

Exhibit 5B

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PHILADELPHIA STOCK EXCHANGE, INC. BY-LAWS

ARTICLE I *Definitions*

Sec. 1-1. Definitions

Unless the context requires otherwise, the terms defined in this Section shall, for all purposes of these By-Laws, have the meaning herein specified:

(a) Approved Lessor

The term "approved lessor" means, with respect to a foreign currency options participation, a lessor approved by the Exchange under these By-Laws and the rules of the Exchange.

(b) Certificate of Incorporation

The term "Certificate of Incorporation" shall mean the Second Restated Certificate of Incorporation of the Exchange, as amended and in effect from time to time.

(c) Commission

The term "Commission" means the United States Securities and Exchange Commission.

(d) Common Stock

The term "Common Stock" shall mean[, collectively,] the [Class A Common Stock and the Class B] Common Stock, par value \$0.01 per share, of the Exchange.

[(d) Class A Common Stock]

[The term "Class A Common Stock" shall mean the Class A Common Stock, par value \$0.01 per share, of the Exchange.]

(e) Designated Governors

The term "Designated Governors" shall mean the [two (2)] Member Governor[s], the PBOT Governor and the [two (2)] Designated Independent Governors. The holder of the Series A Preferred Stock shall be required to elect the Designated Governors in accordance with Article SIXTH of the Certificate of Incorporation and the Trust Agreement.

(f) Designated Independent Governors

The term "Designated Independent Governors" shall mean those Independent Governors, as defined herein, who are elected by the holder of the Series A Preferred Stock in accordance with Article SIXTH of the Certificate of Incorporation.

(g) DGCL

The term "DGCL" shall mean the Delaware General Corporation Law, as amended and in effect from time to time.

(h) Exchange

The term "Exchange" shall mean the Philadelphia Stock Exchange, Inc.

(i) Exchange Act

The term "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(j) Foreign Currency Options Participation

The term "foreign currency options participation" means the foreign currency options participations issued from time to time by the Exchange.

(k) Foreign Currency Options Participant or Participant

The term "foreign currency options participant" or "participant" includes a Member of the Exchange who has purchased a foreign currency options participation and a non-member who has been admitted to the Exchange as a foreign currency options participant by the Admissions Committee.

(l) Foreign Currency Options Participant Organization

The term "foreign currency options participant organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a foreign currency options participant organization by virtue of (i) permission given to it by the Admissions Committee pursuant to the provisions of Section 10-6 of these By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 12-12 of these By-Laws. References herein to officer or partner, when used in the context of a foreign currency options participant organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a foreign currency options participant organization.

(m) Governor

The term "Governor" shall mean a Governor of the Exchange.

(n) Inactive Nominee

The term "inactive nominee" shall mean a natural person associated with and designated as such by a Member Organization and who has been approved by the Admissions Committee for such status and is registered as such with the Membership Services Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a Member of the Exchange pursuant to these By-Laws and the rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the Member Organization to the Membership Services Department on an expedited basis.

(o) Independent

The term "Independent" when used in the context of Governors or committee members, shall mean persons affirmatively determined by the Board as having no Material Relationship with the Exchange or any affiliate of the Exchange, any [m]Member of the Exchange or any affiliate of such [m]Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange.

(p) Independent Governor

The term "Independent Governor" shall mean a Governor who must satisfy the definition of Independent as set forth herein and is duly elected to fill one of the [twelve (12)] vacancies on the Board of Governors allocated to the Independent Governors.

(q) Lessee

The term "lessee" means a foreign currency options participant who has leased legal title to his foreign currency options participation from a lessor.

(r) Lessor

The term "lessor" means a holder of equitable title to a foreign currency options participation, including a former foreign currency options participant, who has leased legal title to his foreign currency options participation to a lessee and has retained equitable title to such foreign currency options participation.

(s) Material Relationship

"Material Relationship" shall mean a relationship, compensatory or otherwise, that could reasonably affect the independent judgment or decision-making of the Governor. It is incumbent upon the Board of Governors to determine independence upon

a Governor's nomination and thereafter no less frequently than annually and as often as necessary in light of a Governor's circumstances and as further outlined in By-Law Article IV Section 4-4 to ensure standards of independence as defined in these By-Laws are maintained.

(t) Member

The term "Member" means a holder of a permit which has not been terminated in accordance with these By-Laws and the rules of the Exchange.

(u) Member Governor

The term "Member Governor" shall mean a Governor who is a Member or a general partner or an executive officer (vice-president and above) of a Member Organization and is duly elected to fill [one of] the one (1) [two (2)] vacancy[ies] on the Board of Governors allocated to the Member Governor[s].

(v) Member Organization

The term "Member Organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a Member Organization by virtue of (i) permission given to it by the Admissions Committee pursuant to the provisions of Section 10-6 of these By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 12-12 of these By-Laws. References herein to officer or partner, when used in the context of a Member Organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a Member Organization.

(w) Member Organization Representative

The term "Member Organization Representative" shall mean the officer (or person in a similar position) of a Member Organization designated by such Member Organization as such Member Organization's Member Organization Representative, who shall have the sole authority, with respect to the selection or removal of Designated Nominees as defined in Section 3-2(a) to exercise any and all rights and to take any and all actions on behalf of such Member Organization and each Member who has designated such Member Organization as his primary affiliation.

(x) Demutualization Merger

The term "Demutualization Merger" shall mean the merger of Phlx Merger Sub, Inc., a Delaware corporation, with and into the Exchange, with the Exchange as the surviving corporation, in connection with the demutualization of the Exchange from a non-stock membership corporation.

(y) Non-member

The term "non-member" includes, with respect to individuals, any person who is not a M[m]ember and, with respect to entities, any organization that is not a Member Organization.

