing standards and agreements; or

(2) sustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature.

Notwithstanding the foregoing, the Board may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

3.2. Delisting by Issuer

A security, which in the opinion of the Board is eligible for continued listing, may be removed from listing upon the request or application of the issuer provided that the issuer submits a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another national securities exchange registered under Section 6 of the

Act having similar requirements or on a facility of a national securities association registered under Section 15A of the Act having similar requirements.

ARTICLE V.

Exchange Organization and Administration

Section 1. Board of Directors]

BOARD OF DIRECTORS

Section 3.1. Powers. (a) The business and affairs of the Exchange shall be managed by its Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to these By-Laws or the Rules. The Board, acting in accordance with the terms of these By-Laws and the Rules, shall be vested with all powers necessary for the government of the Exchange as an "exchange" within the meaning of the Act, the regulation of the business conduct of the ETP Holders, and the promotion of the welfare, objects and purposes of the Exchange.

(b) The Board shall have the power to adopt, amend or repeal the Rules in accordance with Section 8.2.

(c) The Board shall exercise all such powers of the Exchange and do all such lawful acts and things as are not by law, the Certificate of Incorporation, these By-Laws or the Rules, directed or required to be exercised, done or approved by the stockholders of the Exchange or the ETP Holders.

Section 3.2. **[**(a)**]** General Composition. (a) **[**The management and administration of the affairs of the Exchange shall be vested in a Board of Directors, which shall be composed**]** Subject to Section 3.2(b) and Section 3.3, the Board shall consist of thirteen (13) **[**(subject to Section 1(b)) voting D**]**directors (**[**a majority of**]** at least 50% of whom **[**will**]** shall be **[**i**]**Independent Directors **[**pursuant to Section 1(b)**]**)**[**,**]** and shall be comprised as follows:

(i) **[**t**]**The Chief Executive Officer of the Exchange;

(ii) **[**t**]**Three (3) **[**Proprietary Members, or executive officers of Proprietary Member organizations ("Member**]** ETP Holder Directors**[**")**]**;

(iii) **[**six**]** Seven (7) Independent Directors (subject to increase under Section **[**1(b)**]** 3.3 below); and

(iv) **[**three**]** Two (2) executive officers of CBOE, CBOE members or executive officers of CBOE member organizations ("CBOE Directors").

(b) The Board may, by resolution, add or remove director positions to the Board, provided that the number of director positions shall not be less than thirteen (13) nor more than twenty (20), and provided further that no removal of a director

position shall have the effect of shortening the term of any incumbent director. The Board at all times shall include the Chief Executive Officer of the Exchange, at least 50% Independent Directors and such number of ETP Holder Directors that equals the greater of (i) three (3) or (ii) such number as is necessary to comprise at least 20% of the Board. Newly-created director positions pursuant to this Section 3.2(b) shall be filled: first, by Independent Directors, to the extent necessary for the Board to consist of at least 50% Independent Directors, second, by ETP Holder Directors to the extent necessary for the Board to consist of at least 20% ETP Holder Directors, and third, by persons who do not qualify as Independent Directors ("At-Large Directors"), for the remainder of any newly-created director positions of the Board that are not filled with Independent Directors or ETP Holder Directors pursuant to this Section 3.2(b).

(c) **[**Excepting affiliations with national securities exchanges, n**]**No two or more **[**D**]**directors may be partners, officers **[**of**]** or directors of the same person or be affiliated with the same person, unless such affiliation is with a national securities exchange or NSX Holdings, Inc. No director need be a stockholder.

Section 3.3. **[**(b)**]** Changes in Composition on the Occurrence of Certain Events. Notwithstanding the provisions of Section **[**1(a) of this Article V**]** 3.2:

[(i) The current terms of the Directors currently serving as of the effective date of this provision of these By-laws (the "Effective Date") shall be unchanged.

(ii) Following the Effective Date, the three new Independent Directors who are authorized by Section 1(a)(iii) ("New Independent Directors") shall be either (as determined by the Board) (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that each candidate for New Independent Director shall be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in accordance with Sections 2.1(c) and 3 of this Article V.

(iii) On the date of the first Subsequent Closing (as defined below) to occur after January 18, 2005, the number of positions on the Board to be filled by CBOE Directors shall be reduced from three to two and the number of positions to be filled by Independent Directors shall be increased from six to seven. Following the first Subsequent Closing, a new Independent Director shall be either (as determined by the Board) (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that the candidate for Independent Director shall be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in accordance with Sections 2.1(c) and 3 of this Article V.

(iv) If no Subsequent Closing has occurred prior to February 15, 2006, then in order to achieve a majority of Independent Directors serving on the Board, the Board may, in its discretion, add up to two new Independent Directors and thereby increase the number of Directors serving on the Board from thirteen to not more than fifteen. In such event the two new Independent Directors authorized hereby shall be either (as determined by the Board (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that each candidate for Independent Director shall be submitted by the

Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in accordance with Sections 2.1(c) and 3 of this Article V.

(v)**]** (a) On the date of the second Subsequent Closing to occur after January 18, 2005, the number of positions on the Board **[**to be**]** filled by CBOE Directors shall be reduced from two (2) to one (1), and the **[**Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors**]** vacated position shall thereafter be filled by a director whose qualifications shall be determined by the Board, subject to the limitation that such director shall be an At-Large Director unless an Independent Director is required in order to maintain at least 50% Independent Directors then serving on the Board. Following the second Subsequent Closing, **[**a new**]** an At-Large Director or any Independent Director, as the case may be, may be either (as determined by the Board) **[**(y) elected or appointed in accordance with Sections 2.1 and 2.2 of this Article V,**]** (i) nominated and elected in accordance with Section 3.5, except that the requisite action **[**may**]** shall be taken as soon as practical, or (**[**z**]**ii) appointed by the Board in accordance with Section**[**s 2.1(c) and 3 of this Article V**]** 3.7.

[(vi)**]** (b) On the earliest to occur of (**[**A**]**a) the date on which CBOE owns less than five percent (5%) of the outstanding **[**certificates of proprietary membership of the Exchange**]** capital stock of NSX Holdings, Inc. or (**[**B**]**b) the third anniversary of the fourth Subsequent Closing (the earliest of these to occur being the "CBOE Withdrawal Date"), the number of positions on the Board **[**to be**]** filled by CBOE Directors shall be reduced from one (1) to zero (0), and the **[**Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors**]** vacated position shall thereafter be filled by an At-Large Director unless an Independent Director is required in order to maintain at least 50% Independent Directors then serving on the Board. The remaining CBOE Director shall be deemed to have resigned from the Board as of the CBOE Withdrawal Date. Following the CBOE Withdrawal Date, **[**a new**]** an At-Large Director or an Independent Director, as the case may be, may be either (as determined by the Board) **[**(y) elected or appointed in accordance with Sections 2.1 and 2.2 of this Article V**]** (i) nominated and elected in accordance with Section 3.5, except that the requisite action **[**may**]** shall be taken as soon as practical, or (**[**z**]**ii) appointed by the Board in accordance with Section**[**s 2.1(c) and 3 of this Article V**]** 3.7.

[(vii) "Subsequent Closing" has the meaning given to it in the Termination of Rights Agreement between CBOE and the Exchange dated as of September 27, 2004.

Section 2. Election of Directors]

Section 3.4. **[2.1.]** Terms of Office. (a) The **[**b**]**Board term of the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Exchange.

(b) The **[**Member**]** ETP Holder Directors shall be divided into three (3) classes, designated Class I, Class II and Class III, each initially composed of no more than one (1) **[**Member**]** ETP Holder Director. **[**Each Member**]** The ETP Holder Directors

shall **[**be elected for a term expiring at the third successive annual meeting of the membership, or when such Director's successor is thereafter elected and qualified, and shall be identified as being of the same class as the Director such Director succeeds.**]** serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, the ETP Holder Directors in Class I shall initially hold office until the first annual meeting of stockholders of the Exchange, the ETP Holder Director in Class II shall initially hold office until the second annual meeting of stockholders of the Exchange, and the ETP Holder Director in Class III shall initially hold office until the third annual meeting of stockholders of the Exchange. Commencing with the first annual meeting of stockholders, the term of office for each class of ETP Holder Directors elected at each annual meeting shall be three years from the date of election. Notwithstanding the foregoing, in the case of any new **[**Member**]** ETP Holder Director **[**subject to initial election or appointment pursuant to**]** as contemplated by Section **[**1**]**3.2(b) **[**of this Article V**]**, such director shall be added to a class, as determined by the Board at the time of such **[**D**]**director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such **[**D**]**director has been added. All ETP Holder Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, removal or disqualification. **[**In no case will any Member Director be added to a class that is already composed of two Member Directors.**]**

(c) The Independent Directors shall be divided into three (3) classes, **[**each initially composed of no more than two Independent Directors.**]** designated Class I, Class II and Class III, which shall be as nearly equal in number as the total number of Independent Directors then serving on the Board permits. **[**Each Independent Director shall be selected for a term expiring at the third successive annual meeting of the membership or when such Director's successor is thereafter elected and qualified, and shall be identified as being of the same class as the Director such Director succeeds.**]** The Independent Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, Independent Directors in Class I shall initially hold office until the first annual meeting of stockholders of the Exchange, Independent Directors in Class II shall initially hold office until the second annual meeting of stockholders of the Exchange, and Independent Directors in Class III shall initially hold office until the third annual meeting of stockholders of the Exchange. Commencing with the first annual meeting of stockholders, the term of office for each class of directors elected at each annual meeting shall be three years from the date of their election. Notwithstanding the foregoing, in the case of any new Independent Director **[**subject to initial election or appointment pursuant to**]** as contemplated by Section **[**1**]**3.2(b) or Section 3.3 **[**of this Article V**]**, such **[**D**]**director shall be added to a class, as determined by the Board at the time of such **[**D**]**director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such **[**D**]**director has been added. All Independent Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.

(d) The term of a CBOE Director shall be one (1) year from the date of such director's election or until a successor is elected and qualified, subject to earlier removal pursuant to these By-Laws.

(e) In the case of any At-Large Director as contemplated by Section 3.2(b) or Section 3.3, such director shall be added to a class, as determined by the Board at the time of such At-Large Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such At-Large Director has been added. All At-Large Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.

[2.2. Candidate Selection

(a)**]**

Section 3.5. Nomination and Election. (a) Subject to subsection (g) of this Section 3.5, **[**The**]** candidates for election **[**to the Board as Member Directors**]** as a director shall be **[**selected**]** nominated by the Governance and Nominating Committee as follows**[**.**]**:

(b) The Governance and Nominating Committee each year shall **[**select**]** nominate directors for each director position standing for election at the annual meeting of stockholders that year. **[**at least one candidate for the position to be voted upon. An additional candidate or candidates may be nominated by a petition signed by ten percent or more of the Proprietary Members and delivered.**]** For positions requiring persons who qualify as ETP Holder Directors, the Governance and Nominating Committee shall nominate only those persons whose names have been approved and submitted by the ETP Holder Director Nominating Committee and (to the extent required by subsection (e) below) presented to, and approved by, the ETP Holders pursuant to the procedures set forth below in this Section 3.5.

(c) The ETP Holder Director Nominating Committee shall consult with the Governance and Nominating Committee, the Chairman of the Board and the Chief Executive Officer, and shall solicit comments from the ETP Holders for the purpose of approving and submitting names of candidates for election to the position of ETP Holder Director. Not later than seventy-five (75) days prior to the date announced for the annual meeting of stockholders, the ETP Holder Director Nominating Committee shall submit to the Governance and Nominating Committee the initial nominees for ETP Holder Director positions on the Board.

(d) Not later than sixty (60) days prior to the date announced for the annual meeting of stockholders, the Governance and Nominating Committee shall report to the Secretary of the Exchange**[**, provided that such candidate or candidates conforms to the requirements for the open position(s). There shall be an annual election during the annual meeting of the membership, at which only Proprietary Members can vote.**]** the initial nominees for ETP Holder Director positions on the Board that have been approved and submitted by the ETP Holder Director Nominating Committee. The Secretary shall promptly notify ETP Holders of those initial nominees. ETP Holders may identify other candidates for the ETP Holder Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced for the annual meeting of stockholders, a written petition, which shall designate the candidate by name and office and shall be

signed by ten percent (10%) or more of the ETP Holders. An ETP Holder may endorse as many candidates as there are ETP Holder Director positions to be filled.

(e) If one or more valid petitions are received, the Secretary shall notify all ETP Holders of record (as of the close of business on the day before the date of such notice) of the names of the initial nominees approved and submitted by the ETP Holder Director Nominating Committee and those additional candidates identified by the ETP Holders, as well as of the time and date of an election to be held at least twenty (20) days prior to the annual stockholders' meeting to confirm the ETP Holders' selections of nominees for ETP Holder Directors. In such elections, each ETP Holder shall have one (1) vote with respect to each ETP Holder Director position that is to be filled at the annual stockholders' meeting. No ETP Holder shall have the right to vote cumulatively in the election of any directors. Votes may be cast in person or by proxy. The individuals receiving the largest number of votes shall be the persons approved by the ETP Holders as ETP Holder Director nominees. The Secretary shall notify the Governance and Nominating Committee of the results of the election.

(f) If no valid petitions from the ETP Holders are received by the date that is thirty-five (35) days prior to the date that is announced for the annual meeting of stockholders, the initial nominees approved and submitted by the ETP Holder Director Nominating Committee shall be deemed to be the persons approved by the ETP Holders as the ETP Holder Director nominees, and the Secretary shall so notify the Governance and Nominating Committee. **[**(b) The Independent Directors shall be selected by means of the following process. The Nominating Committee shall select, after receipt of input from interested parties, the candidate(s) to be submitted to the Board for approval or disapproval at the first Board meeting following the annual membership meeting.**]**

(g) **[**(c) The**]** Candidates for election as a CBOE Director**[**s**]** shall be **[**elected to the Board**]** nominated by the CBOE Board of Directors at their **[**January**]** annual meeting or as soon thereafter as possible, but in all cases, at least twenty (20) days prior to the annual stockholders' meeting of the Exchange.

Section 3.6. Chairman. The Board, acting through a vote of a majority of its directors, shall elect a Chairman of the Board from among the directors of the Exchange. The Chairman may also serve as the Chief Executive Officer and President of the Exchange, but may hold no other offices in the Exchange. Unless the Chairman of the Board also serves as the Chief Executive Officer of the Exchange, the Board shall elect the Chairman from among the Independent Directors. Unless another director is appointed by the Board for such purpose in the Chairman's absence, the Chairman shall preside at all meetings of the stockholders and the Board. The Chairman shall also have such other duties, authority and obligations as may be given to him or her by these By-Laws or by the Board.

[Section 3. Vacancies]

Section 3.7. Vacancies. (a) Any **[**intraterm**]** vacancy that may occur on the Board **[**caused by**]** resulting from the death, retirement, resignation, disqualification or removal of a director, or as a result of (i) a reduction in the number of directors serving on the Board, or (ii) the creation of any new director positions between annual meetings of the stockholders at which directors are elected, **[**or otherwise**]** shall be filled by the

[D**]**directors then in office **[**by a person having the same qualifications, as set forth in Section 1 of Article V of these By-Laws, as those of the Director whose seat is vacant**]**, even if less than a quorum in accordance with the By-Laws, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs in accordance with the By-Laws. Any person chosen to fill a vacancy or newly-created director position must qualify as the type of director associated with the seat on the Board being filled (unless the position is being filled as a result of a reduction in the number of CBOE Directors serving on the Board pursuant to Sections 3.3(c) and (d), in which case the qualifications of the new director shall be determined by the Board pursuant to Sections 3.3(a) and (b)). The person selected to fill **[**such**]** a vacancy or newly-created director position shall **[**serve the remaining term of**]** hold office until the expiration of the term of office of the replaced director or the end of a term for a newly-created director position, as the case may be.

(b) In the event any **[**D**]**director fails to maintain any of the qualifications **[**of his designated category, as**]** for such director set forth in **[**Section 1 of Article V of**]** these By-Laws or the Certificate of Incorporation of the Exchange, of which failure the Board shall be the sole judge, **[**the**]** such **[**D**]**director shall, upon determination of the Board that **[**the**]** such **[**D**]**director is no longer qualified, cease to be a **[**D**]**director, **[**his**]** such director's office shall **[**become**]** be deemed vacant and (effective upon the expiration of **[**the**]** any grace period for re-qualification **[**set forth in Subsection (1) below),**]** permitted by the Board pursuant to Section 3.7(c) below) the vacancy may be filled by the Board with a person who so qualifies for **[**the category in which the vacancy exists**]** such director's position.

(c) **[**(1) A Director who fails to maintain the applicable qualifications will be allowed the later of (i) 45 days from the date when the Board determines the Director is no longer qualified or (ii) until the next regular Board meeting following the date when the Board makes such determination, in which to requalify and thereafter continue to serve the remainder of such Director's term. During any**]** The Board in its discretion may institute a grace period for re-qualification for a director who ceases to be a director pursuant to Section 3.7(b) above. If any such grace period is instituted, during such period up until the time when the **[**D**]**director re-qualifies, the **[**D**]**director shall be deemed not to hold office and the **[**seat**]** director position formerly held by the **[**D**]**director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether **[**the**]** a **[**D**]**director has re-qualified.

(d) **[**(2)**]** An ETP Holder Director **[**(other than an Independent Director) whose membership has been suspended does not**]** whose individual status as an ETP Holder has been temporarily suspended, or whose ETP Holder organization has been temporarily suspended as an ETP Holder, shall not be deemed to lose his or her qualification as a director by reason of such suspension during the period of suspension.

[**Section 4. Removal]**

Section 3.8. Removal. As set forth in the Certificate of Incorporation of the Exchange, no **[**D**]**director or class of directors may be removed from office **[**with cause**]** by a **[**majority**]** vote of **[**those individuals or entities entitled to vote to elect such Director.**]** the stockholders at any time except for cause. For purposes of this Section

3.8, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Exchange or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

[Section 5. Meetings]

Section 3.9. Place of Meetings; Mode. Any **[**annual**]** meeting of the Board **[**shall**]** may be held **[**immediately following the annual meeting of the members**]** at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Exchange. **[**A time and place for regular meetings of the Board may be established by the Board. Special meetings of the Directors may be held upon call of the Chairman of the Board, the President or any three Directors.**]** Members of the Board or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.10. Regular Meetings. Regular meetings of the Board may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

[Section 6. Notice of Special Meetings]

Section 3.11. Special Meetings. (a) **[**Written notice of s**]** Special meetings of the **[**Directors**]** Board may be called on a minimum of two (2) days notice to each director by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) directors then in office.