(z) Owner

The term "owner" shall mean any person or entity who or which is a holder of equitable title to a foreign currency options participation.

(aa) PBOT Governor

The term "PBOT Governor" shall mean a Governor who is a member of the Philadelphia Board of Trade ("PBOT") and is duly elected to fill the one (1) vacancy on the Board of Governors allocated to the PBOT Governor.

(bb) Permit

The term "permit" shall mean a permit of any class, series or kind established from time to time by the Board of Governors and denominated as such.

(cc) Person

The term "person", shall mean an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

(dd) Securities Act

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

(ee) Trust Agreement

The term "Trust Agreement" shall mean the Third Amended and Restated Trust Agreement, dated as of [January 20, 2004] February 22, 2007, between the Exchange and the trustee under such Trust Agreement.

(ff) Series A Preferred Stock

The term "Series A Preferred Stock" shall mean the Series A Preferred Stock, par value \$0.01 per share, of the Exchange.

(gg) Stockholder

The term "Stockholder" shall mean a stockholder of the Exchange.

(hh) Stockholder Governor

The term "Stockholder Governor" shall mean a Governor who is [a holder of Class A or Class B Common Stock or] an officer, director (or a person in a similar position in business entities that are not corporations), designee or an employee of a holder of [Class A or Class B] Common Stock or any affiliate or subsidiary of such holder of [Class A or Class B] Common Stock and is duly elected to fill the one (1) [of the six (6)] vacancy[ies] on the Board of Governors allocated to the Stockholder Governor[s].

(ii) NASDAQ OMX Merger

The term "NASDAQ OMX Merger" shall mean the merger of a wholly owned subsidiary of The NASDAQ OMX Group, Inc., a Delaware corporation, with and into the Exchange, with the Exchange as the surviving corporation, in connection with the acquisition of the Exchange by The NASDAQ OMX Group, Inc.

(ii) (jj) XLE

The term "XLE" shall mean the electronic system which is operated by the Exchange for the entry, display, execution and reporting of orders in NMS Stocks.

(kk) Regulatory Funds

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

(ll) Preferred Stock

The term "Preferred Stock" shall mean the Preferred Stock, par value \$0.01 per share, of the Exchange.

(mm) Trust

The term "Trust" shall mean the Delaware statutory trust as identified in the Trust Agreement.

ARTICLE II *Offices*

Sec. 2-1. Registered Office and Registered Agent

The Exchange shall maintain a registered office and registered agent within the State of Delaware, which may be changed by the Board of Governors from time to time.

Sec. 2-2. Other Offices

The Exchange shall maintain its principal office and place of business at 1900 Market Street, Philadelphia, Pennsylvania. The Exchange may also have offices at such other places, within or without the State of Delaware, as the Board of Governors may from time to time determine.

ARTICLE III *Member and Member Organization Nominations-Member and Member Organization Annual Elections-Member and Member Organization Meetings*

Sec. 3-1. Place of Member and Member Organization Meetings

All meetings of Members and Member Organizations shall be held at such place within or without the State of Delaware as may be designated by the Board of Governors from time to time. If no such place is designated by the Board of Governors, meetings of Members and Member Organizations shall be held at the principal office of the Exchange.

Sec. 3-2. Member and Member Organization Meetings

(a) An annual meeting of Members and Member Organizations shall be held in each calendar year on the second Monday in March, or at such other time as the Board of Governors shall establish, for the purpose of designating those nominees for Governor that the holder of the Series A Preferred Stock shall be required to elect as such in accordance with Article SIXTH of the Certificate of Incorporation and the Trust Agreement (the "Designated Nominees"). At such annual meeting of Members and Member Organizations, the Member Organization Representatives shall elect the Designated Nominees in accordance with Sections 3-4 and 3-6 of these By-Laws.

(b) Except as otherwise specifically provided by law, special meetings of the Members and Member Organizations or Member Organization Representatives may be called at any time by the Chair[man] of the Board of Governors or by a majority of the Board of Governors or, only in the case of a special meeting of Member Organization Representatives for the purpose of voting on the removal of one or more Designated Governors in accordance with Section 3-3 of these By-Laws, by the Member Organization Representatives representing a majority of the then issued and outstanding permits, provided that, in the event that any such meeting is proposed to be called by Member Organization Representatives, such Member Organization Representatives shall provide the Chair[man] of the Board of Governors written notice prior to calling any such meeting stating in reasonable detail the basis for, and the facts and circumstances purported to warrant, such removal.

Sec. 3-3. Removal of Designated Governors

[(a) Designated Governors may be removed only for cause, unless a majority of the Board of Governors recommends that one or more Designated Governors be removed

in accordance with Section 4-4 of these By-Laws, in which case such Designated Governor or Designated Governors may be removed without cause.

(b) At any annual meeting of Members and Member Organizations, or at any special meeting of Member Organization Representatives called in accordance with Section 3-2(b) of these By-Laws, one or more Designated Governors may be removed with or without cause by the affirmative vote of the Member Organization Representatives representing not less than two-thirds of the then issued and outstanding permits; provided, however, that such removal, if so approved by the vote of the Member Organization Representatives, shall be effected only by the affirmative vote of the holder of the Series A Preferred Stock in accordance with Article SIXTH of the Certificate of Incorporation.

Sec. 3-4. Nomination of Designated Governors

(a) The Nominating, Elections and Governance Committee shall submit nominations for the positions of Designated Governors from candidates selected in accordance with Sections 3-4 and 3-6 of these By-Laws, so that the Designated Nominees may be selected at the annual meeting of Members and Member Organizations as contemplated by Section 3-2 of these By-Laws. The Nominating, Elections and Governance Committee shall give due consideration to the various functions and activities of the Exchange and its Member Organizations and participant organizations in making its nominations. In addition, the Nominating, Elections and Governance Committee shall be required to apply the definition of "Independent" as such term is defined herein in evaluating the qualifications of the Designated Independent Governors.

(b) If Designated Governors are to be elected to fill vacancies differing in length, the nominees with the largest number of votes shall be elected for the longest terms.

Sec. 3-5. Reserved

[Reserved.]

Sec. 3-6. Open Meetings of Nominating, Elections and Governance Committee-Recommendations-Notice

(a) The Nominating, Elections and Governance Committee shall hold at least two (2) open meetings during the month of January or at such other time as the Board of Governors shall determine, in each year for the purpose of receiving recommendations as to candidates for positions as Designated Independent Governors or Member Governor[s]. Recommendations for Designated Independent Governors or Member Governor[s] may be made by any Member, participant or Member Organization Representative or by any member of the Nominating, Elections and Governance Committee then in office. With respect to the PBOT Governor, recommendations shall be submitted by the PBOT Board of Directors. Recommendations may be submitted in writing or they may be presented in person. Notice of such meetings and of the period

within which recommendations may be submitted in writing or presented in person shall be given by the Secretary of the Exchange to all Members, participants and Member Organization Representatives.

(b) The Nominating, Elections and Governance Committee shall report in writing to all Members and participants and to all Member Organization Representatives entitled to vote with respect to the election of Designated Governors in accordance with Section 3-15 of these By-Laws and to the Secretary of the Exchange on the first Monday in February (or at such other time established by the Board of Governors) the names of its nominees to serve as Designated Governors; provided that, in each case, each such nominee shall be a person, who in the opinion of the Nominating, Elections and Governance Committee, is eligible for election to the position for which such person is nominated.

Sec. 3-7. Independent Nominations by Members and Member Organizations; Election of Nominees for Designated Governors

(a) Independent nominations for the positions of Designated Governors may be made by a written petition by Member Organization Representatives filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating, Elections and Governance Committee to the Member Organization Representatives as provided by Section 3-6(b) of these By-Laws. No such nomination shall be valid unless it is signed by Member Organization Representatives representing not less than fifty (50) votes. A Member Organization Representative shall not endorse more than one (1) nominee per vacancy; provided, however, that Member Organization Representatives representing not less than seventy-five (75) votes may, by petition, propose an entire ticket, or any portion thereof, for the vacancies of Designated Governors on the Board of Governors to be filled at the ensuing election.

(b) The Nominating, Elections and Governance Committee and the Secretary of the Exchange shall open the envelopes submitted by the Member Organization Representatives pursuant to Section 3-7(a) of these By-Laws, and if determined by the Nominating, Elections and Governance Committee to be eligible for election, the persons nominated by petition in conformity with the provisions of these By-Laws, together with the names of all nominees for Designated Governors selected by the Nominating, Elections and Governance Committee pursuant to these By-Laws, shall be sent to all Member Organization Representatives as promptly after the third Monday of February (or at such other time established by the Board of Governors) as is reasonably possible as proposed Designated Governors (the "Proposed Designated Governors") to be submitted to a vote at the annual meeting of Members and Member Organizations referred to in Section 3-2 of these By-Laws.

(c) The ballots containing the names of the Proposed Designated Governors shall indicate by appropriate designation whether each such person is a Member or a foreign currency options participant of the Exchange or is a non-member or non-foreign currency options participant of the Exchange who is a general partner or executive officer (vice-

president or above) of a Member Organization or participant organization of the Exchange or is nominated to be a Designated Independent Governor.

(d) The number of Designated Nominees to be elected from among the Proposed Designated Governors at the annual meeting of Members and Member Organizations referred to in Section 3-2 of these By-Laws shall be limited to the number of Designated Governors to be elected at the ensuing annual meeting of Stockholders, and the order of the Proposed Designated Governors' names on notices and on ballots shall be determined through a drawing by lot conducted by the Nominating, Elections and Governance Committee. The Proposed Designated Governors receiving at such election the highest number of votes for the category of Governor for which they were nominated shall be declared the Designated Nominees for their respective positions as Designated Governors. In the case of a tie, the names of the Proposed Designated Governors involved in such tie shall be referred to the Nominating, Elections and Governance Committee, which shall make the selection as to who among such tying Proposed Designated Governors shall be nominated as the Designated Nominees for election at the Annual Meeting of Stockholders.

Sec. 3-8. Death, Withdrawal or Disqualification of Designated Nominees

In the case of the death, withdrawal or disqualification at any time in advance of any election of a nominee for Designated Governor proposed or certified by the Nominating, Elections and Governance Committee to be filled at such election, the election for such position shall proceed at the appointed date therefore, notwithstanding such death, withdrawal or disqualification. In the event that by reason of such death, withdrawal or disqualification there are fewer candidates for such office of Governor than there are vacancies to be filled, the Nominating, Elections and Governance Committee, subject to approval by the Board of Governors, at a meeting held subsequent to such annual election, shall appoint a person to each office left vacant under such circumstances, the person to be appointed to serve until the fourth Wednesday of March following the next annual meeting of [s]Stockholders of the Exchange or until his successor is elected and qualified or until his earlier resignation or removal.

Sec. 3-9. Reserved

[Reserved.]

Sec. 3-10. Reserved

[Reserved.]

Sec. 3-11. Notice of Member and Member Organization Meetings

Any notice of any meeting of Members and Member Organizations that is required or permitted to be given under these By-Laws shall be in writing and state the place, date, hour and purpose of such meeting and shall be given not less than ten (10)

nor more than fifty (50) days before the date of such meeting to each Member Organization Representative entitled to vote at such meeting. If mailed, notice is given when deposited in the United States Mail, postage prepaid, directed to the Member Organization Representative at his address as it appears on the books and records of the Exchange. Such notice may be given in the name of the Board of Governors, the Chair[man] of the Board of Governors, any Vice President, the Secretary or any Assistant Secretary. Whenever notice is required to be given under any provision of law or of the Certificate of Incorporation or these By-Laws, a written waiver thereof, signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at any meeting with respect to which such person is entitled to notice shall constitute a waiver of such notice of such meeting, except when such person attends such 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. Neither the business to be transacted at, nor the purpose of, any meeting of Members and Member Organizations need be specified in any written waiver of notice.