(b) The person or persons calling a special meeting of the Board shall fix **[**stating**]** the time**[**,**]** and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting. Notice of any special meeting **[**and purpose thereof**]** shall be given **[**by personal delivery or by mail, telegram or cablegram not less than two days before the date of the meeting, unless such notice is waived by each Director not so**]** to each director at his or her business address or such other address as he or she may have advised the Secretary of the Exchange to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the director to be notified. If mailed, such notice shall be deemed to be given five (5) business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the director to be notified.

[**Section 7. Quorum]**

Section 3.12. Voting; Quorum and Action by the Board. Each director shall be entitled to one (1) vote. At all meetings of the Board, the presence of **[**A**]** a majority of the **[**members**]** number of **[**the Board**]** directors then in office **[**serving**]** shall constitute a quorum **[**at any meeting of the Board.**]** for the transaction of business. 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 except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these By-Laws.

[**Section 8. Voting**

Each Director shall be entitled to one vote. Except as otherwise provided in Articles IX, X and XII of these By-Laws, the Board shall act by majority vote of those Directors present at any duly called meeting at which a quorum is present.**]**

Section 3.13. Waiver of Notice. A written waiver of notice, signed by a director entitled to notice of a meeting of the Board, whether before or after the time of the meeting stated in the notice, shall be deemed equivalent to the giving of such notice to that director. Attendance of a director at a meeting of the Board or of a committee of the Board of which the director is a member shall constitute a waiver of notice of such meeting, except when the 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 3.14. Presumption of Assent. A director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

[Section 9. Action Without a Meeting]

Section 3.15. Action in Lieu of Meeting. Unless otherwise restricted by statute, the Certificate of Incorporation or these By-Laws, **[**A**]**any action required or permitted to be **[**which may be authorized or**]** taken at any meeting of the **[**Directors**]** Board or any committee thereof may be **[**authorized or**]** taken without a meeting if all members of the **[**Directors**]** Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee **[**to a resolution authorizing such action**]**.

[Section 10. Powers

The Board shall be the governing body of the Exchange and, except as otherwise provided by these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the Exchange and for the promotion of the Exchange's welfare, objects and purposes. In the exercise of such powers, the Board may, without limitation:

(1) adopt for submission to the membership, as provided in Article IX hereof, such By-Laws and changes and additions thereto as it deems necessary or appropriate;

(2) adopt, as provided in Article X of these By-Laws, such Exchange Rules and changes or additions thereto as it deems necessary or appropriate;

(3) issue such orders, resolutions, interpretations and directions and make such decisions as it deems necessary or appropriate;

(4) prescribe penalties for violation of these By-Laws or Exchange Rules; and

(5) set reasonable levels of compensation for Exchange employees and members of the Board.**]**

Section 3.16. Compensation. The directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board and at each meeting of a committee of the Board of which they are members. The Board, irrespective of any personal interest of any of its members, shall have authority to fix compensation of all directors for services to the Exchange as directors, officers or otherwise.

Section 3.17. Interpretation of By-Laws. The Board shall have the power to interpret these By-Laws and any interpretation made by it shall be final and conclusive.

ARTICLE IV

STOCKHOLDERS

Section 4.1. Annual Meeting. The annual meeting of the stockholders shall be held at such place and time as determined by the Board for the purpose of electing directors and for conducting such other business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4.2. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the Chief Executive Officer, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

Section 4.3. List of Stockholders. The Secretary of the Exchange, or such other person designated by the Secretary or the Board, shall have charge of the stock ledger of the Exchange and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

Section 4.4. Quorum and Vote Required for Action. (a) The holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) When a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a

different vote is required in which case such express provision shall govern and control the decision of such question.

Section 4.5. Voting of Shares; Proxies. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, each stockholder of the Exchange shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period. Any such proxy shall be in writing and shall be filed with the Secretary of the Exchange before or at the time of the meeting.

Section 4.6. Action in Lieu of Meeting. As set forth in the Certificate of Incorporation of the Exchange, any action upon which a vote of stockholders is required or permitted, 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 capital 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 and shall be delivered to the Exchange in the manner required by law, provided that the matter to be acted upon by such written consent previously has been directed by the Board to be submitted to the stockholders for their action by written consent. 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 so consented in writing.

ARTICLE V[I. Committees]

COMMITTEES

[Section 1. Establishment of Committees

1.1. Committees]

Section 5.1. Number of Committees. **[**There shall be a Membership Committee,**]** The committees of the Board shall consist of a Business Conduct Committee, a Securities Committee, an Appeals Committee, a Governance and Nominating Committee, an ETP Holder Director Nominating Committee, a Regulatory Oversight Committee, a Compensation Committee, an Executive Committee, an Audit Committee, and such other committees as may be **[**established**]** from time to time established by the Board. Committees shall have such authority as is vested in them by these By-Laws or the Rules, or as is delegated to them by the Board. All **[**C**]**committees are subject to the control and supervision of the Board.

[1.2. Appointment - Vacancies and Removal]

Section 5.2. Appointment; Vacancies; and Removal. The Chairman of the Board, with the approval of the Board, shall appoint, consistent with these By-Laws, the members of **[**the committees established in this Article to serve for terms expiring at the regular meeting of the Board following the next succeeding annual election meeting, and he**]** all committees of the Board, and the Chairman may, at any time, with or without

cause, remove any member of a committee so appointed, with the approval of the Board. Any vacancy occurring in a committee shall be filled by the Chairman of the Board for the remainder of the term, with the approval of the Board.

[1.3. Committee Procedures

Except as otherwise provided in these By-Laws, each committee shall determine its own time and manner of conducting its meetings; a majority of the members of the committee shall constitute a quorum; and the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

1.4. Selection of Members

The membership of such committees shall be chosen in such a way as to assure fair representation of the public and, as appropriate, all classes of members in the administration of the Exchange.**]** Each committee shall be comprised of at least three (3) **[**persons**]** people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law.

[1.5. Interested Persons

No member of a committee shall participate, by voting or otherwise, in the consideration of any matter in which he is personally interested, although his presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.**]**

Section 5.3. Powers and Duties of Committees. To the extent not prohibited by law, all committees shall have such duties and may exercise such authority as may be prescribed for them in these By-Laws, the Rules or by the Board.

Section 5.4. Conduct of Proceedings. Except as otherwise provided in these By-Laws or by the Board, each committee may determine the manner in which its proceedings shall be conducted. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if a written consent to the action is signed by all of the members of the committee and the written consent is filed with the minutes of the proceedings of the committee.

[Section 2. Executive Committee

2.1. Composition]

Section 5.5. Executive Committee. (a) The Chairman of the Board, with the approval of the Board, **[**may**]** shall appoint an Executive Committee**[**, at least one member of which shall be a Proprietary Member**]**. The Chairman of the Board with the approval of the Board, may also appoint one or more **[**D**]**directors as alternate members

of the Executive Committee who shall take the place of any absent member or members at any meeting of such **[**C**]**committee.

[2.2. Powers]

(b) The Executive Committee shall have and may exercise, so far as may be permitted by law, all the powers of the Board as may be delegated to it by the Board, except that the Executive Committee shall not have the power to change the membership of, or to fill vacancies in, the Executive Committee. The Board shall have the power at any time to fill vacancies in**[**, to**]** or change the membership of**[**, or to dissolve**]** the Executive Committee.

[2.3. Quorum]

(c) A majority of the members of the Executive Committee shall constitute a quorum and either (**[**a**]**i) the act of a majority of the members of the Executive Committee present **[**at**]** a meeting thereof, or (**[**b**]**ii) the act of all members of the Executive Committee evidenced by a writing or writings, shall be the act of the Executive Committee.

[2.4. Reports]

(d) All actions of the Executive Committee shall be reported at the meeting of the Board next succeeding such action.

Section 5.6. Regulatory Oversight Committee. The Regulatory Oversight Committee shall be responsible to oversee all of the Exchange's regulatory functions and responsibilities and to advise regularly the Board about the Exchange's regulatory matters.

Section 5.7. ETP Holder Director Nominating Committee. The ETP Holder Director Nominating Committee shall be composed solely of ETP Holder Directors and/or ETP Holder representatives and shall be responsible for approving and submitting names of candidates for election to the position of ETP Holder Director pursuant to, and in accordance with, Section 3.5.

[Section 3. Special Provisions Relating to Certain Committees

3.1. Securities Committee

The Securities Committee shall have the authority to adopt operating procedures necessary and appropriate for the Exchange's automated interface with the Intermarket Trading System (ITS). The Securities Committee also may delegate its authority in Rule 11.9 to approve Designated Dealers and Designated Issues to an officer of the Exchange.

3.2. Nominating Committee

The Chairman, with approval of the Board, shall appoint the members of the Nominating Committee not less than thirty nor more than ninety days prior to the annual meeting of the membership. Such members shall serve for terms of one year.**]**

ARTICLE VI[I. Officers and Employees]

OFFICERS

[Section 1. Composition of Officers]

Section 6.1. Officers of the Exchange. The officers of the Exchange shall **[**be a Chairman of the Board**]** consist of a Chief Executive Officer, President, Chief Regulatory Officer, Secretary, Treasurer, and such other officers as **[**may be appointed by**]** the Board may determine. Any **[**person may hold more than one**]** two or more offices may be held by the same person, except that the Chief Regulatory Officer and the Secretary may not hold either the office of Chief Executive Officer or President **[**or Chairman of the Board**]**.

Section 6.2. Compensation. The compensation of all of the officers of the Exchange shall be fixed from time to time by the Board or a committee thereof designated by the Board.

[Section 2. Tenure and Appointment of Officers]

Section 6.3. Tenure and Appointment. Each **[**All**]** officer**[**s**]** of the Exchange shall be appointed by the Board and shall hold office **[**for one year or until their successors are elected**]** until his or her successor is appointed and qualified, or **[**for such other period as the Board may designate**]** until his or her earlier death, resignation, retirement or removal.

[Section 3. Removal of Officers]

Section 6.4. Removal and Vacancies. Any officer**[**s**]** of the Exchange may be removed at any time by the Board, with or without cause, **[**by the affirmative vote of a majority of the Directors at any special meeting of the Board called for that purpose or at any regular meeting of the Board**]** but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

[Section 4. Officer Vacancies]

Vacancies in any office of the Exchange may be filled for the unexpired term by the Board **[**at any special meeting of the Board called for that purpose or at any regular meeting of the Board**]**.

[Section 5. Powers and Duties of Officers]

Section 6.5. Powers and Duties. Each of the office**[**r**]**s of the Exchange shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board.

[Section 6. Arbitration Director]

Section 6.6. Arbitration Director. The Chairman of the Board, subject to the approval of the Board,**[**shall**]** may designate one of the officers or other employees of the Exchange to serve as the Arbitration Director, and may also designate an employee of the Exchange to serve as the Assistant Arbitration Director, to act in the event of the absence or inability to act of the Arbitration Director. The Arbitration Director, if any, shall be charged with the duty of performing or delegating all ministerial duties in connection with matters submitted for arbitration pursuant to the **[**Exchange**]** Rules **[**9.1**]**.

ARTICLE VII[I. Indemnification of Directors, Officers and Employees]

INDEMNIFICATION

[Section 1. Extent of Indemnification]

Section 7.1. Extent of Indemnification. The Exchange shall, to the maximum extent not prohibited by the General Corporation Law of Delaware or any other applicable laws, as may from time to time be in effect, indemnify and hold harmless any **[**every**]** person who was or is **[**or was**]** made or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a **[**D**]**director**[**,**]** or officer**[**, or employee**]** of the Exchange, or is or was **[**who is**]** serving **[**or has served**]** at the request of the Exchange **[**its request**]** as a director or **[**, trustee,**]** officer **[**, or employee**]** of **[**any other**]** another corporation, partnership, joint venture, trust or other enterprise (each, individually an "Indemnified Person"), against all **[**those**]** expenses **[**and liabilities**]** (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with **[**any pending or threatened claim,**]** such action, suit or proceeding **[**or settlement thereof in which he may be involved or threatened to be involved in his capacity as such, to the maximum extent permitted by law**]**. The Exchange shall be required to indemnify an Indemnified Person in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board.

As set forth in the Certificate of Incorporation of the Exchange, to the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date that the Certificate of Incorporation of the Exchange is adopted or as such law may later be amended, no director of the Exchange shall be liable to the Exchange or its stockholders or the ETP Holders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Exchange that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

[Section 2. Expenses]

Section 7.2. Expenses. Expenses (including attorneys' fees) incurred by an Indemnified Person in defending a civil, criminal, administrative or investigative **[**with respect to any claim,**]** action, suit or proceeding **[**may be advanced by the Exchange prior to the final disposition thereof**]**, including appeals, may be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by **[**the Director, officer or employee**]** or on behalf of such Indemnified Person to repay such amount **[**as**]** if it shall be ultimately **[**be**]** determined **[**not to be subject to indemnification by the Exchange**]** that he or she is not entitled to be indemnified as authorized by the General Corporation Law of the State of Delaware.

Section 7.3. Contract. The provisions of this Article VII shall be deemed to be a contract between the Exchange and each Indemnified Person at any time while this Article and the relevant provisions of the General Corporation Law of Delaware or other applicable law, if any, are in effect and any repeal or modification of any such law or of this Article VII shall not affect and rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 7.4. Discretionary Indemnification Coverage. Persons not expressly covered by the foregoing provisions of this Article VII, such as those who are or were directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Exchange was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board.

[Section 3. Duration and Non-exclusivity]

Section 7.5. Continuity of Indemnification and Non-Exclusivity. The **[**rights of**]** indemnification provided or permitted hereunder shall not be deemed exclusive of any other rights to which **[**any such Director, officer, or employee**]** those indemnified now or hereafter may be entitled**[**,**]** by law or otherwise, and shall continue as to a person who has ceased to be a **[**D**]**director, officer, **[**or**]** employee**[**,**]** or agent entitled to such indemnification and shall inure to the benefit of **[**such person's**]** the heirs**.** **[**and legal representatives**]** executors and administrators of such person.

[Section 4. Insurance]

Section 7.6. Insurance. The Exchange**[**, by authorization of the Board,**]** may purchase and maintain insurance on behalf of any person who is or was a **[**D**]**director, officer, **[**or**]** employee or agent of the Exchange, or **[**who**]** is or was serving **[**or has served**]** at **[**its**]** the request of the Exchange as a director, **[**trustee,**]** officer, **[**or**]** employee or agent of **[**any other**]** another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against **[**him and incurred by him**]** such person in any such capacity, or arising out of **[**his**]** such person's status as such, whether or not the Exchange would have the power to indemnify **[**him**]** such person against such liability **[**under this Article VIII**]**.

Section 7.7. Exchange Not Liable. The Exchange shall not be liable for any loss or damage sustained by any current or former member or ETP Holder growing out of the use or enjoyment by such member or ETP Holder of the facilities afforded by the Exchange (or any predecessor or successor thereof) or its subsidiaries.

ARTICLE VIII[X. Amendments to By-Laws]

AMENDMENTS

[Section 1. Procedure]

Section 8.1. By-Laws. **[**Any member of the Board, by resolution, or one-third of the Proprietary Members of the Exchange, by a petition signed by such members, may propose additions, alterations or amendments to these By-Laws. A proposed addition, alteration or amendment shall be presented in writing to the Board and a record shall be kept thereof. The Board in its discretion may, or may decline to, adopt for submission to the membership any proposed addition, alteration or amendment by affirmative vote of a majority of the members of the Board then in office. Any addition, alteration or amendment approved by the membership in accordance with the requirements of Section 10 of Article II of these By-Laws**]** As set forth in the Certificate of Incorporation of the Exchange, the Board shall have the power to adopt, amend or repeal the By-Laws. The By-Laws may also be amended or repealed, or new By-Laws of the Exchange may be adopted, by action taken by the stockholders of the Exchange. Notwithstanding the foregoing, neither this sentence nor any provision of Sections 3.1 through 3.8 , Section 3.12, or Section 4.5 of these By-Laws may be amended or repealed without action of the stockholders of the Exchange. By-Laws adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act.

[ARTICLE X. Adoption of and Amendments to Exchange Rules

Section 1. Procedure]

Section 8.2. Rules. The **[**Board may adopt, add to, alter or amend Exchange Rules.**]** Rules may be amended or repealed, or new Rules may be adopted, by the Board. A proposal to adopt, **[**add to,**]** alter or amend any rule shall be presented in writing to the Board by the Chairman of the Board and a record shall be kept thereof. The Board shall pass on the proposed action, which may be adopted by the affirmative vote of a majority of the members of the Board then in office. **[**Exchange**]** Rules **[**so**]** adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act.

ARTICLE XI. Commissions

Section 1. General

Nothing in these By-Laws, the Exchange Rules or the Exchange practices shall be construed to require, authorize or permit any member, or any person associated with a

member, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of the facilities of, the Exchange.

A**RTICLE XII. Off-Exchange Transactions**

Section 1. General

No rule, stated policy or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this Exchange with another person in any security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.**]**

ARTICLE IX

CERTIFICATES OF STOCK AND THEIR TRANSFER

Section 9.1. Form and Execution of Certificates. Every holder of stock in the Exchange shall be entitled to have a certificate signed by, or in the name of, the Exchange by the Chairman of the Board, the President or a vice president and by the Secretary or an assistant secretary or the Treasurer or an assistant treasurer of the Exchange, certifying the number of shares owned. Any and all signatures on a certificate may be facsimiles. Such certificates shall be in such form as may be determined by the Board. In case any officer, transfer agent or registrar of the Exchange who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer, transfer agent or registrar of the Exchange before such certificate is issued by the Exchange, such certificate may nevertheless be issued and delivered by the Exchange with the same effect as if the officer, transfer agent or registrar who signed, or whose facsimile signature was placed upon, such certificate had not ceased to be such officer, transfer agent or registrar.

Section 9.2. Replacement Certificates. The Exchange may direct a new certificate or certificates to be issued in place of any certificate or certificates evidencing shares of stock of the Exchange alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Exchange may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to advertise the same in such manner as it shall require and require such owner to give the Exchange a bond in such sum as it may direct as indemnity against any claim that may be made against the Exchange with respect to the certificate alleged to have been lost, stolen or destroyed. The Exchange may delegate its authority to direct the issuance of replacement stock certificates to the transfer agent or agents of the Exchange.