Sec. 3-12. Vote of Member Organizations

(a) Subject to Section 3-12(c) of these By-Laws, each permit carries one vote in the election of Designated Nominees in accordance with the provisions of Section 3-6 of these By-Laws. Such right to vote shall be vested exclusively in each Member's Member Organization with which it is primarily affiliated (as defined in the rules of the Exchange) with respect to the selection of Designated Nominees, which Member Organization shall act through its Member Organization Representative. Each such Member Organization Representative may vote in person or by proxy under such procedures as the Nominating, Elections and Governance Committee may establish from time to time. Except as otherwise provided in Section 3-12(c) of these By-Laws, a Member Organization Representative may cast the number of votes equal to the number of permits held by Members having designated the Member Organization Representative's Member Organization as such [m]Members' primary affiliation with respect to the selection of Designated Nominees.

(b) All elections by Members and Member Organizations shall be by secret written ballot unless otherwise provided in the Certificate of Incorporation. Except as otherwise specifically provided by law, all other votes may be taken by voice unless the Nominating, Elections and Governance Committee determines that it be taken by ballot, in which latter event the vote shall be taken by secret written ballot.

(c) Notwithstanding anything to the contrary contained in these By-Laws or the rules of the Exchange, in the event that any Member Organization at any time, directly or indirectly, possesses the right to vote more than 20% of the then outstanding permits (such permits in excess of such 20% limit being hereinafter referred to as "Excess Permits"), except as otherwise permitted by the Board of Governors, such Member Organization shall have no right to vote, or to give any consent or proxy with respect to, such Excess Permits, and such Excess Permits shall be deemed not to be (i) present for

the purposes of determining whether a quorum is present at any meeting or vote of the Members or Member Organizations, or (ii) entitled to vote in determining the number of permits required for determining a quorum or to be voted for approval of or to give consent with respect to any matter presented to the Members or the Member Organizations.

Sec. 3-13. Quorum of Members and Member Organizations—Proxies

Subject to Section 3-12(c) of these By-Laws, at all meetings of Members and Member Organizations, each Member Organization Representative may cast his votes in person or by proxy; provided that no action shall become effective unless there shall have been voted a majority of the number of permits outstanding at such time. The Member Organization Representatives present at a duly organized meeting thereof can continue to do business until adjournment, notwithstanding the withdrawal of enough votes of such Member Organization Representatives to leave less than such a majority. If an action cannot become effective because of the absence of such a majority, those present may, except as otherwise provided by law, adjourn the meeting to such time and place as they may determine, without notice other than announcement at such meeting. Those Member Organization Representatives who attend a second adjourned meeting, although less than such a majority, shall nevertheless be sufficient for the purpose of selecting Designated Nominees. All proxies shall be executed in writing and shall be filed with the Secretary of the Exchange not later than the day on which exercised. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Sec. 3-14. Lists of Members and Member Organizations Entitled to Vote

The officer who has charge of the lists of Members, Member Organizations and Member Organization Representatives (as applicable) shall prepare and make, at least ten (10) days before every meeting of Members and Member Organizations, a complete list of the Member Organization Representatives entitled to vote at the meeting, arranged in alphabetical order, showing their names and addresses, the number of votes they are entitled to cast and the Member or Member Organization on whose behalf the votes are cast and the name and address of the individual permit holder associated with each right to vote. Such list shall be open to the examination of any Member or Member Organization Representative 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 said 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 thereof, and may be inspected by any Member or Member Organization Representative who is present.

Sec. 3-15. Determination of Record Dates

The Board of Governors may fix in advance a record date to determine the Member Organization Representatives entitled to notice of or to vote at any meeting of Members and Member Organizations or any adjournment thereof, or to express consent to any action in writing without a meeting, or for the purpose of any other lawful action. Such date shall be not more than sixty (60) nor less than ten (10) days before the date of any such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed, the record date for determining the Member Organization Representatives entitled to notice of or to vote at a meeting thereof shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of the Member Organization Representatives of record entitled to notice of or to vote at a meeting of Members and Member Organizations shall apply to any adjournment of the meeting; provided, however, that the Board of Governors may fix a new record date for the adjourned meeting.

Sec. 3-16. Governance of Member and Member Organization Meetings

The Chair[man] of the Board of Governors, or if there be none, or in his/her absence, the Vice-Chair[man] of the Board of Governors, or if there be none, or in his/her absence, any person designated by resolution of the Board of Governors shall preside over all meetings of Members and Member Organizations. To the maximum extent permitted by law, such presiding person shall have the power to administer any such meeting in accordance the procedures pertaining thereto as may be set from time to time by such presiding person and/or the Nominating, Elections and Governance Committee (in each case subject to any procedures to the contrary established by the Board of Governors), including, but not limited to, any such procedures respecting the time allotted to Members, Member Organization Representatives or any other persons in attendance at such meeting to speak.

ARTICLE IV *Board of Governors*

Sec. 4-1. Number and Composition

The management of the business and affairs of the Exchange shall be vested in the Board of Governors. The Board of Governors shall be composed of a majority of Independent Governors. The Board of Governors shall be composed of the [Chairman of] number of Governors determined from time to time by the Board of Governors and shall include: one (1) Governor, who shall be the [individual then holding the office of the] Chief Executive Officer; one (1) Governor who is a [of the Exchange and twenty-two (22) other Governors consisting of: two (2) Governors who are] Member Governor[s] who meets the qualifications set forth in By-Law Article I, Section 1-1 with respect to the Member Governor[s]; one (1) Governor who is a PBOT Governor who meets the qualifications set forth in By-Law Article I, Section 1-1 with respect to the PBOT Governor; [six (6)] one (1) Governor[s] who [are] is a Stockholder Governor[s] who meets the qualifications set forth in By-Law Article I, Section 1-1 with respect to the Stockholder Governor[s]; [twelve (12) Governors who are Independent Governors who

meet the qualifications set forth in By-Law Article I, Section 1-1 with respect to Independent Governors and] one (1) Governor who is the Vice-Chair[man] of the Board of Governors who meets the qualifications set forth in By-Law Article V, Section 5-[2]3 with respect to the Vice-Chair[man] and such additional Governors who are Independent Governors meeting the qualifications set forth in By-Law Article 1, Section 1-1 as shall fill the remaining seats on the Board of Governors, including a number of Designated Independent Governors, which, together with the Member Governor and the PBOT Governor, shall equal at least 20% of the total number of Governors.

Sec. 4-2. Reserved

[Reserved.]

Sec. 4-3. [Classification] Term

(a) [Subject to Section 4-3(b) of these By-Laws, the Stockholder] All Governors[, Independent Governors (including Designated Independent Governors), Member Governors and the PBOT Governor] shall be [divided into three (3) classes. Each such class shall be constituted by election or appointment each year to serve for three (3) years and until their successors are] elected for terms of one year [and qualify. Except for the Chairman of the Board of Governors and the Vice-Chairman of the Board of Governors, Governors shall not serve more than two (2) consecutive full three (3) year terms from and after the effective date of the Merger].

(b) The Governors of the Exchange [holding such positions] serving immediately after [prior to] the effective time of the NASDAQ OMX Merger shall be the directors of the wholly owned subsidiary of The NASDAQ OMX Group, Inc., (the “Merger Subsidiary”), which will be merged with and into the Exchange through the NASDAQ OMX Merger and which directors shall satisfy the compositional requirements of the Exchange Board of Governors contained in these By-Laws. The Designated Governors serving immediately after the effective time of the NASDAQ OMX Merger shall be directors of the Merger Subsidiary who have also been serving as Designated Governors of the Exchange immediately before the effective time of the NASDAQ OMX Merger. [continue to serve as Governors from and after the Merger for the then remaining balance of their respective terms, such that those Governors whose terms would have expired at: (i) the 2004 annual meeting of Members will expire at the 2004 annual meeting of Stockholders; (ii) the 2005 annual meeting of Members will expire at the 2005 annual meeting of Stockholders; and (iii) the 2006 annual meeting of Members will expire at the 2006 annual meeting of Stockholders.]

Sec. 4-4. Duties and Powers

(a) The Board of Governors shall be vested with all the powers necessary for the management of the business and affairs of the Exchange, the regulation of the business conduct of Members, participants, Member Organizations, and participant organizations, and persons associated with such organizations and for the promotion of the welfare,

objects and purposes of the Exchange, and in addition to the power and authority conferred by these By-Laws, may exercise all powers of the Exchange and do all such lawful acts and things as are not by statute, these By-Laws or the Certificate of Incorporation directed or required to be exercised or done by the Stockholders. In the exercise of its powers it may adopt such rules, issue such orders and directions and make such decisions as it may deem appropriate.

(b) Specific Powers. Without limiting the general powers conferred by the last preceding clause and the powers conferred by the Certificate of Incorporation and these By-Laws, it is hereby expressly declared that the Board of Governors shall have the following powers:

(i) Holidays. The Board of Governors shall have power to determine whether the Exchange shall be open or closed for business on any day or days, including holidays or partial holidays, and shall have the right to fix by rule or otherwise the time for opening and closing the Exchange. Provided always, however, that in times of emergency the powers conferred by this Section may be exercised by the Chair[man] of the Board of Governors.

(ii) Removal of Officers. The Board of Governors, by the affirmative vote of a majority of Governors then in office, may remove any officer who was either directly appointed by it or is serving with its approval and declare the office vacant whenever such officer shall fail to discharge his duties to the satisfaction of the Board of Governors.

(iii) Procedure. The Board of Governors shall determine the manner and form by which its proceedings shall be conducted. It may dissolve all Standing and other Committees, define, alter and regulate their jurisdiction, and have original and supervisory jurisdiction over any and all subjects and matters referred to said Committees and may direct and control their actions and proceedings at any stage thereof.

Trials

It may try charges against Members, participants, Member Organizations and participant organizations and persons associated with Member or participant organizations, and may punish such persons and organizations as may be found guilty.

Control of property and finances

It shall have control of the property and finances of the Exchange and it shall approve the compensation to be paid to officers of the Exchange.

Annual Independence Review

The Board of Governors shall, no less frequently than annually and as often as necessary in light of a Governor's circumstances, review the incumbent Independent Governors to ensure no Material Relationship has developed that would cause an Independent Governor to fall outside of the definition of "Independent" set forth in By-Law I, Section 1-1. It will be incumbent upon each Governor to promptly inform the Chair[man] or a member of the Executive Committee of any development that may affect such Governor's status as an Independent Governor.

Appoint and dismiss employees

It may appoint and dismiss employees of the Exchange and fix their duties and compensation, and may delegate such powers to Standing Committees or officers of the Exchange.

Finances

It shall pass upon the report of estimated income and expenses of the Exchange as presented to it by the Finance Committee in December of each year.

Bonds for faithful performance

It may require officers or employees of the Exchange to give good and sufficient bonds for the faithful performance of their duties.

(iv) The Board of Governors may prescribe penalties for the violation of rules adopted pursuant to these By-Laws and for neglect or refusal to comply with orders, directions or decisions of the Board of Governors or any Standing or Special Committee, or for any offense against the Exchange the penalty for which is not specifically prescribed by these By-Laws or such rules.