Section 9.3. Notice on Certificates. Each certificate evidencing shares of stock of the Exchange shall include a clear and conspicuous notice of the restrictions and

limitations on the transfer of the shares evidenced by such certificate, in form and substance similar to the following:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY BE TRANSFERRED ONLY PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION THEREUNDER AND OTHERWISE IN ACCORDANCE WITH THE BY-LAWS OF THE CORPORATION."

Section 9.4. Conditions to Transfer. No sale, transfer or other disposition of stock of the Exchange shall be effected except (a) (i) pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws or (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the counsel for the Exchange that such sale, transfer or disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws and (b) upon delivery to the Exchange of such certificates or other documentation as counsel to the Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws.

Section 9.5. Transfers of Stock. Upon surrender to the Exchange or the transfer agent of the Exchange of a certificate for shares of stock of the Exchange duly endorsed or accompanied by proper evidence of succession, assignment or other authority to transfer, it shall be the duty of the Exchange to issue a new certificate to the person entitled to the new certificate, cancel the old certificate and record the transaction upon its books, provided the Exchange or a transfer agent of the Exchange shall not have received a notification of adverse interest and that the conditions of Section 8-401 of Title 6 of the Delaware Code have been met.

Section 9.6. Registered Stockholders. The Exchange shall be entitled to treat the holder of record (according to the books of the Exchange) of any share or shares of its stock as the holder in fact of those shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other party whether or not the Exchange shall have express or other notice of that claim or interest, except as expressly provided by the laws of the State of Delaware.

ARTICLE X

SELF-REGULATORY FUNCTION OF THE EXCHANGE

Section 10.1. Management of the Exchange. In connection with managing the business and affairs of the Exchange, the Board shall consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including, without limitation, the requirements that (a) the Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its "members," as that term is defined in Section 3 of the Act (such statutory members being referred to in these By-Laws as "ETP Holders") and persons associated with ETP

Holders, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

Section 10.2. Participation in Board and Committee Meetings. All meetings of the Board (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) shall be closed to all persons other than members of the Board and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of NSX Holdings, Inc. who are not also members of the Board, or any officers, staff, counsel or advisors of NSX Holdings, Inc. who are not also officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), be allowed to participate in any meetings of the Board (or any committee of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters).

Section 10.3. Books and Records; Confidentiality of Information and Records Relating to SRO Function. The books and records of the Exchange shall be maintained at a location within the United States. All books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by the Exchange and its personnel and will not be used by the Exchange for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any ETP Holder) other than to those personnel of the Exchange, members of committees of the Exchange, members of the Board, hearing officers and other agents of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange.

Section 10.4. Regulatory Fees and Penalties. Any revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used to pay dividends and shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1. Fiscal Year. The fiscal year of the Exchange shall be as determined from time to time by the Board.

Section 11.2. Dividends. Subject to any provisions of any applicable statute or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Exchange by, and in the absolute discretion of, the Board; and any such dividends may be paid in cash, property or shares of stock of the Exchange, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

Section 11.3. Reserves. Before payment of any dividends, there may be set aside out of any funds of the Exchange available for dividends such sum or sums as the

Board from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Exchange, or for such other purpose as the Board shall determine to be conducive to the interests of the Exchange, and the Board may modify or abolish any such reserve in the manner in which it was created.

Section 11.4 Subsidiaries. The Board may constitute any officer of the Exchange its proxy, with power of substitution, to vote the equity interests of any subsidiary of the Exchange and to exercise, on behalf of the Exchange, any and all rights and powers incident to the ownership of those equity interests, including the authority to execute and deliver proxies, waivers and consents.

Section 11.5. Power to Vote Stock. Unless otherwise instructed by the Board, the Chief Executive Officer of the Exchange shall have the power and authority on behalf of the Exchange to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Exchange may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Exchange any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Exchange in connection with the exercise by the Exchange of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

Section 11.6. Severability. If any provision of these By-Laws, or the application of any provision of these By-Laws to any person or circumstances, is held invalid, the remainder of these By-Laws and the application of such provision to other persons or circumstances shall not be affected.

RULES
OF
NATIONAL STOCK EXCHANGE, INC.

CHAPTER I.

Adoption, Interpretation and Application of Rules, and Definitions

Rule 1.1. Adoption of Exchange Rules

The following Exchange Rules are adopted pursuant to **[**Article X**]** Section 3.1(b) and Section 8.2 of the By-Laws of the Exchange.

* * * * *

Rule 1.3. Applicability

Exchange Rules shall apply to all **[**members**]** ETP Holders and persons associated with **[**a member**]** an ETP Holder.

Rule 1.4. Reserved.

Rule 1.5. Definitions

Unless the context otherwise requires, for all purposes of these Exchange Rules, terms used in Exchange Rules shall have the meaning assigned in Article I of the By-Laws or as set forth below:

A.

Adverse Action

(1) The term "adverse action" shall mean any action taken by the Exchange which affects adversely the rights of any ETP Holder, applicant for an ETP, or any person associated with an ETP Holder (including the denial of an ETP and the barring of any person from becoming associated with an ETP Holder) and any prohibition or limitation by the Exchange imposed on any person with respect to access to services offered by the Exchange, or an ETP Holder thereof. This term does not include disciplinary actions for violations of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of the By-Laws or Exchange Rules or any interpretation thereof or resolution or order of the Board or appropriate Exchange committee which has been filed with the Commission pursuant to Section 19(b) of the Act and has become effective thereunder. Review of disciplinary actions is provided for in Chapter VIII of the Exchange Rules.

B. Reserved.

C. Reserved.

D.

Designated Self-Regulatory Organization

(1) The term "designated self-regulatory organization" shall mean a self-regulatory organization, other than the Exchange, designated by the Commission under Section 17(d) of the Act to enforce compliance by ETP Holders with Exchange Rules.

E.

ETP

(1) The term "ETP" shall refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

F. Reserved.

G. Reserved.

H. Reserved.

I. Reserved.

J. Reserved.

K. Reserved.

L. Reserved.

M. Reserved.

N. Reserved.

O. Reserved.

P.

Person Associated with an ETP Holder

(1) The terms "person associated with an ETP Holder" or "associated person of an ETP Holder" mean any partner, officer, director, or branch manager of an ETP Holder (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any

employee of such ETP Holder, except that any person associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.

Q. Reserved.

R. Reserved.

S.

Statutory Disqualification

(1) The term "statutory disqualification" shall mean any statutory disqualification as defined in the Act.

T. Reserved.

U. Reserved

V. Reserved.

W. Reserved.

X. Reserved.

Y. Reserved.

Z. Reserved.

* * * * *

CHAPTER II.

[Definitions] ETP Holders of the Exchange

Rule 2.1. [Definitions in Code of Regulations (By-Laws)] Rights, Privileges and Duties of ETP Holders

Unless [the context] otherwise [requires, or unless defined in this Chapter, terms used in] provided in the Exchange Rules or the By-Laws, each ETP Holder shall have the [meaning assigned in the Code of Regulations (By-Laws)] same rights, privileges and duties of any other ETP Holder.

[Rule 2.2. Definitions in Rules

The term "designated self-regulatory organization" means a self-regulatory organization, other than the Exchange, designated by the Commission under Section 17(d) of the Act to enforce compliance by Exchange members with Exchange Rules.]

Rule 2.2. Obligations of ETP Holders and the Exchange

In addition to all other obligations imposed by the Exchange in its By-Laws or the Exchange Rules, all ETP Holders, as a condition of effecting approved securities transactions on the Exchange's trading facilities, shall agree to be regulated by the Exchange and shall recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and with the provisions of the Act and regulations thereunder, and that, subject to orders and rules of the Commission, the Exchange is required to discipline ETP Holders and persons associated with ETP Holders for violations of the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and the Act and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fines, censure, being suspended or barred from being associated with an ETP Holder, or any other fitting sanction.

Rule 2.3. ETP Holder Eligibility

Except as hereinafter provided, any registered broker or dealer or any person associated with a registered broker or dealer shall be eligible to be an ETP Holder. Any person may become an associated person of an ETP Holder.

Rule 2.4. Restrictions

(a) No person may become an ETP Holder or continue as an ETP Holder in any capacity on the Exchange where:

(1) such person is other than a natural person and is not a registered broker or dealer;

(2) such person is a natural person who is not either a registered broker or dealer or associated with a registered broker or dealer; or

(3) such person is subject to a statutory disqualification, except that a person may become an ETP Holder or continue as an ETP Holder where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become an ETP Holder.

(b) No natural person or registered broker or dealer shall be admitted as, or be entitled to continue as, an ETP Holder or an associated person of an ETP Holder, unless such natural person or broker or dealer meets the standards of training, experience and competence as the Exchange may prescribe. Each ETP Holder shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person applying for registration with the Exchange as an associated person of an ETP Holder.

(c) No registered broker or dealer shall be admitted as, or be entitled to continue as, an ETP Holder if such broker or dealer:

(i) fails to comply with either the financial responsibility requirements established by Rule 15c3-1 under the Act, or such other financial responsibility and operational capability requirements as may be established by the Exchange Rules; or

(ii) fails to adhere to the Exchange Rules relating to the maintenance of books and records or those rules of other self-regulatory organizations of which such broker or dealer is or was a member; or

(iii) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than six months; or

(iv) has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years; or

(v) has engaged in an established pattern of failure to pay just debts or has defaulted, without a reasonable explanation, on an obligation to a self-regulatory organization, any ETP Holder, or any member of a self-regulatory organization.

(d) No person shall be admitted as an ETP Holder or as an associated person of an ETP Holder where it appears that such person has engaged, and there is a reasonable likelihood that such person again may engage, in acts or practices inconsistent with just and equitable principles of trade.

(e) No person shall become an associated person of an ETP Holder unless such person agrees:

(i) to supply the Exchange with such information with respect to such person's relationships and dealings with the ETP Holder as may be specified by the Exchange;

(ii) to permit examination of such person's books and records by the Exchange to verify the accuracy of any information so supplied; and

(iii) to be regulated by the Exchange and to recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of the Exchange Rules, the By-Laws, the interpretations and policies of the Exchange and the provisions of the Act and the regulations thereunder.

Interpretations and Policies

.01 (a) The Exchange may require the successful completion of a written proficiency examination to enable it to examine and verify that prospective ETP Holders and associated persons of ETP Holders have adequate training, experience and competence to comply with the Exchange Rules and policies of the Exchange.

(b) If the Exchange requires the completion of such proficienty examinations, the Exchange may, in exceptional cases and where good cause is shown, waive such proficiency examinations as are required by the Exchange upon written request of the applicant and accept other standards as evidence of an applicant's qualifications. Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.

(c) The Exchange requires the General Securities Representative Examination ("Series 7") in qualifying persons seeking registration as general securities representatives.

.02 The Exchange uses the Uniform Application for Securities Industry Registration or Transfer ("Form U4") as part of its procedure for registration and oversight of its ETP Holder personnel.

.03 An ETP Holder may only give-up its own or another ETP Holder's clearing number when executing a transaction on the Exchange; provided, however, that an ETP Holder may give-up a non-ETP Holder's clearing number when executing a transaction on the Exchange if (i) the non-ETP Holder (a) is a registered broker-dealer and is a self-clearing member of the National Securities Clearing Corporation ("NSCC") and (b) consents to the disciplinary jurisdiction of the Exchange and agrees to adhere to all applicable Exchange Rules and By-Laws; and (ii) the executing ETP Holder's guaranteeing clearing firm, who must be an ETP Holder, agrees to accept financial responsibility for all transactions given-up to the non-ETP Holder, including but not limited to, responsibility to clear and settle the non-ETP Holder's trades in the event that the non-ETP Holder or the NSCC does not accept any such trades.

Rule 2.5. Application Procedures for an ETP Holder or to become an Associated Person of an ETP Holder

(a) Applications for an ETP shall be made to the Exchange and shall contain the following:

(1) An agreement to abide by, comply with, and adhere to the provisions of the Exchange's Amended Certificate of Incorporation, its By-Laws, the Exchange Rules, the policies, interpretations and guidelines of the Exchange and all orders and decisions of the Exchange's Board and penalties imposed by the Board, and any duly authorized committee; provided, however, that such agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act.

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Exchange.

(3) An agreement that the Exchange and its officers, employees and members of its Board and of any committee shall not be liable, except for willful malfeasance, to the applicant or to any other person, for any action taken by such director, officer or member in his official capacity, or by any employee of the Exchange while acting within the scope of his employment, in connection with the administration or enforcement of any of the provisions of its By-Laws, Exchange Rules, policies, interpretations or guidelines of the Exchange or any penalty imposed by the Exchange, its Board or any duly authorized committee.

(4) An agreement to maintain and make available to the Exchange, its authorized employees and its Board or committee members such books and records as may be required to be maintained by the Commission or the Exchange Rules.

(5) Such other reasonable information with respect to the applicant as the Exchange may require.

(b) Applications for association with an ETP Holder shall be made on Form U4 and such other forms as the Exchange may prescribe, and shall be delivered to the Exchange's Vice President of Regulation or such other officer or employee as designated by the Exchange.

(c) If the Exchange is satisfied that the applicant is qualified to hold an ETP pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of such determination, and the applicant shall be issued an ETP.

(d) If the Exchange is not satisfied that the applicant is qualified to hold an ETP pursuant to the provisions of this Chapter, the Exchange shall promptly notify the applicant of the grounds for denying the ETP. The Board on its own motion may reverse the determination that the applicant is not qualified to hold an ETP. If a majority of the Board specifically determines to reverse the determination to deny the issuance of an ETP, the Board shall promptly notify Exchange staff, who shall promptly notify the applicant of the Board's decision and shall issue an ETP to the applicant. An applicant who has been denied an ETP may appeal such decision under Chapter X of the Exchange Rules governing adverse action.

(e) In considering applications for an ETP, the Exchange shall adhere to the following procedures:

(1) Where an application is granted by the Board, the Exchange shall promptly notify the applicant.

(2) The applicant shall be afforded an opportunity to be heard on the denial of an ETP pursuant to Chapter X of the Exchange Rules governing adverse action.

(f) Except where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to review and act upon applications for associated persons of an ETP Holder, the procedure set forth in this Chapter shall govern the processing of any such applications.

Rule 2.6. Revocation of an ETP or an Association with an ETP Holder

ETP Holders or associated persons of ETP Holders may effect approved securities transactions on the Exchange's trading facilities only so long as they possess all the qualifications set forth in the Exchange Rules. Except where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to monitor the continued qualifications of an ETP Holder or an associated person of an ETP Holder, when the Exchange has reason to believe that an ETP Holder or associated person of an ETP Holder fails to meet such qualifications, the Exchange may act to revoke such person's ETP or association. Such action shall be instituted under, and governed by, Chapters VII and VIII of the Exchange Rules and may be appealed under Chapter X of the Exchange Rules governing adverse action. In connection with any revocation of an ETP or voluntary termination of an ETP pursuant to Rule 2.7, the ETP shall be cancelled.

Rule 2.7. Voluntary Termination of Rights as an ETP Holder

An ETP Holder may voluntarily terminate such person's rights as an ETP Holder only by a written resignation addressed to the Exchange's Secretary or another officer designated by the Exchange. Such resignation shall not take effect until 30 days after all of the following conditions have been satisfied: (i) receipt of such written resignation; (ii) all indebtedness due the Exchange shall have been paid in full; (iii) any Exchange investigations or disciplinary action brought against the ETP Holder has reached a final disposition; and (iv) any examination of such ETP Holder in process is completed and all exceptions noted have been reasonably resolved; provided, however, that the Board may declare a resignation effective at any time.

Rule 2.8. Transfer or Sale of an ETP

ETP Holders may not transfer or sell or encumber their ETPs or any interest therein.

Rule 2.9. Dues, Assessments and Other Charges

The Exchange may prescribe such reasonable assessments, dues or other charges as it may, in its discretion, deem appropriate. Such assessments and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

Rule 2.10 No Affiliation between Exchange and any ETP Holder

Without the prior approval of the Commission, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in an ETP Holder. In addition, without the prior approval of the commission, an ETP Holder shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. The term affiliate shall have the meaning specified in Rule 12b-2 under the Act. Nothing in this Rule 2.10 shall prohibit an ETP Holder or its affiliate from acquiring or holding an equity interest in NSX Holdings, Inc. that is permitted by the ownership and voting limitations contained in the Amended and Restated Certificate of Incorporation of NSX Holdings, Inc. In addition, nothing in this Rule 2.10 shall prohibit an ETP Holder from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such ETP Holder or any officer, director, manager, managing member, partner or affiliate of such ETP Holder being or becoming either (a) an ETP Holder Director or an At-Large Director (as such terms are defined in the By-Laws of the Exchange) pursuant to the By-Laws of the Exchange, or (b) a member of the Board of Directors of NSX Holdings, Inc.

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CHAPTER III.

Rules of Fair Practice

Rule 3.1. Business Conduct of [Members] ETP Holders

[A member**]** An ETP Holder, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Interpretations and Policies:

01. [A member] An ETP Holder may not split any order into multiple smaller orders for any purpose other than seeking the best execution for the entire order.

Rule 3.2. Violations Prohibited

No **[**member**]** ETP Holder shall engage in conduct in violation of the Act, the rules or regulations thereunder, the By-Laws, Exchange Rules or any policy or written interpretation of the By-Laws or Exchange Rules by the Board or an appropriate Exchange Committee. Every **[**member**]** ETP Holder shall so supervise persons associated with the **[**member**]** ETP Holder as to assure compliance with those requirements.

Rule 3.3. Use of Fraudulent Devices

No **[**member**]** ETP Holder shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Rule 3.4. False Statements

No **[**member**]** ETP Holder or applicant for **[**membership**]** an ETP shall make any false statements or misrepresentations in any application, report or other communication to the Exchange**[**, and no member**]**. No ETP Holder shall make any false statement or misrepresentation to any Exchange committee, officer, the Board or any designated self-regulatory organization in connection with any matter within the jurisdiction of the Exchange.

Rule 3.5. Advertising Practices

(a) No **[**member**]** ETP Holder, directly or indirectly, in connection with the purchase or sale of any security that has listed or unlisted trading privileges on the Exchange, shall publish, circulate or distribute any advertisement, sales literature or market letter or make oral statements or presentations which the **[**member**]** ETP Holder knows, or in the exercise of reasonable care should know, contain any untrue statement of material fact or which is otherwise false or misleading. Exaggerated or misleading statements or claims are prohibited.