(v) Rules for Dealing-Insolvency. The Board of Governors shall prescribe rules for dealing on the Exchange. It shall prescribe rules as to insolvency and as to Exchange Contracts, the performance thereof, and default thereon, and it may extend or postpone the time for the performance of Exchange Contracts whenever in its opinion such action is called for by the public interest or by just and equitable principles of trade.

Members' contracts

It may adopt such rules as it may deem necessary or proper with respect to Members' Contracts.

(vi) Organizations, Offices, and Employees of Members. The Board of Governors may adopt such rules as it may deem necessary or proper with respect to the formation of Member Organizations, the continuance thereof and the interest of Members and other persons therein, the offices of Members and such

organizations and the employees thereof, the business connections of Members and such organizations and their association with or domination by or over corporations or other persons engaged in the securities business.

Member Organizations

The Board of Governors may adopt rules prescribing the terms and conditions under which a Member may qualify a Member Organization and a Member Organization may register as a Member Organization of the Exchange; and may impose further terms and conditions in connection with such qualification or registration whenever it may deem it advisable.

(vii) The List. The Board of Governors may list or admit to unlisted trading privileges upon the Exchange securities, "rights" and similar privileges pertaining to securities, and securities on a "when issued" and "when distributed" basis, and may in its discretion at any time and without notice, suspend dealings therein and may remove the same from listing or unlisted trading.

(viii) Corners—Deliveries Postponed—Settlement Price. Whenever in the opinion of the Board of Governors a corner has been created in a security admitted to dealings on the Exchange, or a single interest or group has acquired such control of a security so admitted that the same cannot be obtained for delivery on existing contracts except at prices and on terms arbitrarily dictated by such interest or group, the Board of Governors may postpone the time for deliveries on exchange contracts therein, and may from time to time further postpone such time or may postpone deliveries until further action by the Board of Governors, and may at any time by resolution declare that if such security is not delivered on any contract calling for delivery thereof at or before the time to which delivery has been postponed or which has been fixed by the Board of Governors for such delivery, such contract shall be settled by the payment to the party entitled to receive such security or by the credit to such party of a fair settlement price as agreed by the parties to the contract, or if the parties to any contract which is to be settled on the basis of such fair settlement price do not agree with respect thereto, such fair settlement price and the date for the payment of the same may be fixed by the Board of Governors. The Board of Governors, before fixing the same, shall give the parties to the contract which is to be settled on the basis thereof an opportunity to be heard either before the Board of Governors or before a Special Committee appointed for the purpose. Any such Special Committee shall report the testimony together with its conclusions thereon to the Board of Governors which may act upon such report without further hearing or may accord the parties a further hearing before acting thereon.

Qualification and registration of Member Organizations

The Board of Governors (or its designee) shall receive and act upon the application of a Member to qualify a Member Organization and the application of a Member

Organization to register with the Exchange; [also] and upon the application to terminate such qualification or registration.

(ix) Applications for Permits and Reinstatement. The Board of Governors may receive reports of the Admissions Committee in connection with applications for permits, applications by non-members for admission as foreign currency options participants, and applications for reinstatement of suspended permits or privileges.

Removal of governors [or trustees of gratuity fund and stock exchange] for cause

In the event of the refusal or failure of any Governor to discharge his duties or for any reason deemed sufficient by the Board of Governors, the Board of Governors may, by the affirmative vote of a majority of Governors then in office, recommend to the Stockholders (and, in the case of a Designated Governor, the Members) that such Governor be removed and call a special meeting of Stockholders (and, in the case of a Designated Governor, a special meeting of the Members and Member Organizations and subsequently a special meeting of the holder of the Series A Preferred Stock, who shall be required to vote in accordance with Article SIXTH of the Certificate of Incorporation and the Trust Agreement) for the purpose of voting on such removal. [The Board may, by the affirmative vote of a majority of Governors then in office, remove any Trustee of the Stock Exchange Fund and declare the position held by him to be vacant upon the like refusal or failure or for like cause.]

(x) Removal of Governors for Absence. If a Governor shall have been absent from three (3) regular meetings of the Board of Governors within a twelve-month period, the Executive Committee shall conduct a review of such Governor's attendance and may make a recommendation to the full Board of Governors which may, by a majority vote of the Governors then in office, recommend to the Stockholders (and, in the case of a Designated Governor, the Members) that such Governor be removed and call a special meeting of Stockholders (and, in the case of a Designated Governor, a special meeting of the Members and Member Organizations and subsequently a special meeting of the holder of the Series A Preferred Stock, who shall be required to vote in accordance with Article SIXTH of the Certificate of Incorporation and the Trust Agreement) for the purpose of voting on such removal.

(xi) The Board of Governors shall have the power to confer upon any officer or officers of the Exchange the power to choose, remove or suspend assistant officers, agents or servants.

(xii) The Board of Governors shall have the power to appoint any person, firm or corporation to accept and hold in trust for the Exchange any property belonging to the Exchange or in which it is interested, and to authorize any such person, firm or corporation to execute any documents and perform any duties that may be requisite in relation to any such trust.

(xiii) The Board of Governors shall have the power to appoint a person or persons to vote shares of another corporation held and owned by the Exchange.

(xiv) The Board of Governors shall have the power to purchase or otherwise acquire for the Exchange any property, rights or privileges which the Exchange is authorized to acquire, at such prices, on such terms and conditions and for such consideration as it shall from time to time see fit, and, at its discretion, to pay for any property or rights acquired by the Exchange, either wholly or partly in money or in bonds, debentures or other securities of the Exchange.