(b) Advertisements, sales literature and market letters shall contain the name of the **[**member**]** ETP Holder, the person or firm preparing the material, if other than the **[**member**]** ETP Holder, and the date on which it was first published, circulated or distributed (except that in advertisements only the name of the **[**member**]** ETP Holder need be stated).

(c) *No change*.

(d) Each item of advertising and sales literature and each market letter shall be approved by signature or initial, prior to use, by an officer, partner or other official the **[**member**]** ETP Holder has designated to supervise all such matters.

(e) A separate file of all advertisements, sales literature and market letters, including the names of the persons who prepared them and/or approved their use, shall be maintained by the **[**member**]** ETP Holder for a period of three years from the date of each use (for the first two years in a place readily accessible to examination or spot checks). Each **[**member**]** ETP Holder shall file with the Exchange, or the designated self-regulatory organization for such **[**member**]** ETP Holder, within five business days after initial use, each advertisement (i.e., any material for use in any newspaper or magazine or other public media or by radio, telephone, recording, motion picture or television, except tombstone advertisements), unless such advertisement may be published under the rules of another self-regulatory organization regulating the **[**member**]** ETP Holder under the Act.

(f) Testimonial material based on experience with the **[**member**]** ETP Holder or concerning any advice, analysis, report or other investment related service rendered by the **[**member**]** ETP Holder must make clear that such testimony is not necessarily indicative of future performance or results obtained by others. Testimonials also shall state whether any compensation has been paid to the maker, directly or indirectly, and if the material implies special experience or expert opinion, the qualifications of the maker of the testimonial should be given.

(g) *No change*.

(h) No claim or implication may be made for research or other facilities beyond those which the **[**member**]** ETP Holder actually possesses or has reasonable capacity to provide.

Rule 3.6. Fair Dealing with Customers

All **[**members**]** ETP Holders have a fundamental responsibility for fair dealing with their customers. Practices which do not represent fair dealing include, but are not limited to, the following:

(a)-(f) *No change*.

Rule 3.7. Recommendations to Customers

(a) In recommending to a customer the purchase, sale or exchange of any security, **[**a member**]** an ETP Holder shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts disclosed by such customer, after reasonable inquiry by the **[**member**]** ETP Holder, as to the customer's other securities holdings and as to the customer's financial situation and needs.

(b) **[**A member**]** An ETP Holder may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by the **[**member**]** ETP Holder within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which, or the price within which, the recommendation was to be acted upon, and the fact that the period was one of generally failing or rising markets, if such was the case.

Interpretations and Policies

.01 Recommendations made in connection with products listed pursuant to **[**Article IV, Sec. 1.3(5)**]** Rule 15.3 shall comply with the provisions of (a) above. No **[**Member**]** ETP Holder shall recommend to a customer a transaction in any such product unless the **[**Member**]** ETP Holder has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

Rule 3.8. The Prompt Receipt and Delivery of Securities

(a) Purchases. No **[**member**]** ETP Holder may accept a customer's purchase order for any security until it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

(b) Sales.

(1) No **[**member**]** ETP Holder shall execute a sale order for any customer in any security unless:

(i) the other customer has possession of the security; or

(ii) the customer is long the security in his account with the **[**member**]** ETP Holder; or

(iii) reasonable assurance is received by the **[**member**]** ETP Holder from the customer that the security will be delivered to it in good deliverable form within three (3) business days of the execution of the order; or

(iv) the security is on deposit in good deliverable form with (A) **[**a member**]** an ETP Holder of the Exchange, (B) a member of another self-regulatory organization or (C) any organization subject to state or federal banking regulations, and instructions have been forwarded to such member or organization to deliver the securities against payment.

(2) In order to satisfy the "requirement of reasonable assurance" contained in sub-paragraph (1)(iii) above, the **[**member**]** ETP Holder, at the time it takes the order, shall make a notation on the order ticket which reflects the **[**member'**]** ETP Holder's conversation with the customer as to the present location of the securities in question, whether they are in good deliverable form and his ability to deliver them to the **[**member**]** ETP Holder within three business days.

Rule 3.9. Charges for Services Performed

[A member'**]** An ETP Holder's charges, if any, for services performed (including miscellaneous services such as collection of moneys due for principal, dividends or interest; exchange or transfer of securities; appraisals, safekeeping or custody of securities; and other services) shall be reasonable and not unfairly discriminatory among customers.

Rule 3.10. Use of Information

[A member**]** An ETP Holder who, in the capacity of payment agent, transfer agent, or any other similar capacity, or in any fiduciary capacity, has received information as to the ownership of securities shall not make use of such information for soliciting purchases, sales or exchanges except at the request, and on behalf, of the issuer.

Rule 3.11. Publication of Transactions and Quotations

No **[**member**]** ETP Holder shall report to the Exchange or publish or cause to be published any transaction as a purchase or sale of any security unless such **[**member**]** ETP Holder believes that such transaction was a bona fide purchase or sale of such security, and no **[**member**]** ETP Holder shall purport to quote the bid or asked price for any security, unless such **[**member**]** ETP Holder believes that such quotation represents a bona fide bid for, or offer of, such security.

Rule 3.12. Offers at Stated Prices

No **[**member**]** ETP Holder shall make an offer to buy from or sell to any person any security at a stated price unless such **[**member**]** ETP Holder is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

Rule 3.13. Payment Designed to Influence Market Prices, Other than Paid Advertising

No **[**members**]** ETP Holders shall directly or indirectly, give, permit to be given, or offer to give anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service or similar publication of any matter which has, or is intended to have, an effect upon the market price of any security; provided, that this Rule shall not be construed to apply to a matter which is clearly identifiable as paid advertising.

Rule 3.14. Disclosure on Confirmations

[A member**]** An ETP Holder, at or before the completion of each transaction with a customer, shall give or send to such customer such written notification or confirmation of the transaction as is required by Commission Rule 10b-10.

Rule 3.15. Disclosure of Control

[A member**]** An ETP Holder controlled by, controlling, or under common control with, the issuer of any security, shall disclose to a customer the existence of such control before entering

into any contract with or for such customer for the purchase or sale or such security, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of a written disclosure to the customer at or before completion of the transaction.

Rule 3.16. Discretionary Accounts

(a) No **[**member**]** ETP Holder shall effect any purchase or sale transactions with, or for, any customer's account in respect of which such **[**member**]** ETP Holder is vested with any discretionary power if such transactions are excessive in size or frequency in view of the financial resources and character of such account.

(b) No **[**member**]** ETP Holder shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization and the account has been accepted by the **[**member**]** ETP Holder, as evidenced in writing by a person duly designated by the **[**member**]** ETP Holder.

(c) The **[**member**]** ETP Holder shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account. The **[**member**]** ETP Holder shall designate a partner, officer or manager in each office, including the main office, to carry out the approval and review procedures.

(d) This Rule shall not apply to an order by a customer for the purchase or sale of a definite amount of a specified security which order gives the **[**member**]** ETP Holder discretion only over the time and price of execution.

Rule 3.17. Customer's Securities or Funds

No **[**member**]** ETP Holder shall make improper use of a customer's securities or funds.

Rule 3.18. Prohibition Against Guarantees

No **[**member**]** ETP Holder shall guarantee, directly or indirectly, a customer against loss in any securities account of such customer carried by the **[**member**]** ETP Holder or in any securities transaction effected by the **[**member**]** ETP Holder with or for such customer.

Rule 3.19. Sharing in Accounts; Extent Permissible

No **[**member**]** ETP Holder shall share, directly or indirectly, in the profits or losses in any account of a customer carried by the **[**member**]** ETP Holder or any other **[**member**]** ETP Holder, unless authorized by the customer or **[**member**]** ETP Holder carrying the account; and **[**a member**]** an ETP Holder shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the **[**member**]** ETP Holder. Accounts of the immediate family of **[**a member**]** an ETP Holder shall be exempt from this direct proportionate share limitation. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law, father-in-law, husband or wife, children or any other relative to whose support the **[**member**]** ETP Holder contributes directly or indirectly.

Rule 3.20. Installment or Partial Payment Sales

(a) No **[**member**]** ETP Holder shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer, or for the sale of any security to the customer, where payment for the security is to be made to the **[**member**]** ETP Holder by the customer over a period of time in installments or by a series or partial payments, unless:

(1) in the event such **[**member**]** ETP Holder acts as an agent or broker in such transaction, the **[**member**]** ETP Holder promptly shall make an actual purchase of the security for the account of the customer, take possession or control of such security and maintain possession or control thereof so long as the **[**member**]** ETP Holder remains under an obligation to deliver the security to the customer;

(2) in the event such **[**member**]** ETP Holder acts as a principal in such transaction, the **[**member**]** ETP Holder shall own, at the time of such transaction, such security and shall maintain possession or control thereof so long as he remains under an obligation to deliver the security to the customer; and

(3) if applicable to such **[**member**]** ETP Holder, the provisions of Regulation T of the Federal Reserve Board shall be satisfied.

(b) No **[**member**]** ETP Holder, whether acting as principal or agent, shall make, in connection with any transaction referred to in this Rule, any agreement with his customer under which such **[**member**]** ETP Holder shall be allowed to pledge or hypothecate any security involved in such transaction in contravention of Commission Rules 8c-1 and 15c3-3.

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CHAPTER IV.

Books and Records

Rule 4.1. Requirements

Each **[**member**]** ETP Holder shall make and keep books, accounts, records, memoranda and correspondence in conformity with Section 17 of the Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with Exchange Rules.

Rule 4.2. Furnishing of Records

Every **[**member**]** ETP Holder shall furnish to the Exchange, upon request and in a time and manner required by the Exchange, current copies of any financial information filed with the Commission, as well as any records, files, or financial information pertaining to transactions executed on or through the Exchange. Further, the Exchange shall be allowed access, at any time, to the books and records of the **[**member**]** ETP Holder in order to obtain or verify

information related to transactions executed on or through the Exchange or activities relating to the Exchange.

Interpretations and Policies

.01 Consistent with the responsibility of the Exchange and the **[**Securities and Exchange**]** Commission to provide for timely regulatory investigations, the Exchange has adopted the following time parameters within which **[**members**]** ETP Holders are required to respond to Exchange requests for trading data:

1st Request.....10 business days
2nd Request.....5 business days
3rd Request.....5 business days

The third request letter will be sent to the **[**member'**]** ETP Holder's compliance officer and/or senior officer.

.02 Regulatory Data Submission Requirement. **[**Members**]** ETP Holders shall submit to the Exchange such Exchange-related order, market and transaction data as the Exchange **[**by Regulatory Circular**]** may specify, in such form and on such schedule as the Exchange may require.

Rule 4.3. Record of Written Complaints

(a) Each **[**member**]** ETP Holder shall keep and preserve for a period of not less than five years a file of all written complaints of customers and action taken by the **[**member**]** ETP Holder in respect thereof, if any. Further, for the first two years of the five- year period, the **[**member**]** ETP Holder shall keep such file in a place readily accessible to examination or spot checks.

(b) *No change*.

(c) A "complaint" shall mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of **[**a member**]** an ETP Holder or persons under the control of the **[**member**]** ETP Holder in connection with (1) the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the Exchange or (2) the disposition of securities or funds of that customer which activities are related to such a transaction.

Rule 4.4. Disclosure of Financial Condition

(a) **[**A member**]** An ETP Holder shall make available for inspection by a customer, upon request, the information relative to such **[**member'**]** ETP Holder's financial condition disclosed in its most recent balance sheet prepared either in accordance with such **[**member'**]** ETP Holder's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder. Further, **[**a member**]** an ETP Holder shall send to its customers the statements required by Commission Rule 17a-5(c).

(b) As used in paragraph (a) of this Rule, the term "customer" has the same meaning as set forth in Commission Rule 17a-5(c)(4).

[Rule 4.5. Mandatory Year 2000 Testing

This rule will expire automatically on January 1, 2001.

(a) *Point-to-Point Testing.* Each member that has an electronic interface with the Exchange shall participate in point-to-point testing with the Exchange of its computer systems designed to ascertain Year 2000 compatibility of those computer systems, in a manner and frequency as prescribed by the Exchange. A member that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Exchange, (i) the service provider conducts successful tests with the Exchange on behalf of the firms it serves, (ii) the member conducts successful point-to-point testing with the service provider, and (iii) the Exchange agrees that further testing is not necessary.

(b) *Industry-wide Testing.* The Exchange may require certain of its members to participate in industry-wide testing of computer systems for Year 2000 compatibility. The Exchange may require any member who will participate in industry-wide testing to also participate in any tests necessary to ensure preparedness to participate in industry-wide testing.

(c) *Reports.* Members participating in point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or industry- wide testing shall file reports with the Exchange concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.

Rule 4.6. Decimal Price Testing

This rule will expire automatically upon the full implementation of decimal pricing.

(a) *Point-to-Point Testing.* Each member that has an electronic interface with the Exchange shall participate in point-to-point testing with the Exchange of its computer systems designed to ascertain decimal pricing conversion compatibility of those computer systems, in a manner and frequency as prescribed by the Exchange. A member that has its electronic interface through a service provider need not participate in point-to-point testing, (i) if the service provider conducts successful tests with the Exchange on behalf of the firms it serves, and (ii) if the member conducts successful point-to-point testing with the service provider by a time designated by the Exchange.

(b) *Industry-wide Testing.* The Exchange may require certain of its members to participate in industry-wide testing of computer systems for decimal pricing conversion compatibility. The Exchange may require any member who will participate in industry-wide testing to also participate in any tests necessary to ensure preparedness to participate in industry-wide testing.

(c) *Reports.* Members participating in point-to-point testing or industry testing shall file reports with the Exchange concerning the required tests in the manner and frequency required by the Exchange.

(d) *Documentation.* Members shall maintain adequate documentation of tests required by this Rule and the results of such testing for examination by the Exchange.**]**

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CHAPTER V.

Supervision

Rule 5.1. Written Procedures

Each **[**member**]** ETP Holder shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the **[**member**]** ETP Holder and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.

Rule 5.2. Responsibility of [Members] ETP Holders

Final responsibility for proper supervision shall rest with the **[**member**]** ETP Holder. The **[**member**]** ETP Holder shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures. A copy of such procedures shall be kept in each such office.

Rule 5.3. Records

Each **[**member**]** ETP Holder shall be responsible for making and keeping appropriate records for carrying out the **[**member'**]** ETP Holder's supervisory procedures.

Rule 5.4. Review of Activities and Annual Inspection

Each **[**member**]** ETP Holder shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each **[**member**]** ETP Holder shall conduct at least annually an inspection of each office of the **[**member**]** ETP Holder.

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Rule 5.6. Anti-Money Laundering Compliance Program

(a) Each **[**member**]** ETP Holder shall develop and implement an anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each **[**member**]** ETP Holder's anti-money laundering program must be approved, in writing, by a member of its senior management.

(b) The anti-money laundering programs required by the Rule shall, at a

minimum:

(1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(2) establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(3) provide for independent testing for compliance to be conducted by the **[**member**]** ETP Holder's personnel or by a qualified outside party;

(4) designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number), a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and

(5) provide ongoing training for appropriate persons.

In the event that any of the provisions of this Rule 5.6 conflict with any of the provisions of another applicable self-regulatory organization's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the rule of the **[**member**]** ETP Holder's Designated Examining Authority shall apply.

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CHAPTER VI.

Extensions of Credit

Rule 6.1. Prohibitions and Exemptions

(a) **[**A member**]** An ETP Holder shall not effect a securities transaction through Exchange facilities in a manner contrary to the regulations of the Board of Governors of the Federal Reserve System.

(b)-(c) *No change.*

Rule 6.2. Day Trading Margin

(a)-(b) *No change.*

(c) No **[**member**]** ETP Holder shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No **[**member**]** ETP Holder shall permit a public customer to make a practice of selling

securities with them in a cash account which are to be received against payment from another broker- dealer where such securities were purchased and are not yet paid for.

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CHAPTER VII.

Suspension by Chairman or President

Rule 7.1. Imposition of Suspension

(a) **[**A member**]** An ETP Holder which fails or is unable to perform any of its contracts, or is insolvent or is unable to meet the financial responsibility requirements of the Exchange, shall immediately inform the Secretary in writing of such fact. Upon receipt of said notice, or whenever it shall appear to the Chairman or President (after such verification and with such opportunity for comment by the **[**member**]** ETP Holder as the circumstances reasonably permit) that **[**a member**]** an ETP Holder has failed to perform its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting its business in such financial or operational condition or is otherwise conducting its business in such a manner that it cannot be permitted to continue in business with safety to its customers, creditors and other **[**members**]** ETP Holders of the Exchange, the Chairman or President may summarily suspend the **[**member**]** ETP Holder or may impose such conditions and restrictions upon the **[**member**]** ETP Holder as are reasonably necessary for the protection of investors, the Exchange, the creditors and the customers of such **[**member**]** ETP Holder.

(b) **[**A member**]** An ETP Holder that does not pay any dues, fees, assessments, charges or other amounts due to the Exchange within **[**30**]** 90 days after the same has become payable shall be reported to the Chairman, who may, after giving reasonable notice to the **[**member**]** ETP Holder of such arrearages, suspend the **[**member**]** ETP Holder until payment is made. Should payment not be made within six months after payment is due, the **[**membership**]** ETP may be disposed of or cancelled by the Exchange.

(c) In the event of suspension of **[**a member**]** an ETP Holder, the Exchange shall give prompt notice of such suspension to the **[**membership**]** ETP Holders of the Exchange. Unless the Chairman or the President shall determine that lifting the suspension without further proceedings is appropriate, such suspension shall continue until the **[**member**]** ETP Holder is reinstated as provided in Rule 7.3. of this Chapter.

Rule 7.2. Investigation Following Suspension

Every **[**member**]** ETP Holder suspended under the provisions of this Chapter shall immediately make available every facility requested by the Exchange for the investigation of its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short security position maintained by the **[**member**]** ETP Holder and each of its customers. The foregoing includes, without limitation, the furnishing of such of the

[member'**]** ETP Holder's books and records and the giving of such sworn testimony as may be requested by the Exchange.

Rule 7.3. Reinstatement

[A member**]** An ETP Holder suspended under the provisions of this Chapter may apply for reinstatement by a petition in accordance with and in the time provided for by the provisions of Chapter X of the Exchange Rules relating to adverse action.

Rule 7.4. Failure to be Reinstated

[The membership of a member**]** An ETP Holder suspended under the provisions of this Chapter who fails to seek or obtain reinstatement in accordance with Rule 7.3 shall **[**be**]** have its ETP cancelled or disposed of by the Exchange in accordance with **[**the**]** Exchange**[**'s By- Laws**]** Rule 2.6.

Rule 7.5. Termination of Rights by Suspension

[A member**]** An ETP Holder suspended under the provisions of this Chapter shall be deprived during the term of its suspension of all rights and privileges **[**of membership.**]** conferred to it by virtue of it holding an ETP.

Rule 7.6. Summary Suspension of Exchange Services

The Chairman or President (after such verification with such opportunity for comment as the circumstances reasonably permit) may summarily limit or prohibit (i) any person from access to services offered by the Exchange, if such person has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization or is in such financial or operating difficulty that the Exchange determines that such person cannot be permitted to do business with safety to investors, creditors, Exchange **[**members**]** ETP Holders or the Exchange; or (ii) a person who is not **[**a member**]** an ETP Holder from access to services offered by the Exchange, if such person does not meet the qualification requirements or other pre-requisites for such access and if such person cannot be permitted to continue to have access with safety to investors, creditors, **[**members**]** ETP Holders and the Exchange. Any person aggrieved by any such summary action may seek review under the provisions of Chapter X of the Exchange Rules relating to adverse action.

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CHAPTER VIII.

Discipline

Rule 8.1. Disciplinary Jurisdiction

(a) **[**A member**]** An ETP Holder or a person associated with **[**a member**]** an ETP Holder (the "Respondent") who is alleged to have violated or aided and abetted a violation of any

provision of the **[**Securities Exchange**]** Act **[**of 1934, as amended**]**, or the rules and regulations promulgated thereunder, or any provision of the **[**Articles**]** Certificate of Incorporation, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution or order of the Board or appropriate Exchange committee shall be subject to the disciplinary jurisdiction of the Exchange under this Chapter, and after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with **[**a member**]** an ETP Holder or any other fitting sanction, in accordance with the provisions of this Chapter.

An individual **[**member**]** ETP Holder, responsible party, or other person associated with **[**a member**]** an ETP Holder **[**organization**]** may be charged with any violation committed by employees under his/her/its supervision or by the **[**member**]** ETP Holder **[**organization**]** with which he/she/it is associated, as though such violation were his/her/its own. **[**A member**]** An ETP Holder organization may be charged with any violation committed by its employees or by any other person who is associated with such **[**member**]** ETP Holder organization, as though such violation were its own.

(b) Any **[**member**]** ETP Holder or person associated with **[**a member**]** an ETP Holder shall continue to be subject to the disciplinary jurisdiction of the Exchange following **[**such person's**]** the termination of **[**membership**]** such person's ETP or association with **[**a member**]** an ETP Holder with respect to matters that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former **[**member**]** ETP Holder or former associated person within one year of receipt by the Exchange of the latest written notice of the termination of such person's status as **[**a member**]** an ETP Holder or person associated with **[**a member**]** an ETP Holder. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself or herself to the disciplinary jurisdiction of the Exchange by becoming **[**a member**]** an ETP Holder or a person associated with **[**a member**]** an ETP Holder.

(c) *No change*.

Rule 8.2. Complaint and Investigation

(a)-(b) *No change*.

(c) Requirement to Furnish Information and Right to Counsel

Each **[**member**]** ETP Holder and person associated with **[**a member**]** an ETP Holder shall be obligated upon request by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) an investigation initiated pursuant to paragraph (a) of this Rule or (ii) a hearing or appeal conducted pursuant to this Chapter or preparation by the Exchange in anticipation of such a hearing or appeal. No **[**member**]** ETP Holder or person associated with **[**a member**]** an ETP Holder shall impede or delay an Exchange investigation or proceeding conducted pursuant to this Chapter nor refuse to comply with a request made by the Exchange pursuant to this paragraph. **[**A member**]** An ETP Holder or person associated with **[**a member**]** an ETP Holder is entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.

(d)-(e) *No change*.

(f) Regulatory Cooperation

No **[**member**]** ETP Holder or person associated with **[**a member**]** an ETP Holder or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. The requirements of this Rule 8.2(f) shall apply when the Exchange has been notified by another self-regulatory organization of the request for testimony, documentary materials or other information and the Exchange then requests in writing that **[**a member**]** an ETP Holder, person associated with **[**a member**]** an ETP Holder or other person or entity provide such testimony, documentary materials or other information. Any person or entity required to furnish testimony, documentary materials or other information pursuant to this Rule 8.2(f) shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request.

(g)-(h) *No change*.

* * * * *

Rule 8.12. Miscellaneous Provisions

(a)-(b) *No change*.

(c) Reports and Inspection of Books for Purpose of Investigating Complaints

For the purpose of any investigation or determination as to the filing of a complaint, or any hearing of any complaint against any **[**member**]** ETP Holder of the Exchange or any person associated with **[**a member**]** an ETP Holder, the Exchange's staff, Business Conduct Committee, Board or designated self-regulatory organization shall have the right (1) to require any **[**member**]** ETP Holder of the Exchange to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such **[**member**]** ETP Holder with relation to any matter involved in any such investigation or hearing. No **[**member**]** ETP Holder shall refuse to make any report as required in this Rule, or refuse to permit any inspection of books, records and accounts as may be validly called for under this Rule.

Rule 8.13. Costs of Proceedings

Any **[**member**]** ETP Holder disciplined pursuant to this Chapter shall bear such part of the costs of the proceedings as the Business Conduct Committee or the Board deems fair and appropriate in the circumstances.

* * * * *

Rule 8.15. Imposition of Fines for Minor Violation(s) of Rules

(a) In lieu of commencing a disciplinary proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed $2,500, on any **[**member, member organization**]** ETP Holder, associated person of an ETP Holder, or registered or non-registered employee of **[**a member or member organization**]** an ETP Holder, for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the **[**Securities Exchange**]** Act **[**of 1934, and**]** or as may be required by any other regulatory authority.

(b)-(d) *No change*.

(e) The Exchange shall prepare and announce to its **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations from time to time a listing of the Exchange Rules as to which the Exchange may impose fines as provided in this Rule. Such listing shall also indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such Rule or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation. Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to the violation of any Rule included in any such listing.

Interpretations and Policies

.01 List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Rule 8.15:

(a) Rule 14.3 requirement to issue ITS pre-opening notification.

(b) Rule 14.9 requirement to comply with ITS trade-through and locked market rules.

(c) Rule 14.10 requirement to comply with ITS block-trade policy.

(d) Rule 4.1, Rule 4.2 and Interpretations, thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period.

Fine Schedule

Fine Amount	Individual**[**Member**]** ETP Holder	Organization
First time fined	$100	$500
Second time fined	300	1,000
Third time fined	500	2,500

*Within a "rolling" 12-month period.

(e) Rule 4.2 and Interpretations thereunder related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information.

(f) Rule 11.9(c) related to the requirement to comply with quotation policies.

(g) Rule 12.10 and Interpretations thereunder related to the requirement to display customer limited orders.

Recommended Fine Amount

$100 per violation

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CHAPTER IX.

Arbitration

Rule 9.1. General

(a) Any dispute, claim or controversy between a customer or **[**nonmember and a member, member**]** non-ETP Holder and an ETP Holder, ETP Holder organization, and/or associated person arising in connection with the business of such **[**member, member**]** ETP Holder, ETP Holder organization, and/or associated person in connection with his activities as an associated person shall be arbitrated under the By-Laws and the Exchange Rules **[**of the Exchange**]** as provided by any duly executed and enforceable written agreement or upon the demand of the customer or **[**nonmember**]** non-ETP Holder.

(b) *No change*.

Rule 9.2. Simplified Arbitration

(a) Any dispute, claim, or controversy, arising between a public customer(s) and an associated person or **[**a member**]** an ETP Holder subject to arbitration under this Code involving a dollar amount not exceeding $10,000 exclusive of attendant costs and interest, shall upon demand of the customer(s), or by written consent of the parties, be arbitrated as hereinafter provided.

(b)-(l) *No change*.

* * * * *

Rule 9.8. Designation of Number of Arbitrators

(a) (1) In all arbitration matters involving public customers and **[**nonmembers**]** non-ETP Holders where the matter in controversy exceeds $10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry,

unless the public customer or non-**[**member**]** ETP Holder requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(i.) Is a person associated with **[**a member**]** an ETP Holder, or broker-dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment advisor, or

(ii.) – (iv) *No change.*

(3) *No change*.

(b) No change.

*** * * * ***

Rule 9.20. General Provision Governing A Pre-Hearing Proceeding

(a)-(f) *No change*.

(g) Power to Direct Appearance and Production of Documents.

The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed by or associated with any **[**member**]** ETP Holder or **[**member**]** ETP Holder organization of the Exchange and/or the production of any records in the possession or control of such persons or **[**members**]** ETP Holders. Unless the arbitrator(s) directs otherwise, the party requesting the appearance of a person or the production of documents under this Section shall bear all reasonable costs of such appearance and/or production.

*** * * * ***

Rule 9.31. Requirements When Using Pre-Dispute Arbitration Agreements with Customers

(1)-(4) *No change*.

(5) The requirements of this section shall apply only to new agreements signed by an existing or new customer of **[**a member**]** an ETP Holder or **[**member**]** ETP Holder organization after 120 days have elapsed from the date of Commission approval of this rule.

CHAPTER X.

Adverse Action

Rule 10.1. Scope of Chapter

This Chapter provides the procedure for persons who are or are about to be aggrieved by adverse action, including, but not limited to, those persons who have been denied **[**membership**]** an ETP, barred from becoming associated with **[**a member**]** an ETP Holder, or prohibited or limited with respect to Exchange services (e.g., denial of admission of eligible securities to listing) or the services of any Exchange **[**member**]** ETP Holder pursuant to any contractual arrangement, the By-Laws or the Rules of the Exchange (other than disciplinary action for which review is provided in Chapter VIII and other than an arbitration award, from which there is no Exchange review), to apply for an opportunity to be heard and to have the complained of action reviewed.

* * * * *

CHAPTER XI.

Trading Rules

* * * * *

Rule 11.5. Orders to be Reduced and Increased on Ex-Date

(a)-(c) *No change*.

(d) Open orders held by **[**a member**]** an ETP Holder prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be reduced in price and, if the above is applicable, increased in shares by the value of the dividend or distribution of rights, unless the **[**member**]** ETP Holder is otherwise instructed by the customer from whom the orders were received. In this regard, a customer may enter a Do Not Reduce or "DNR" order if he does not want the price of an order reduced for cash dividends, or a Do Not Increase or "DNI" order if he does not want an order increased in shares for stock dividends or stock distributions.

* * * * *

Rule 11.7. Cabinet Trading

Trading in securities for which there is no dealer participation may be provided through Exchange facilities. Bids and offers of **[**members**]** ETP Holders shall be registered in a book maintained for such purposes by the Exchange at a facility located in Chicago, Illinois, or elsewhere as designated by the Exchange's Board.

Rule 11.8. Qualified Dealer Trading

(a) The Securities Committee may approve one or more **[**Proprietary Members of the Exchange**]** ETP Holders to be a "qualified dealer" for each designated issue (as defined in Rule 11.9 of this Chapter). Such qualified dealers shall perform the following functions:

(1) guarantee settlement for transactions occurring through the Exchange in issues for which the **[**Proprietary Member**]** ETP Holder is the qualified dealer and executes the transaction;

(2) act as a clearing contra-party for transactions occurring through the Exchange in issues for which the **[**Proprietary member**]** ETP Holder is a qualified dealer and executes the transaction;

(3) provide to all **[**members**]** ETP Holders during Exchange trading hours a continuous two-sided market in odd-lots of issues for which the **[**Proprietary Member**]** ETP Holder is designated a qualified dealer; and

(4) give precedence in trading to all public agency orders shown to the qualified dealer at prices equal to or better than the qualified dealer's own bid or offer.

(b) For purposes of Rule 11.8., a public agency order shall mean any order for the account of a person other than **[**a member**]** an ETP Holder, which order is represented, as agent, by **[**a member**]** an ETP Holder.

(c)-(d) *No change*.

Rule 11.9. National Securities Trading System

(a) When used in Rule 11.9, unless the context otherwise requires -

(1)-(4) *No change*.

(5) The term "Designated Dealer" means **[**a Proprietary Member**]** an ETP Holder who, in addition to trading on an agency basis, also trades on a proprietary basis and maintains a minimum net capital of at least the greater of $500,000 or the amount required under Rule 15c3-1 of the Securities Exchange Act of 1934, as amended, and who has been approved by the Securities Committee to perform market functions by entering bids and offers for Designated Issues into the System.

(6) The term "Contributing Dealer" means **[**a Proprietary Member**]** an ETP Holder who (i) in addition to trading on an agency basis, also trades on a proprietary basis; (ii) maintains a minimum net capital of at least the greater of $50,000 or the amount required under Rule 15c3-1 of the **[**Securities Exchange**]** Act**[**, as amended**]**; (iii) is registered with the Exchange with respect to one or more Designated Issues; and **[**(iii)**]** (iv) provides to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he/she/it is registered.

(7) The term "User" means **[**a Member**]** an ETP Holder of the Exchange or an Approved Dealer. **[**Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member.**]**

(8) *No change*.

(9) The term "public agency order" means any order for the account of a person other than **[**a member**]** an ETP Holder, an Approved Dealer or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is represented, as agent, by a User.

(10)-(14) *No change*.

(b) *No change*.

(c) The Securities Committee shall approve one or more applicant **[**Proprietary Members**]** ETP Holders of the Exchange as a Designated Dealer for one or more Designated Issues. A Designated Dealer shall perform the following functions:

(i)-(iii) *No change*.

(iv) Guarantee the execution of public agency market orders in Designated Issues for which he is Designated Dealer in accordance with subparagraph (n) of this Rule 11.9. If there exist two or more Designated Dealers in a Designated Issue, then unless the Securities Committee has approved one **[**member**]** ETP Holder as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis. For the purposes of this subsection, market order shall include marketable limit order, which is a limit order that is immediately executable because the ITS BBO or Nasdaq System BBO at the time the order is entered is equal to or better than the limit price on the order.

(v) Guarantee the execution in Designated Issues that are other than Nasdaq/NNM securities up to 1099 shares at the opening price of opening public agency market orders and limit orders which are priced better than such opening price ("marketable limit orders"). Guarantee the execution of market orders and marketable limit orders in Designated Issues that are Nasdaq/NNM securities up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed Nasdaq System BBO. If there exist two or more Designated Dealers in a Designated Issue, then, unless the Securities Committee has approved one **[**member**]** ETP Holder as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis.

(d) **[**A Proprietary Member**]** An ETP Holder registered with the Exchange as a Contributing Dealer shall forfeit his right to continue as a Contributing Dealer if he fails to provide to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he is registered as a Contributing Dealer.

(e) *No change*.

(f) **[**Proprietary Members**]** An ETP Holder of the Exchange may provide bids and offers for their own accounts in any Designated Issue to all Users through the System so long as, in effecting transactions on the Exchange through the System, they comply with Section 11(a) of the Act and the rules and regulations thereunder.

(g) – (h) *No change*.

(i) The System offers two modes of order interaction selected by **[**members**]** ETP Holders:

(1) *No change.*

(j) *No change*.

(k) Public agency orders entered in the System which have not been executed may be removed from the System only by the User who entered the order for the purpose of canceling the order, transferring the order to another national market or, in the case of withdrawal by an Approved Dealer or **[**Proprietary Member**]** an ETP Holder, executing such order immediately as principal pursuant to a limit order guarantee. Executions of public agency orders as principal pursuant to a limit order guarantee shall be deemed to be transactions effected on the Exchange in the same manner as if such transactions were executed through the System and must be reported to the Exchange as promptly as possible and in any event within one minute of execution.

(l) *No Change.*

(m) It shall be the responsibility of each Approved Dealer or other **[**Proprietary Member**]** ETP Holder when trading on the Exchange for his own account or as agent for professional agency orders in round lots of Designated Issues to effect such transactions through the System and, in so doing, to yield priority to

(1) *No change.*

(2) All orders, bids and offers of Approved Dealers and other **[**Proprietary Members**]** ETP Holders for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or (ii) in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such Approved Dealers are representing as agent pursuant to subparagraph (u).

(n)-(o) *No change.*

(p) Nothing in paragraphs (j) through (l) shall preclude an Approved Dealer or **[**Proprietary Member**]** an ETP Holder from effecting an execution of a public agency order in a Designated Issue on the Exchange pursuant to a limit order guarantee.

(q)-(r) *No change*.

(s) The Board shall be responsible for the supervision of National Securities Trading System including the following:

(1) Affording to any person adversely affected by any prohibition or limitation with respect to access to services offered by the Exchange or any **[**member**]** ETP Holder in connection with the System the procedural rights available under Exchange Rules for adverse action.

(2) *No change*.

(3) Requiring all Users participating in the System to comply with all Exchange Rules. Approved Dealers and **[**Proprietary Members**]** ETP Holders shall apprise customers promptly when they have acted as principal in effecting transactions with customers, unless earlier notification and consent is required by law.

(t) Neither the Exchange nor its agents, employees or contractors shall be liable to its **[**members, member**]** ETP Holders, ETP Holder organizations, successors, representatives or customers thereof, or any persons associated therewith, for any claims arising out of the use or enjoyment by such **[**member, member**]** ETP Holder, ETP Holder organization, successor, representative, customer, or associated person, of the facilities afforded by the Exchange, including, without limitation, the National Securities Trading System and the Automated Extension Processing System.

(u) *No change.*

(v)

(1)-(2) *No change*.

(3) **[**Members**]** ETP Holders and **[**member**]** ETP Holder organizations shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by **[**a member**]** an ETP Holder or **[**member**]** ETP Holder organization to customers or to the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts] . In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts] ."

[A member**]** An ETP Holder or **[**member**]** ETP Holder organization carrying omnibus account for a non-**[**member**]** ETP Holder broker-dealer is required to inform such non-**[**member**]** ETP Holder that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-**[**member**]** ETP Holder to make such written description available to its customers on the same terms as are directly applicable to **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations under this rule.

Upon request of a customer, **[**a member**]** an ETP Holder or **[**member**]** ETP Holder organization shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(4)-(6) *No change.*

(w)

(1)-(4) *No change.*

(5) **[**Member**]** ETP Holder Obligations. **[**Members**]** ETP Holders and **[**member**]** ETP Holder organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) *No change*.

(x) Index Fund Shares

(1)-(2) *No change*.

(3) Disclosure. Upon request of a customer, **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4)-(5) *No change*.