(xv) The Board of Governors shall have the power to create, make and issue mortgages, bonds, deeds of trust, trust agreements and negotiable or transferable instruments and securities, secured by mortgage or otherwise, and to do every other act and thing necessary to effectuate the same.

(xvi) The Board of Governors shall have the power to appoint and remove or suspend such subordinate officers, agents or servants, permanently or temporarily, as it may from time to time think fit, and to determine their duties, and fix, and from time to time change, their salaries or emoluments, and to require security in such instances and in such amounts as it thinks fit.

(xvii) The Board of Governors shall have the power to determine who shall be authorized on the Exchange's behalf to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

(xviii) The Board of Governors shall have the power, by resolution passed by a majority of the whole Board of Governors, to designate one (1) or more ad hoc or special committees, each to consist of two (2) or more Governors, to have such duties, powers and authority as the Board of Governors shall determine. All such committees of the Board of Governors shall have the authority to adopt their own rules of procedure. Absent the adoption of specific procedures, the procedures applicable to the Board of Governors shall also apply to such committees and standing committees of the Board of Governors.

(xix) The Board of Governors shall have the power, by resolution, to adopt, amend or repeal such rules as it may deem necessary with respect to the initiation of disciplinary action, the procedure and conduct for disciplinary hearings and reviews therefrom, and the imposition of disciplinary sanctions, as such matters may apply to any Member, participant, Member Organization or participant organization or any partner, officer, director (or persons in similar positions) or person associated with any Member, participant, Member Organization or participant organization.

Sec. 4-5. Compensation of Governors

Subject to Section 6-1 of these By-Laws, compensation of Governors and reimbursement of their expenses incurred in connection with the business of the Exchange, if any, shall be as determined from time to time by resolution of the Board of Governors.

Sec. 4-6. Resignations

(a) Any Governor may resign at any time by submitting his written resignation to the Exchange. Such resignation shall take effect at the time of its receipt by the Exchange unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

(b) In the event of a merger, consolidation or other acquisition, which results in persons serving on the Board of Governors who are associated with the same [m]Member Organization or participant organization, all but one (1) such person shall notify the Chair[man] of the Board of Governors of their resignation by the first day of January preceding the next annual meeting of Stockholders in order that the vacancy created thereby may be filled by the Nominating, Elections and Governance Committee in accordance with Section 4-7 of these By-Laws or at the next annual meeting of Stockholders in accordance with the nominating and election procedures set forth in Articles III and XXVIII of these By-Laws, as applicable. Such resignation shall become effective no later than the expiration of the term of the outgoing class of Governors.

(c) If the required number of Governors in any of the categories of Governor is not maintained because of any Governor's change in occupational category or Member Organization or participant organization, such Governor shall notify the Chair[man] of the Board of Governors of his resignation by the first day of January preceding the next annual election in order that the vacancy created thereby may be filled by the Nominating, Elections and Governance Committee in accordance with Section 4-7 of these By-Laws or at the next annual meeting of Stockholders in accordance with the nominating and election procedures set forth in Articles III and XXVIII of these By-Laws, as applicable. Such resignation shall become effective no later than the expiration of the term of the outgoing class of Governors.

Sec. 4-7. Vacancies

Vacancies in the Board of Governors, including vacancies resulting from the resignation of any Governors or an increase in the number of Governors, shall be filled by the Nominating, Elections and Governance Committee, subject to approval by a majority of the Governors then in office, although less than a quorum, or by a sole remaining Governor, and each person so elected shall be a Governor until his successor is elected and qualified or until his earlier resignation or removal.

Sec. 4-8. Disqualification of Governors

(a) No Governor shall be disqualified from participating in any meeting, action or proceeding of the Board of Governors by reason of being or having been a member of a Standing or Special Committee which has made prior inquiry, examination or investigation of the subject under consideration. Nor shall any member of any such Committee be disqualified by reason of such membership from acting as a Governor upon an appeal from a decision of any such Committee. Pursuant to the Exchange's Code of Conduct for Board Members and Committee Members, members of the Board of Governors or of any Standing or Special Committee or subcommittee shall not participate, directly or indirectly in the discussion or determination of any matter affecting their interests, or the interests of any member of their immediate family, or any matter in which their impartiality might reasonably be questioned.

(b) For the purposes of this Section, the term "immediate family" shall include a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

(c) The last sentence of subsection (a) of this Section shall not apply when the interest of the relevant person is derived solely from being part of the general membership or of a class of Members, unless their impartiality might reasonably be questioned.

Sec. 4-9. Quorum

For all purposes a majority of Governors then in office shall be necessary to constitute a quorum. Except as otherwise specifically provided, any action taken pursuant to the vote of a majority of the Governors present at a meeting shall be deemed to be the action of the Board of Governors.

Sec. 4-10. Place of Meeting

Meetings of the Board of Governors may be held at such place within the State of Delaware or elsewhere as a majority of the Governors may from time to time designate or as may be designated in the notice calling the meeting.

Sec. 4-11. Regular and Annual Meetings

Regular meetings of the Board of Governors may be held from time to time without notice at the place, date and hour as a majority of the Board of Governors may designate. An annual meeting of the Board of Governors shall be held following each annual meeting of Stockholders at the place, date and hour as the Chair[man] or a majority of the Board of Governors (consisting of those Governors elected at such annual meeting of the Stockholders and the Governors whose terms in office do not expire upon the effectiveness of such elections) may designate.

Sec. 4-12. Action at Meetings

The Board of Governors, except as otherwise specifically provided, may consider and take action upon any matter at any regular meeting or at any special meeting of the Board of Governors, even though such matter has not been referred to in the notice of such meeting.

Sec. 4-13. Adjourned Meetings

Any meeting or trial may be adjourned, from time to time, by the Board of Governors in its discretion; but no Governor who shall not have been present at any meeting or trial of the Board of Governors at which evidence is taken, or at which an accused member or a person whose conduct is involved is heard, shall participate in the final decision.