Interpretations And Policies

.01 *No change*.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment

company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by **[**a member**]** an ETP Holder or **[**member**]** ETP Holder organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of **[**the series of Index Fund Shares**]** has been prepared by the **[**open-end management investment company name**]** and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing **[**the series of Index Fund Shares**]** ."

[A member**]** An ETP Holder or **[**member**]** ETP Holder organization carrying an omnibus account for a non-**[**member**]** ETP Holder broker-dealer is required to inform such non-**[**member**]** ETP Holder that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-**[**member**]** ETP Holder to make such written description available to its customers on the same terms as are directly applicable to **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations under this rule.

Upon request of a customer, **[**member**]** an ETP Holder or **[**member**]** ETP Holder organization shall also provide a prospectus for the particular series of Index Fund Shares.

Rule 11.10. National Securities Trading System Fees

A. Trading Fees

(a) Agency Transactions. As in the case for Preferenced transactions, **[**members**]** ETP Holders acting as an agent will be charged the per share incremental rates as noted below for public agency transactions:

Avg. Daily Share * Volume	Charge Per Share
1 to 250,000.	$0.0015
250,001 to 500,000	$0.0013
500,001 to 750,000	$0.0009
750,001 to 1,250,000	$0.0007
1,250,001 and higher	$0.0005

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* Odd-Lot Shares Excluded

(b) Odd-Lot Transactions. **[**Members**]** ETP Holders will be charged $0.50 per odd-lot transaction when acting as agent or principal, except that **[**members**]** ETP Holders will earn a credit of $0.50 for every four round-lot transactions executed (agency, professional agency or principal) on the Exchange and printed on the Consolidated Tape by the Exchange. Notwithstanding the forgoing credit, there will be a minimum charge of $0.10 per odd-lot transaction.

(c) *No change.*

(d) Professional Agency Transactions. **[**Members**]** ETP Holders will be charged $0.0025 per share ($0.25/100 shares) for professional agency (Rule 11.9(a)(8)) transactions.

(e)-(f) *No change*.

(g) Proprietary (Principal) Transactions

(1) (A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged $0.001 per share ($0.10/100 shares) for principal transactions.

(B) For a pilot period commencing October 1, 2002 and lasting through June 30, 2006, **[**members**]** ETP Holders that execute orders in Nasdaq securities against previously displayed quotes/orders of other **[**members**]** ETP Holders shall pay $0.004 per share for such execution. The Exchange shall pass on to the **[**member**]** ETP Holder displaying the quote/order executed against $0.003 per share and the Exchange shall retain $0.001 per share.

(2)-(3) *No change*.

(4) **[**Members**]** ETP Holders executing principal transactions in securities for which they are not registered as a Designated or Contributing Dealer will be charged $0.02 per share ($2.00/100 shares).

(h) *No change.*

(i) Transaction Fee Cap. The monthly transaction fees charged to each **[**member**]** ETP Holder shall be equal to the lesser of (1) the amounts assessed pursuant to Paragraphs (A)(a) through (A)(h) of this Rule 11.10 or (2) $50,000.

(j) *No change*.

(k) Tape "B" Transactions. Except as provided in Paragraph (A)(e)(4) above, the Exchange will not impose a transaction fee on Consolidated Tape "B" securities. In addition, **[**Members**]** ETP Holders will receive a 50 percent pro rata transaction credit of gross Tape "B" revenue; provided that, however, calculation of the transaction credit will be based on net Tape “B” revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape “B” transactions is subject to any adjustment, credits provided under this program may be adjusted accordingly.

(l)-(m) *No change.*

(n) NSTS Internal Customer Port Charge. For purposes of this charge, a "Port" shall be defined as a TCP/IP address. For each port utilized on the Exchange

mainframe a $350.00 per month charge will be assessed the **[**member**]** ETP Holder.

(o) Technology Fee. Every **[**Member**]** ETP Holder of the Exchange shall be assessed a fee of $1,250.00 per month to help offset technology expenses incurred by the Exchange.

(p) Clearing Related Fee Passed Through to **[**Member**]** ETP Holder. The Exchange will pass onto **[**members**]** ETP Holders the entire amount of the clearing related fees allocated to the Exchange by the clearing agent for transactions which the Exchange submits to clearing on behalf of **[**members**]** ETP Holders.

(q) Regulatory Transaction Fee. Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to **[**members**]** ETP Holders. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expense. Each **[**member**]** ETP Holder engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the **[**member**]** ETP Holder's aggregate dollar amount of covered sales occurring on the Exchange during any computational period.

(r) Workstation Fee. Every **[**member**]** ETP Holder using the Exchange Workstation shall be charged $1,000.00 per device per month.

B. **[**Membership**]** ETP Holder Fees.

Item	Fee
Yearly**[** Membership**]** Dues (Quarterly Charge $625)	$2,500
New **[**Member**]** ETP Holder Application Fee	$1,000
Transfers	$350
Responsible Party Change	
Firm Registration/Name Change	

C. Transaction Credit De Minimis. For all rebates applicable to Tape A and Tape B Transactions, no **[**member**]** ETP Holder shall be eligible for a rebate for any quarter unless the total rebate calculation for that quarter exceeds $500.00.

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CHAPTER XII.

Trading Practice Rules

Rule 12.1. Market Manipulation

No **[**member**]** ETP Holder shall execute or cause to be executed or participate in an account for which there are executed purchases of any security at successively higher prices, or sales of any security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security on the Exchange or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

Rule 12.2. Fictitious Transactions

No **[**member**]** ETP Holder, for the purpose of creating or inducing a false or misleading appearance of activity in a security traded on the Exchange or creating or inducing a false or misleading appearance with respect to the market in such security shall:

(1)-(3) *No change*.

Rule 12.3. Excessive Sales by [Member] an ETP Holder

No **[**member**]** ETP Holder shall execute purchases or sales or any security traded on the Exchange for any account in which such **[**member**]** ETP Holder is directly or indirectly interested, which purchases or sales are excessive in view of the **[**member'**]** ETP Holder's financial resources or in view of the market for such security.

Rule 12.4. Manipulative Transactions

(a) No **[**member**]** ETP Holder shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(b)-(d) *No change*.

Rule 12.5. Dissemination of False Information

No **[**member**]** ETP Holder shall make any statement or circulate and disseminate any information concerning any security traded on the Exchange which such **[**member**]** ETP Holder knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

Rule 12.6. Customer Priority

(a) No **[**member**]** ETP Holder shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the **[**member**]** ETP Holder is directly or indirectly interested while such **[**a

member**]** an ETP Holder holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No **[**member**]** ETP Holder shall (i) buy or initiate the purchase of any such security for any account in which it or any associated person of the **[**member**]** ETP Holder is directly or indirectly interested at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer or (ii) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

(c) The provisions of paragraphs (a) and (b) of this Rule shall not apply: (i) to any purchase or sale of any such security in an amount less than the unit of trading made by **[**a member**]** an ETP Holder to offset odd-lot orders for customers; (ii) to any purchase or sale of any such security upon terms for delivery other than those specified in such unexecuted market or limited price order; or (iii) to any unexecuted order that is subject to a condition that has not been satisfied.

Interpretations and Policies

No change.

Rule 12.7. Joint Activity

No **[**member**]** ETP Holder, directly or indirectly, shall hold any interest or participation in any joint account for buying or selling in a security traded on the Exchange, unless such joint account is promptly reported to the Exchange. The report should contain the following information for each account:

(1)-(2) *No change.*

(3) the name of the **[**member**]** ETP Holder carrying and clearing the account; and

(4) *No change.*

Rule 12.8. Influencing the Consolidated Tape

No **[**member**]** ETP Holder shall attempt to execute a transaction or transactions to buy or sell a security for the purpose of influencing any report appearing on the Consolidated Tape.

Rule 12.9. Options

(a) No **[**member**]** ETP Holder shall initiate the purchase or sale on the Exchange for its own account, or for any account in which it is directly or indirectly interested, of any stock of any issuer in which it holds or has granted any put, call, straddle or option; provided, however, that this prohibition shall not be applicable in respect of any option issued by **[**the**]** The Options Clearing Corporation.

(b) No **[**member**]** ETP Holder acting as an odd-lot dealer shall become interested directly or indirectly, in a pool dealing or trading in the stock of any issuer in which it is an odd-lot dealer, nor shall it acquire or grant directly or indirectly, any option to buy or sell, receive or deliver shares of stock of any issuer in which such **[**member**]** ETP Holder is an odd-lot dealer, unless such option is issued by **[**the**]** The Options Clearing Corporation.

Rule 12.10. Best Execution

In executing customer orders, **[**a member**]** an ETP Holder is not a guarantor of "best execution" but must use the care of a reasonably prudent person in the light of all circumstances deemed relevant by the **[**member**]** ETP Holder and having regard for the **[**member'**]** ETP Holder's brokerage judgment and experience.

Interpretations and Policies

.01 As part of **[**a member'**]** an ETP Holder's fiduciary obligation to provide best execution for its customer limit orders, the **[**member**]** ETP Holder shall refer to, and comply with, Rule 11Ac1-4 promulgated under the Securities Exchange Act of 1934, as amended.

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Rule 12.12. Publication of Transactions and Changes

(a) The Exchange shall cause to be disseminated for publication on the Consolidated Tape all last sale price reports of transactions executed through the facilities of the Exchange pursuant to the requirements of the Consolidated Tape Plan approved by the Commission.

(b) To facilitate the dissemination of such last sale price reports, each **[**member**]** ETP Holder shall cause to be reported to the Exchange, as promptly as possible after execution, all information concerning each transaction required by the Consolidated Tape Plan.

(c) *No change*.

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CHAPTER XIII.

Miscellaneous Provisions

Rule 13.1. Comparison and Settlement Requirements

(a) Every **[**member**]** ETP Holder who is a member of a qualified clearing agency shall implement comparison and settlement procedures under the rules of such entity and every **[**member**]** ETP Holder who is not such a member shall implement comparison and settlement procedures which conform to the comparison and settlement requirements of the National Association of Securities Dealers Uniform Practice Code.

(b) For purposes of this Rule, a qualified clearing agency shall mean a clearing agency (as defined in the Act) which has agreed to supply the Exchange with data reasonably requested in order to permit the Exchange to enforce compliance by its **[**members**]** ETP Holders and **[**member**]** ETP Holder organizations with the provisions of the Act, the rules and regulations there-under, and the rules of the Exchange.

(c) *No change*.

Rule 13.2. Failure to Deliver and Failure to Receive

(a) No **[**member**]** ETP Holder shall sell a security for his own account, or buy a security as **[**a member**]** an ETP Holder for a customer (except exempt securities), if he has a fail to deliver in that security 60 days old or older.

(b) For good cause shown and in exceptional circumstances, **[**a member**]** an ETP Holder may request and receive exemption from the provisions of the Rule by written request to the Secretary of the Exchange.

Rule 13.3. Proxies

(a) No **[**member**]** ETP Holder shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of paragraph (b) or (c) hereof unless such **[**member**]** ETP Holder is the beneficial owner of such stock.

(b) Whenever a person soliciting proxies shall timely furnish to **[**a member**]** an ETP Holder:

(1) sufficient copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such **[**member**]** ETP Holder for all out-of-pocket expenses, including reasonable clerical expenses incurred by such **[**member**]** ETP Holder in connection with such solicitation, such **[**member**]** ETP Holder shall transmit promptly to each beneficial owner of stock of such issuer which is in its possession or control or registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the

[member**]** ETP Holder, and a letter informing the beneficial owner of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. **[**A member**]** An ETP Holder shall furnish a copy of the symbols to the person soliciting the proxies and also shall retain a copy thereof pursuant to the provisions of Rule 17a-4 under the Act. Notwithstanding the provisions of this Rule, **[**a member**]** an ETP Holder may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the **[**member**]** ETP Holder is also responsible provided that the records of the **[**member**]** ETP Holder clearly indicate which procedure it is following. This section shall not apply to beneficial owners residing outside of the United States of America though **[**members**]** ETP Holders may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

(c) **[**A member**]** An ETP Holder may give a proxy to vote any stock registered in its name if such **[**member**]** ETP Holder holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. **[**A member**]** An ETP Holder which has in its possession or within its control stock registered in the name of another **[**member**]** ETP Holder and which desires to transmit signed proxies pursuant to the provisions of paragraph (b), shall obtain the requisite number of signed proxies from such holder of record.

(d) Notwithstanding the provisions of this Rule 13.3, **[**a member**]** an ETP Holder may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required pursuant to Rule **[**13.6**]** 15.9). This provision will be effective for any meeting of shareholders that occurs on or after the 90th day following the effective date of this provision.

Rule 13.4. Forwarding of Issuer Materials

[A member**]** An ETP Holder when so requested by an issuer and upon being furnished with: (1) sufficient copies of annual reports, information statements or other material required by law to be sent to stockholders periodically, and (2) satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner of securities of such issuer which are in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished. This paragraph shall not apply to beneficial owners residing outside of the United States of America though **[**members**]** ETP Holders may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

Rule 13.5. Assigning of Registered Securities in Name of [Member] an ETP Holder or [Member] ETP Holder Organization

[A member**]** An ETP Holder or **[**member**]** ETP Holder organization may authorize one or more persons who are his or its employees to assign registered securities in the name of such **[**member**]** ETP Holder or **[**member**]** ETP Holder organization and to guarantee assignments of registered securities with the same effect as if the name of such **[**member**]** ETP Holder or **[**member**]** ETP Holder organization had been signed under like circumstances by such **[**member**]** ETP Holder or by one of the partners of the **[**member**]** ETP Holder firm or by one of the authorized officers of the **[**member**]** ETP Holder corporation by executing and filing with the

Exchange, in a form prescribed by it, a separate Power of Attorney for each person so authorized.

Rule 13.6.

[(a) General Application. Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Rule 13.6. Consistent with requirements of the Sarbanes-Oxley Act of 2002, certain provisions of this Rule 13.6 are applicable to some listed companies but not to others.

(1) Equity Listings. Rule 13.6 applies in full to all companies listing common equity securities, with the following exceptions:

(a) Controlled Companies. A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Rule 13.6(d)(1), (4) or (5). A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. Controlled companies must comply with the remaining provisions of Rule 13.6.

(b) Limited Partnerships and Companies in Bankruptcy. Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Rule 13.6(d)(1), (4) or (5). However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Rule 13.6.

(c) Closed-End and Open-End Funds. The Exchange considers that many of the significantly expanded standards and requirements provided for in Rule 13.6 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, registered closed-end funds must comply with the requirements of Rule 13.6(d)(6), (7)(a) and (c), and (12). Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Interpretations and Policies to Rule 13.6(d)(7)(a) which calls for disclosure of the board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 13.6 applicable to domestic issuers other than Rule 13.6(d)(2) and (7)(b). For purposes of Rule 13.6(d)(1), (3), (4), (5), and (9), a director of a business development company shall be considered to be independent if he or she is not an

"interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A-3 under the Act, open-end funds (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs) are required to comply with the requirements of Rule 13.6(d)(6) and (12)(b).

Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management investment company, as well as employees of the management investment company. This responsibility must be addressed in the audit committee charter.

(d) Other Entities. Except as otherwise required by Rule 10A-3 under the Act (for example, with respect to open-end funds), Rule 13.6 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Rule 13.6(d)(6) and (12)(b).

(e) Foreign Private Issuers. Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Act) are permitted to follow home country practice in lieu of the provisions of this Rule 13.6, except that such companies are required to comply with the requirements of Rule 13.6(d)(6), (11) and (12)(b).

(2) Preferred and Debt Listings. Rule 13.6 does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Act, all companies listing only preferred or debt securities on the Exchange are required to comply with the requirements of Rule 13.6(d)(6) and (12)(b).

(3) Dual and Multiple Listings. At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 13.6, and that class of security has not been suspended from trading on that market, the issuer shall not be required to separately meet the requirements set forth in this Rule 13.6, except for the requirements of Rule 13(d)(6) and (7), below (audit committees) and with the notification requirements of Rule 13.6(d)(12)(B), as it relates to their audit committees, with respect to that class of securities or any other class of securities. Governance requirements of other markets will be considered to be substantially similar to the requirements of this Rule 13.6 if they are adopted by the New York Stock Exchange ("NYSE") or the National

Association of Securities Dealers (for the Nasdaq National Market or SmallCap Market) or if they otherwise require, subject to exceptions approved by the Commission, that the issuer maintain (a) a board of directors, a majority of whom are independent directors (50% of whom are independent directors, for a small business issuer); (2) a nominating committee or other body, a majority of whom are independent directors; (3) a compensation committee or other body, a majority of whom are independent directors; and (4) a code of business conduct and ethics that complies with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and the rules thereunder (17 C.F.R. 228.406 and 17 C.F.R. 229.406).

Similarly, when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 13.6, and that class of security has not been suspended from trading on that market, a direct or indirect consolidated subsidiary of the issuer, or an at least 50% beneficially-owned subsidiary of the issuer, shall not be required to separately meet the requirements set forth in this Rule 13.6 with respect to any class of securities it issues, except classes of equity securities (other than non-convertible, non-participating preferred securities) of such subsidiary.

(b) Effective Dates/Transition Periods. Listed companies will have until the earlier of their first annual meeting after July 31, 2004, or December 31, 2004, to comply with the new standards contained in Rule 13.6, although if a company with a classified board would be required (other than by virtue of a requirement under Rule 13.6(d)(6)) to change a director who would not normally stand for election in such annual meeting, the company may continue such director in office until the second annual meeting after such date, but no later than December 31, 2005. In addition, foreign private issuers will have until July 31, 2005, to comply with the new audit committee standards set out in Rule 13.6(d)(6). As a general matter, the existing audit committee requirements provided for in Subsection 1.4 of Article IV of the Exchange By-Laws continue to apply to listed companies pending the transition to these new rules.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on the same schedule as is permitted pursuant to Rule 10A-3 under the Act for audit committees, that is one independent member at the time of listing, a majority of independent members within 90 days of listing and fully independent committees within one year. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A-3 under the Act. Companies listing in conjunction with their initial public offering will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Rule 13.6 other than Rule 13.6(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. The Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 13.6 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 13.6(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1) (iv) (a) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies listing upon transfer from another market, or that are listing a security that is listed on another market or markets, have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market or that are dually or multiply listing securities will not apply to the requirements of Rule 13.6(d)(6) unless a transition period is available pursuant to Rule 10A-3 under the Act.

(c) References to Form 10-K. There are provisions in this Rule 13.6 that call for disclosure in a company's Form 10-K under certain circumstances. If a company subject to such a provision is not a company required to file a Form 10-K, then the provision shall be interpreted to mean the annual periodic disclosure form that the company does file with the Commission. For example, for a closed-end fund, the appropriate form would be the annual Form N-CSR.

(d) Listed Company Corporate Governance Requirements.

(1) Listed companies must have a majority of independent directors.

Interpretations and Policies: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

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(2) In order to tighten the definition of "independent director" for purposes of these standards:

(a) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.

Interpretations and Policies: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "company" would include any parent or subsidiary in a consolidated group with the company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material

relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

The directors who have been determined to be independent must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. The basis for a board determination that a relationship is not material must also be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

(i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.

Interpretations and Policies: Employment as an interim Chairman or CEO shall not disqualify a director from being considered independent following that employment.

(ii) A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

Interpretations and Policies: Compensation received by a director for former service as an interim Chairman or CEO need not be considered in determining independence under this test. Compensation received by an immediate family member for service as a non-executive employee of the listed company need not be considered in determining independence under this test.

(iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until three years after the end of the affiliation or the employment or auditing relationship.

(iv) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.

(v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of (A) $200,000, (B) 5% of such other company's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules, is not "independent" until three years after falling below such threshold.

Interpretations and Policies: In applying the test in Rule 13.6(d)(2)(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Charitable organizations shall not be considered "companies" for purposes of Rule 13.6(d)(2)(b)(v), provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of (A) $200,000, (B) 5% of such charitable organization's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Rule 13.6(d)(2)(a) above.

General Interpretations and Policies to Rule 13.6(d)(2)(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look back provisions in Rule 13.6(d)(2)(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. In addition, references to the "company" would include any parent or subsidiary in a consolidated group with the company.

Transition Rule. Each of the above standards contains a three-year "look-back" provision. In order to facilitate a smooth transition to the new independence standards, the Exchange will phase in the "look-back" provisions by applying only a one-year look-back for the first year after adoption of these new standards. The three-year look-backs provided for in Rule 13.6(d)(2)(b) will begin to apply on from and after July 9, 2005.

As an example, until July 8, 2005, a company need look back only one year when testing compensation under Rule 13.6(d)(2)(b)(ii). Beginning July 9, 2005, however, the company would need to look back the full three years provided in Rule 13.6(d)(2)(b)(ii).

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(3) To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

Interpretations and Policies: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not company officers (as that term is defined in Rule 16a-a(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees.

In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Companies may, if they wish, utilize for this purpose the same procedures they have

established to comply with the requirement of Rule 10A-3 (b)(3) under the Act, as applied to listed companies through Rule 13.6(d)(6).

While this Rule 13.6(d)(3) refers to meetings of non-management directors, if that group includes directors who are not independent under this Rule 13.6, listed companies should at least once a year schedule an executive session including only independent directors.

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(4) (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities - which at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management; and

(ii) an annual performance evaluation of the committee.

Interpretations and Policies: A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

(5) (a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities-which at minimum must be to have direct responsibility to:

(A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; and

(B) make recommendations to the board with respect to non-CEO compensation, incentive compensation plans and equity-based plans; and

(C) produce a compensation committee report on executive compensation as required by the Commission to be included in the company's annual proxy statement or annual report on Form 10-K filed with the Commission;

(ii) an annual performance evaluation of the compensation committee.

Interpretations and Policies: In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws.

The compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

Nothing in this provision should be construed as precluding discussion of CEO compensation with the board generally, as it is not the intent of this standard to impair communication among members of the board.

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(6) Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Act and Subsection 1.4 of Article IV of the Exchange By-Laws.

Interpretations and Policies: The Exchange will apply the requirements of Rule 10A-3 in a manner consistent with the guidance provided by the Commission in Securities Exchange Act Release No. 34-47654 (April 1, 2003). Without limiting the generality of the foregoing, as provided in Section 1.4(d) of Article IV of the Exchange By-Laws, the Exchange will provide companies the opportunity to cure defects provided in Rule 10A-3(a)(3) under the Act.

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(7) (a) In accordance with Subsection 1.4(a)(1) of Article IV of the Exchange By-Laws, the audit committee must have a minimum of three members.

Interpretations and Policies: Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. While the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set out in Item 401 (h) of Regulation S-K, a board may presume that such a person has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission.

(b) In addition to any requirement of Rule 10A-3(b)(1) of the Act, all audit committee members must satisfy the requirements for independence set out in Rule 13.6(d)(2).

(c) In accordance with Subsection 1.4(a)(2) of Article IV of the Exchange By-Laws, the audit committee must have a written charter. In addition to the requirements of Subsection 1.4(a)(2) of Article IV, the charter must address the following:

(i) the committee's purpose - which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence and (4) the performance of the company's internal audit function and independent auditors; and

(B) prepare an audit committee report as required by the Commission to be included in the company's annual proxy statement;

(ii) an annual performance evaluation of the audit committee; and

(iii) the duties and responsibilities of the audit committee - which, at a minimum must include those set out in Rule 10A-3(b)(2), (3), (4) and (5) of the Act and in Subsection 1.4 of Article IV of the Exchange By-Laws, as well as include that the committee:

(A) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

Interpretations and Policies: After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

[(B) discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations"

(C) discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Interpretations and Policies: The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(D) discuss policies with respect to risk assessment and risk management;

Interpretations and Policies: While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(E) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Interpretations and Policies: To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent

auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(F) review with the independent auditor any audit problems or difficulties and management's response;

Interpretations and Policies: The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(G) set clear hiring policies for employees or former employees of the independent auditors; and

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Interpretations and Policies: Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(H) report regularly to the board of directors.

Interpretations and Policies: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

General Interpretations and Policies to Rule 13.6(d)(7)(c): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in the light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

(d) Each listed company must have an internal audit function.

Interpretations and Policies: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management process and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

General Interpretations and Policies to Rule 13.6(d)(7): To avoid any confusion, note that the audit committee functions specified in Rule 13.6(d)(7) are the sole responsibility of the audit committee and may not be allocated to a different committee.

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(8) Listed companies must satisfy the requirements for shareholder approval of equity compensation plans in accordance with Exchange Rule 13.7.

(9) Listed companies must adopt and disclose corporate governance guidelines.

Interpretations and Policies: No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual report on Form 10-K filed with the Commission must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor

understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.

The following subjects must be addressed in the corporate governance guidelines:

(A) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Rule 13.6(d)(1) and (2). Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.

(B) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

(C) Director access to management and, as necessary and appropriate, independent advisors.

(D) Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.

(E) Director orientation and continuing education.

(F) Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

(G) Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

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(10) Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Interpretations and Policies: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report on Form 10-K filed with the Commission must state that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

(A) Conflicts of interest. A "conflict of interest" occurs when an individual's private interest interferes in any way-or even appears to interfere-with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

(B) Corporate opportunities. Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.

(C) Confidentially. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

(D) Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

(E) Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.

(F) Compliance with laws, rules and regulations (including insider trading laws). The company should proactively promote compliance with laws, rules and regulations, including insider-trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

(G) Encouraging the reporting of any illegal or unethical behavior. The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers, or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

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(11) Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's listing standards.

Interpretations and Policies: Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under the Exchange's listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes the U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

Listed foreign private issuers may provide this disclosure either on their website (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the website, the annual report shall so state and provide the web address at which the information may be obtained.

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(12) (a) Each listed company CEO must certify to the Exchange each year that he or she is not aware of any violation by the company of Exchange corporate governance listing standards.

Interpretations and Policies: The CEO's annual certification to the Exchange that, as of the date of certification, he or she is unaware of any violation by the company of the Exchange's corporate governance listing standards will focus the CEO and senior management on the

company's compliance with the listing standards. Both this certification to the Exchange, and any CEO/CFO certifications required to be filed with the Commission regarding the quality of the company's public disclosure must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the companies annual report on Form 10-K filed with the Commission.

(b) Each listed company CEO must promptly notify the Exchange in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Rule 13.6.

(13) The Exchange may issue a public reprimand letter to any listed company that violates an Exchange listing standard.

Interpretations and Policies: Suspending trading in or delisting a company can be harmful to the very shareholders that the Exchange listing standards seek to protect; the Exchange must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the Exchange to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the Exchange may issue a public reprimand letter to any listed company, regardless of type of security listed or country of incorporation, that it determines has violated an Exchange listing standard. For companies that repeatedly or flagrantly violate Exchange listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in Article IV of the Exchange By-Laws or that fail to comply with the audit committee standards set out in Subsection 1.4 of Article IV of the Exchange By-Laws or Rule 13.6(d)(6). The process and procedures provided for in those provisions govern the treatment of companies falling below those standards.**]**

Commissions

Nothing in the Exchange Rules, the By-Laws or the Exchange practices shall be construed to require, authorize or permit any ETP Holder, or any person associated with an ETP Holder, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of the facilities of, the Exchange.

Rule 13.7. [Shareholder Approval of Equity Compensation Plans

Equity compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval,

with limited exemptions identified in this rule.

(a) Definition of Equity Compensation Plan. An "equity compensation plan" is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. A compensatory grant of options or other equity securities that is not made under a plan is considered an "equity compensation plan" for purposes of these rules.

(b) Exceptions to Equity Compensation Plan Definition. The following are not equity compensation plans, even if the brokerage and other costs of the plan are paid for by the listed company:

(1) plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;

(2) plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether: (i) the shares are delivered immediately or on a deferred basis; or (ii) the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

(c) Material Revisions. A "material revision" of an equity compensation plan includes, but is not limited to, the following:

(1) A material increase in the number of shares available under the plan, other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction.

(i) If a plan contains a formula for automatic increases in the number of shares available (sometimes referred to as an "evergreen formula") or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years. Regardless of the term, this type of plan is referred to below as a "formula plan." Examples of automatic grants pursuant to a formula are: (A) annual grants to directors of restricted stock having a certain dollar value, and (B) "matching contributions," whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

(ii) If a plan contains no limit on the number of shares available and it is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years. This type of plan is referred to below as a "discretionary plan." A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.

(2) An expansion of the types of awards available under the plan.

(3) A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.

(4) A material extension of the term of the plan.

(5) A material change to the method of determining the strike price of options under the plan.

(i) A change in the method of determining "fair market value" from the closing price on the date of the grant to the average of the high and low price on the date of grant is an example of a change that the Exchange would not review as material.

(6) The deletion or limitation of any provision prohibiting repricing of options.

An amendment will not be considered a "material revision" if it curtails rather than expands the scope of the plan in question.

(d) Repricings. A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this listing standard as prohibiting repricing. Accordingly, any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective. "Repricing" means any of the following or any other action that has the same effect:

(1) Lowering the strike price of an option after it is granted.

(2) Any other action that is treated as a repricing under generally accepted accounting principles.

(3) Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

(e) Exemptions. The listing standard does not require shareholder approval of employment inducement awards; certain grants, plans and amendments in the context of mergers and acquisitions; and certain specific types of plans, all described below. However, these exempt grants, plans and amendments may be made only with the approval of the company's independent compensation committee or the approval of a majority of the company's independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

(1) Employment Inducement Awards. An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.

(2) Mergers and Acquisitions. Two exemptions apply in the context of corporate acquisitions and mergers. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered "pre-existing" for purposes of this exemption. Shares available under such a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

(i) the number of shares available for grants is appropriately adjusted to reflect the transaction;

(ii) the time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and

(iii) the options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, and thus require shareholder approval. These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

(3) Qualified Plans, Section 423 Plans and Parallel Excess Plans.

(i) The following types of plans, and material revisions thereto, are exempt from the shareholder approval requirement: (A) plans intended to meet the requirements of Section 401(a) of the Internal Revenue Code (e.g., ESOPs); (B) plans intended to meet the requirements of Section 423 of the Internal Revenue Code; and (C) "parallel excess plans" as defined below.

(ii) Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15% are also required by the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and parallel plans are not required to be approved by shareholders, U.S. GAAP requires that the shares issued

under these plans be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

(iii) The term "parallel excess plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA") that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a) to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g)(the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17)(the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless: (A) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Internal Revenue Code Section 401(a)(17)(or any successor or similar limits that may hereafter be enacted); (B) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the proceeding sentence and the limitation described in clause (C); and (C) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

(f) Transition Rules. Except as provided below, a plan that was adopted before the date the Commission order approving this listing standard will not be subject to shareholder approval under this Rule 13.6 unless and until it is materially revised.

(1) In the case of a discretionary plan, as defined in "Material Revisions" above, whether or not previously approved by shareholders, additional grants may be made after the effective date of this Rule 13.6 without further shareholder approval only for a limited transaction period, defined below, and then only in a manner consistent with past practice. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

(2) In the case of a formula plan, as defined in "Material Revisions" above, that either (i) has not previously been approved by shareholders or (ii) does not have a term of ten years or less, additional grants may be made after the effective date of this Rule 13.6 without further shareholder approval only for a limited transition period, defined below.

(3) The limited transition period described in subparagraphs (f)(1) and (f)(2) above will end upon the first to occur of: (i) the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard; (ii) the first anniversary of the effective date this Rule 13.6; and (iii) the expiration of the plan.

(4) A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this Rule 13.6, and would not itself be considered a "material revision" requiring shareholder approval. In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this Rule 13.6 are made only from the shares available immediately before the effective date (i.e., based on formulaic increases that occurred prior to such effective date).

(g) Broker Voting. For member proxy requirements with respect to the implementation of any equity compensation plan, or any material revisions to the terms of any existing equity compensation plan, refer to Rule 13.3.**]**

Off-Exchange Transactions

No rule, stated policy or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any ETP Holder to effect any transaction otherwise than on this Exchange with another person in any security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

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CHAPTER XIV.

Intermarket Trading System Plan

Rule 14.1. Definitions

The following terms as used in this Chapter XIV shall, unless the context otherwise indicates, be construed as follows:

(a)-(j) *No change*.

(k) The term "Clearing Member" shall mean the **[**member**]** ETP Holder of the Exchange designated by the User who issued or accepted the commitment or obligation to trade which resulted in an ITS Communications System trade to clear for him.

(l)-(m) *No change*.

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CHAPTER XV.

Listed Securities and Other Exchange Products

Listed Securities

Rule 15.1. Applications

All applications for listing on the Exchange will be submitted to the Exchange's Secretary on a form prescribed by the Exchange.

Rule 15.2. Procedure

The Exchange shall determine whether the applicant meets the requirements for listing. In making such determination, the Exchange shall adhere to the following procedures:

(a) If the Exchange is satisfied that the applicant is qualified for listing pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of the Exchange's determination, and the applicant will be approved for listing on the Exchange.

(b) If the Exchange is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of the grounds for denying listing. The Board may reverse the determination that the applicant is not qualified for listing. If a majority of the Board specifically determines to reverse the determination to deny listing, the Board shall promptly notify the Exchange staff, who shall promptly notify the applicant that the Board has granted the applicant's application for listing.

(c) In considering applications for listing, the Exchange shall adhere to the following procedures:

(1) Where a listing application is granted by the Board, the Exchange shall promptly notify the applicant.

(2) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to Chapter X of the Exchange Rules governing adverse action.

(3) The applicant must satisfy the requirements of this Chapter, including any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.

Rule 15.3. Requirements

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

(a) In the case of common stock have:

(1) net tangible assets of at least $2,000,000;

(2) at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;

(3) outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;

(4) demonstrated net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income; and

(5) been actively engaged in business and have been so operating for at least three (3) consecutive years.

(b) In the case of preferred stock:

(1) The listing of issues is considered on a case by case basis, in light of the suitability of the issue for trading on the Exchange. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act.

(2) An issuer applying for listing of a preferred stock is expected to meet the following criteria:

(i) The issuer appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in paragraph (a) above.

(ii) In the case of an issuer whose common stock is listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act, the following guidelines apply:

Shares Publicly Held	100,000
Aggregate Market Value/Price	$2,000,000/$10

For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

Preferred Shares Publicly Held	400,000
Public Round-Lot Holders	800
Aggregate Market Value/Price	$4,000,000/$10

(iii) The Exchange will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a

minimum period of ten business days within which such price reduction will be in effect.

(c) In the case of warrants:

(1) at least 250,000 outstanding, exclusive of the holdings of officers and directors; and

(2) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(d) In the case of bonds:

(1) a principal amount outstanding of at least $2,000,000;

(2) have at least an aggregate market value of at least $2,000,000;

(3) have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; and

(4) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(e) In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections or in the Exchange Rules, provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

(1) the issuer has assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in paragraph (a), the Exchange generally will require the issuer to have the following:

(i) assets in excess of $200 million and stockholders' equity of at least $10 million; or

(ii) assets in excess of $100 million and stockholders' equity of at least $20 million;

(2) the issue have a minimum public distribution of one million trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;

(3) the issue have a principal amount/aggregate market value of not less than $20 million;

(4) where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; and

(5) where the instrument contains redemption provisions, the redemption price may not be below $3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection (e), the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the ETP Holders providing guidance regarding ETP Holder compliance responsibilities when handling transactions in such securities.

(f) Limited Partnerships - No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(1) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended; and

(2) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

Rule 15.4. Listing Standards Relating to Audit Committees

(a) In addition to the requirements contained in Rule 15.3, each issuer must have an audit committee. The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this Rule 15.4 or any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A-3 of the Act:

(1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.

(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:

(i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and

(ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue

with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:

(1) any determination that the issuer has made regarding the independence of its audit committee members;

(2) the financial literacy of the audit committee members;

(3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(4) the annual review and reassessment of the adequacy of the audit committee charter.

(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A-3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.

(d) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this Rule 15.4 or Rule 10A-3 of the Act.

Rule 15.5. Other Listing Standards

(a) General Application. Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Rule. Consistent with requirements of the Sarbanes-Oxley Act of 2002, certain provisions of this Rule are applicable to some listed companies but not to others.

(1) Equity Listings. This Rule applies in full to all companies listing common equity securities, with the following exceptions:

(a) Controlled Companies. A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Rule 15.5(d)(1), (4) or (5). A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed

with the Commission. Controlled companies must comply with the remaining provisions of this Rule.

(b) Limited Partnerships and Companies in Bankruptcy. Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Rule 15.5(d)(1), (4) or (5). However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of this Rule.

(c) Closed-End and Open-End Funds. The Exchange considers that many of the significantly expanded standards and requirements provided for in Rule 15.5 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, registered closed-end funds must comply with the requirements of Rule 15.5(d)(6), (7)(a) and (c), and (12). Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Interpretations and Policies to Rule 15.5(d)(7)(a) which calls for disclosure of the board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 15.5 applicable to domestic issuers other than Rule 15.5(d)(2) and (7)(b). For purposes of Rule 15.5(d)(1), (3), (4), (5), and (9), a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A-3 under the Act, open-end funds (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs) are required to comply with the requirements of Rule 15.5(d)(6) and (12)(b).

Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management investment company, as well as employees of the management investment company. This responsibility must be addressed in the audit committee charter.

(d) Other Entities. Except as otherwise required by Rule 10A-3 under the Act (for example, with respect to open-end funds), Rule 15.5 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Rule 15.5(d)(6) and (12)(b).

(e) Foreign Private Issuers. Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Act) are permitted to follow home country practice in lieu of the provisions of this Rule 15.5, except that such companies are required to comply with the requirements of Rule 15.5(d)(6), (11) and (12)(b).

(2) Preferred and Debt Listings. Rule 15.5 does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Act, all companies listing only preferred or debt securities on the Exchange are required to comply with the requirements of Rule 15.5(d)(6) and (12)(b).

(3) Dual and Multiple Listings. At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 15.5, and that class of security has not been suspended from trading on that market, the issuer shall not be required to separately meet the requirements set forth in this Rule 15.5, except for the requirements of Rule 13(d)(6) and (7), below (audit committees) and with the notification requirements of Rule 15.5(d)(12)(B), as it relates to their audit committees, with respect to that class of securities or any other class of securities. Governance requirements of other markets will be considered to be substantially similar to the requirements of this Rule 15.5 if they are adopted by the New York Stock Exchange ("NYSE") or the National Association of Securities Dealers (for the Nasdaq National Market or SmallCap Market) or if they otherwise require, subject to exceptions approved by the Commission, that the issuer maintain (a) a board of directors, a majority of whom are independent directors (50% of whom are independent directors, for a small business issuer); (2) a nominating committee or other body, a majority of whom are independent directors; (3) a compensation committee or other body, a majority of whom are independent directors; and (4) a code of business conduct and ethics that complies with the definition of a "code of ethics" set out in Section 406(c) of the Sarbanes-Oxley Act and the rules thereunder (17 C.F.R. 228.406 and 17 C.F.R. 229.406).

Similarly, when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 15.5, and that class of security has not been suspended from trading on that market, a direct or indirect consolidated subsidiary of the issuer, or an at least 50% beneficially-owned subsidiary of the issuer, shall not be required to separately meet the requirements set forth in this Rule 15.5 with respect to any class of securities it issues, except classes of equity securities (other than non-convertible, non-participating preferred securities) of such subsidiary.

(b) Transition Periods. Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on the same schedule as is permitted pursuant to Rule 10A-3 under the Act for audit committees, that is one independent member at the time of listing, a majority of independent members within 90 days of listing and fully independent committees within one year. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A-3 under the Act. Companies listing in conjunction with their initial public offering will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Rule 15.5 other than Rule 15.5(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. The Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 15.5 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 15.5(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1) (iv) (a) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies listing upon transfer from another market, or that are listing a security that is listed on another market or markets, have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market or that are dually or multiply listing securities will not apply to the requirements of Rule 15.5(d)(6) unless a transition period is available pursuant to Rule 10A-3 under the Act.

(c) References to Form 10-K. There are provisions in this Rule 15.5 that call for disclosure in a company's Form 10-K under certain circumstances. If a company subject to such a provision is not a company required to file a Form 10-K, then the provision shall be interpreted to mean the annual periodic disclosure form that the company does file with the Commission. For example, for a closed-end fund, the appropriate form would be the annual Form N-CSR.

(d) Listed Company Corporate Governance Requirements.

(1) Listed companies must have a majority of independent directors.

Interpretations and Policies: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

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(2) In order to tighten the definition of "independent director" for purposes of these standards:

(a) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.

Interpretations and Policies: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "company" would include any parent or subsidiary in a consolidated group with the company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

The directors who have been determined to be independent must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. The basis for a board determination that a relationship is not material must also be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

(i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.

Interpretations and Policies: Employment as an interim Chairman or CEO shall not disqualify a director from being considered independent following that employment.

(ii) A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

Interpretations and Policies: Compensation received by a director for former service as an interim Chairman or CEO need not be considered in determining independence under this test. Compensation received by an immediate family member for service as a non-executive employee of the listed company need not be considered in determining independence under this test.

(iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until three years after the end of the affiliation or the employment or auditing relationship.

(iv) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.

(v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of (A) $200,000, (B) 5% of such other company's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules, is not "independent" until three years after falling below such threshold.

Interpretations and Policies: In applying the test in Rule 15.5(d)(2)(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed

fiscal year. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Charitable organizations shall not be considered "companies" for purposes of Rule 15.5(d)(2)(b)(v), provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of (A) $200,000, (B) 5% of such charitable organization's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Rule 15.5(d)(2)(a) above.

General Interpretations and Policies to Rule 15.5(d)(2)(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look back provisions in Rule 15.5(d)(2)(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. In addition, references to the "company" would include any parent or subsidiary in a consolidated group with the company.

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(3) To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

Interpretations and Policies: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not company officers (as that term is defined in Rule 16a-a(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees.

In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirement of Rule 10A-3 (b)(3) under the Act, as applied to listed companies through Rule 15.5(d)(6).

While this Rule 15.5(d)(3) refers to meetings of non-management directors, if that group includes directors who are not independent under this Rule 15.5, listed companies should at least once a year schedule an executive session including only independent directors.

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(4) (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities - which at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management; and

(ii) an annual performance evaluation of the committee.

Interpretations and Policies: A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

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(5) (a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities-which at minimum must be to have direct responsibility to:

(A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; and

(B) make recommendations to the board with respect to non-CEO compensation, incentive compensation plans and equity-based plans; and

(C) produce a compensation committee report on executive compensation as required by the Commission to be included in the company's annual proxy statement or annual report on Form 10-K filed with the Commission;

(ii) an annual performance evaluation of the compensation committee.

Interpretations and Policies: In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws.

The compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole

authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

Nothing in this provision should be construed as precluding discussion of CEO compensation with the board generally, as it is not the intent of this standard to impair communication among members of the board.

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(6) Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Act and this Chapter.

Interpretations and Policies: The Exchange will apply the requirements of Rule 10A-3 in a manner consistent with the guidance provided by the Commission in Securities Exchange Act Release No. 34-47654 (April 1, 2003). Without limiting the generality of the foregoing, as provided in Rule 15.4(d), the Exchange will provide companies the opportunity to cure defects provided in Rule 10A-3(a)(3) under the Act.

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(7) (a) In accordance with Rule 15.4(a)(1), the audit committee must have a minimum of three members.

Interpretations and Policies: Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. While the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set out in Item 401 (h) of Regulation S-K, a board may presume that such a person has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such

determination in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission.

(b) In addition to any requirement of Rule 10A-3(b)(1) of the Act, all audit committee members must satisfy the requirements for independence set out in Rule 15.5(d)(2).

(c) In accordance with Rule 15.4(a)(2), the audit committee must have a written charter. In addition to the requirements of Rule 15.4(a)(2), the charter must address the following:

(i) the committee's purpose - which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence and (4) the performance of the company's internal audit function and independent auditors; and

(B) prepare an audit committee report as required by the Commission to be included in the company's annual proxy statement;

(ii) an annual performance evaluation of the audit committee; and

(iii) the duties and responsibilities of the audit committee - which, at a minimum must include those set out in Rule 10A-3(b)(2), (3), (4) and (5) of the Act and in Rule 15.4, as well as include that the committee:

(A) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

Interpretations and Policies: After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should

further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(B) discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations"

(C) discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Interpretations and Policies: The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(D) discuss policies with respect to risk assessment and risk management;

Interpretations and Policies: While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(E) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Interpretations and Policies: To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(F) review with the independent auditor any audit problems or difficulties and management's response;

Interpretations and Policies: The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(G) set clear hiring policies for employees or former employees of the independent auditors; and

Interpretations and Policies: Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(H) report regularly to the board of directors.

Interpretations and Policies: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the

company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

General Interpretations and Policies to Rule 15.5(d)(7)(c): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in the light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

(d) Each listed company must have an internal audit function.

Interpretations and Policies: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management process and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

General Interpretations and Policies to Rule 15.5(d)(7): To avoid any confusion, note that the audit committee functions specified in Rule 15.5(d)(7) are the sole responsibility of the audit committee and may not be allocated to a different committee.

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(8) Listed companies must satisfy the requirements for shareholder approval of equity compensation plans in accordance with Exchange Rule 13.7.

(9) Listed companies must adopt and disclose corporate governance guidelines.

Interpretations and Policies: No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual

report on Form 10-K filed with the Commission must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.

The following subjects must be addressed in the corporate governance guidelines:

(A) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Rule 15.5(d)(1) and (2). Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.

(B) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

(C) Director access to management and, as necessary and appropriate, independent advisors.

(D) Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.

(E) Director orientation and continuing education.

(F) Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

(G) Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

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(10) Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Interpretations and Policies: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board

and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report on Form 10-K filed with the Commission must state that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

(A) Conflicts of interest. A "conflict of interest" occurs when an individual's private interest interferes in any way-or even appears to interfere-with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

(B) Corporate opportunities. Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.

(C) Confidentially. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

(D) Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

(E) Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and

waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.

(F) Compliance with laws, rules and regulations (including insider trading laws). The company should proactively promote compliance with laws, rules and regulations, including insider-trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

(G) Encouraging the reporting of any illegal or unethical behavior. The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers, or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

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(11) Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Exchange's listing standards.

Interpretations and Policies: Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under the Exchange's listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes the U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

Listed foreign private issuers may provide this disclosure either on their website (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the website, the annual report shall so state and provide the web address at which the information may be obtained.

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(12) (a) Each listed company CEO must certify to the Exchange each year that he or she is not aware of any violation by the company of Exchange corporate governance listing standards.

Interpretations and Policies: The CEO's annual certification to the Exchange that, as of the date of certification, he or she is unaware of any violation by the company of the Exchange's corporate governance listing standards will focus the CEO and senior management on the company's compliance with the listing standards. Both this certification to the Exchange, and any CEO/CFO certifications required to be filed with the Commission regarding the quality of the company's public disclosure must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the companies annual report on Form 10-K filed with the Commission.

(b) Each listed company CEO must promptly notify the Exchange in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Rule 15.5.

(13) The Exchange may issue a public reprimand letter to any listed company that violates an Exchange listing standard.

Interpretations and Policies: Suspending trading in or delisting a company can be harmful to the very shareholders that the Exchange listing standards seek to protect; the Exchange must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the Exchange to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the Exchange may issue a public reprimand letter to any listed company, regardless of type of security listed or country of incorporation, that it determines has violated an Exchange listing standard. For companies that repeatedly or flagrantly violate Exchange listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in this Chapter or that fail to comply with the audit committee standards set out in Rule 15.4 or Rule 15.5(d)(6). The process and procedures provided for in those provisions govern the treatment of companies falling below those standards.

Rule 15.6. Shareholder Approval of Equity Compensation Plans

Equity compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with limited exemptions identified in this rule.

(a) Definition of Equity Compensation Plan. An "equity compensation plan" is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as

compensation for services. A compensatory grant of options or other equity securities that is not made under a plan is considered an "equity compensation plan" for purposes of these rules.

(b) Exceptions to Equity Compensation Plan Definition. The following are not equity compensation plans, even if the brokerage and other costs of the plan are paid for by the listed company:

(1) plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;

(2) plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether: (i) the shares are delivered immediately or on a deferred basis; or (ii) the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

(c) Material Revisions. A "material revision" of an equity compensation plan includes, but is not limited to, the following:

(1) A material increase in the number of shares available under the plan, other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction.

(i) If a plan contains a formula for automatic increases in the number of shares available (sometimes referred to as an "evergreen formula") or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years. Regardless of the term, this type of plan is referred to below as a "formula plan." Examples of automatic grants pursuant to a formula are: (A) annual grants to directors of restricted stock having a certain dollar value, and (B) "matching contributions," whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

(ii) If a plan contains no limit on the number of shares available and it is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years. This type of plan is referred to below as a "discretionary plan." A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.

(2) An expansion of the types of awards available under the plan.

(3) A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.

(4) A material extension of the term of the plan.

(5) A material change to the method of determining the strike price of options under the plan.

(i) A change in the method of determining "fair market value" from the closing price on the date of the grant to the average of the high and low price on the date of grant is an example of a change that the Exchange would not review as material.

(6) The deletion or limitation of any provision prohibiting repricing of options.

An amendment will not be considered a "material revision" if it curtails rather than expands the scope of the plan in question.

(d) Repricings. A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this listing standard as prohibiting repricing. Accordingly, any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective. "Repricing" means any of the following or any other action that has the same effect:

(1) Lowering the strike price of an option after it is granted.

(2) Any other action that is treated as a repricing under generally accepted accounting principles.

(3) Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

(e) Exemptions. The listing standard does not require shareholder approval of employment inducement awards; certain grants, plans and amendments in the context of mergers and acquisitions; and certain specific types of plans, all described below. However, these exempt grants, plans and amendments may be made only with the approval of the company's independent compensation committee or the approval of a majority of the company's independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

(1) Employment Inducement Awards. An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.

(2) Mergers and Acquisitions. Two exemptions apply in the context of corporate acquisitions and mergers. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-

transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered "pre-existing" for purposes of this exemption. Shares available under such a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

(i) the number of shares available for grants is appropriately adjusted to reflect the transaction;

(ii) the time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and

(iii) the options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, and thus require shareholder approval. These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

(3) Qualified Plans, Section 423 Plans and Parallel Excess Plans.

(i) The following types of plans, and material revisions thereto, are exempt from the shareholder approval requirement: (A) plans intended to meet the requirements of Section 401(a) of the Internal Revenue Code (e.g., ESOPs); (B) plans intended to meet the requirements of Section 423 of the Internal Revenue Code; and (C) "parallel excess plans" as defined below.

(ii) Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15% are also required by the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and parallel plans are not required to be approved by shareholders, U.S. GAAP requires that the shares issued under these plans be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees,

but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

(iii) The term "parallel excess plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA") that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a) to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g)(the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17)(the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless: (A) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Internal Revenue Code Section 401(a)(17)(or any successor or similar limits that may hereafter be enacted); (B) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the proceeding sentence and the limitation described in clause (C); and (C) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

(f) Transition Rules. Except as provided below, a plan that was adopted before the date the Commission order approving this listing standard will not be subject to shareholder approval under this Rule 15.6 unless and until it is materially revised.

(1) In the case of a discretionary plan, as defined in "Material Revisions" above, whether or not previously approved by shareholders, additional grants may be made after the effective date of this Rule 15.6 without further shareholder approval only for a limited transaction period, defined below, and then only in a manner consistent with past practice. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

(2) In the case of a formula plan, as defined in "Material Revisions" above, that either (i) has not previously been approved by shareholders or (ii) does not have a term of ten years or less, additional grants may be made after the effective date of this Rule 15.6 without further shareholder approval only for a limited transition period, defined below.

(3) The limited transition period described in subparagraphs (f)(1) and (f)(2) above will end upon the first to occur of: (i) the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard; (ii) the first anniversary of the effective date this Rule 15.6;

and (iii) the expiration of the plan.

(4) A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this Rule 15.6, and would not itself be considered a "material revision" requiring shareholder approval. In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this Rule 15.6 are made only from the shares available immediately before the effective date (i.e., based on formulaic increases that occurred prior to such effective date).

(g) Broker Voting. For ETP Holder proxy requirements with respect to the implementation of any equity compensation plan, or any material revisions to the terms of any existing equity compensation plan, refer to Rule 13.3.

Rule 15.7. Suspension and/or Delisting by Exchange

(a) The Board may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security by filing the appropriate application with the Commission (the "Form 25") to strike a class of securities from listing on the Exchange or from registration under Section 12(b) of the Act within a reasonable time after the Exchange makes the decision to suspend or delist a security. The Exchange shall provide: (1) notice to the issuer of the Exchange's decision to delist the issuer's securities; (2) an opportunity for the issuer to file an appeal pursuant to the Chapter X of the Exchange Rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange's final determination to delist the security via a press release and posting on the Exchange's website (such posting to remain on the Exchange's website until the effective date of the delisting); and (4) the prompt delivery of a copy of the Form 25 to the issuer.

(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) failure to comply with the listing standards and agreements; or

(3) sustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature or

(3) the entire class of securities has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments, and such funds have been made available to security holders; or

(4) the entire class of security has been redeemed or paid at maturity or retirement; or

(5) the instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefore and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision); or

(6) all rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as a result of an order of a court or other governmental authority, the orders hall be final, all applicable appeals periods shall have expired and no appeals shall be pending.

Notwithstanding the foregoing, the Board may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

Rule 15.8. Delisting by Issuer

A security, which in the opinion of the Board is eligible for continued listing, may be removed from listing upon the request or application of the issuer provided that the issuer submits the following to the Exchange:

(a) a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration;

(b) a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof;

(c) a certification of its compliance with the Exchange's Rules for delisting and applicable state and federal laws;

(d) written notifications to the Exchange:

(i) no fewer than ten days before the issuer files Form 25 with the Commission of its intent to withdraw its securities from listing and/or registration on the Exchange (such form shall set forth a description of the security involved, together with a statement of all the material facts relating to the reasons for the withdrawal);

(ii) of its filing of Form 25 with the Commission simultaneous with said filing (such notification shall include the date the issuer expects such withdrawal to become effective pursuant to the rules of the Commission);: and

(iii) of the effective date of such withdrawal immediately after its withdrawal from listing becomes effective pursuant to the rules of the Commission; and

(e) a certification that the issuer has, contemporaneous with providing written notice to the Exchange, issued a public notice of the issuer's intent to delist, and/or withdraw its securities from Section 12(b) registration, via a press release and, if it has a publicly accessible web site,

post such notice on such web site and has undertaken to continue such posting on its website until the effective date of the delisting.

Interpretations and Policies:

.01. Any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Exchange Rule 15.8 above that has received notice from the Exchange, pursuant to Exchange Rule 15.7(c) above or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its statement of all material facts (pursuant Exchange Rule 15.8(d) above) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule12d2-2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

Other Exchange Products

Rule 15.9. Unlisted Trading Privileges

Notwithstanding the requirements for listing set forth in these Rules, the Exchange may seek and continue unlisted trading privileges on any security as to which unlisted trading privileges may be extended in accordance with Section 12(f) of the Act and the rules therunder.