Sec. 4-14. Special Meetings

Special meetings of the Board of Governors may be called by the Chair[man] of the Board of Governors, or if there be none, or in his/her absence, the Vice-Chair[man] of the Board of Governors, or if there be none, or in his/her absence, the Governor designated by the Board of Governors to act as an interim Chair[man] and shall be called by the Chair[man] of the Board of Governors or the Secretary of the Exchange upon the written request of at least a majority of the Governors then in office.

Sec. 4-15. Notices of Meetings of Board of Governors

(a) Regular Meetings. No notice shall be required to be given of any regular meeting, unless the same be held at other than the time or place for holding such meetings as fixed in accordance with Section 4-11 of these By-Laws, in which event one (1) day's notice shall be given of the time and place of such meeting.

(b) Special Meetings. At least one (1) hour's notice shall be given at the time when, place where, and purpose for which any special meeting of the Board of Governors is to be held.

Sec. 4-16. Informal Action by the Board of Governors

Any action required or permitted to be taken at any meeting of the Board of Governors or of any committee thereof may be taken without a meeting, if all members of the Board of Governors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Governors or such committee.

Sec. 4-17. Interpretation of By-Laws

The Board of Governors shall have the power to interpret these By-Laws and the rules adopted pursuant hereto. Any such interpretation made by the Board of Governors shall be final, binding and conclusive. The Board of Governors shall determine whether

such interpretation must be filed with the Commission as a proposed rule change, and if so, then such change shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

Sec. 4-18. Indemnification

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (for the purposes of this Section 4-18, a "proceeding"), by reason of the fact that he or she is or was a Governor, officer, committee member or in-house legal counsel of the Exchange or is or was serving at the request of the Exchange as an officer, director (or person in a similar position), employee or agent of another corporation or of a partnership (general or limited), limited liability company, joint venture, trust or other enterprise or business entity, including, without limitation, such service with respect to an employee benefit plan (each, hereinafter an "indemnitee"), whether the basis of such action, suit or proceeding is alleged action in an official capacity as a Governor, officer, committee member, in-house legal counsel, director (or person in a similar position), employee or agent or in any other capacity while serving as a Governor, officer, committee member, in-house legal counsel, director (or a person in a similar position), employee or agent, shall be indemnified and held harmless by the Exchange to the fullest extent authorized by the DGCL (but, in the case of any such amendment, only to the extent that such amendment permits the Exchange to provide broader indemnification rights than permitted prior thereto), from and against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended, and in each case any amounts paid in settlement thereof) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a Governor, officer, committee member, in-house legal counsel, director (or person in a similar position), employee or agent and shall inure to the benefit of the indemnitee's heirs, executors, administrators and representatives; provided, however, that, except as provided in paragraph (c) of this Section 4-18 with respect to actions, suits or proceedings to enforce rights to indemnification, the Exchange shall indemnify any such indemnitee in connection with an action, suit or proceeding (or part thereof) initiated by such indemnitee only if such action, suit or proceeding (or part thereof) was authorized by the Board of Governors.

(b) Right to Advancement of Expenses. The right to indemnification conferred in paragraph (a) of this Section 4-18 shall include the right to be paid by the Exchange the expenses incurred in defending any action, suit or proceeding for which such right to indemnification is applicable in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a Governor, officer or committee member (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee

benefit plan) shall be made only upon delivery to the Exchange of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

(c) Right of Indemnitee to Bring Suit. The rights to indemnification and to the advancement of expenses conferred in paragraphs (a) and (b) of this Section 4-18 shall be contract rights. If a claim under either paragraph (a) or (b) of this Section is not paid in full by the Exchange within sixty (60) days after a written claim therefor has been received by the Exchange from an indemnitee, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, such indemnitee may at any time thereafter bring suit against the Exchange to recover the unpaid amount of such claim. If successful in whole or in part in any such suit, or in a suit brought by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit by the Exchange to recover an advancement of expenses pursuant to the terms of the undertaking the Exchange shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Exchange (including its Board of Governors or independent legal counsel or any of its Stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Exchange (including its Board of Governors or independent legal counsel or any of its Stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Exchange to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the Exchange.

(d) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under the Certificate of Incorporation or these By-Laws or any statute, agreement, vote of the Stockholders or of disinterested Governors or otherwise.

(e) Insurance. The Exchange may maintain insurance, at its expense, to protect itself and any Governor, officer, committee member, director (or person in a similar position), employee or agent of the Exchange or another corporation, partnership (general

or limited), limited liability company, joint venture, trust or other enterprise or business entity against any expense, liability or loss, whether or not the Exchange would have the power to indemnify such person against such expense, liability or loss under the DGCL.

(f) Indemnification of Employees and Agents of the Exchange. The Exchange may, to the extent authorized from time to time by the Board of Governors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Exchange to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of Governors, officers and committee members of the Exchange.

Sec. 4-19. Term of Office

The terms of office of the persons elected to serve as Governors shall [commence at 4:00 p.m. on the fourth Wednesday of March after the date of their election, or if the election is certified later in the calendar year than 4:00 p.m. on the fourth Wednesday of March, at the time of such certification, and shall] continue[, notwithstanding the periods of time specified in these By-Laws,] until their respective successors are elected and qualify or until their earlier resignation, [or] removal or death.

Sec. 4-20. Exercise Rights with Respect to Stock Clearing Corporation Stock

The Board of Governors shall exercise the rights of the Exchange as owner of the Capital Stock of Stock Clearing Corporation of Philadelphia.

Sec. 4-21. Annual Financial Report

[The Board of Governors shall send to the Stockholders, Members, participants, Member Organizations and participant organizations each year an annual financial report of the Exchange's business based upon an independent audit of its financial condition by a Certified Public Accountant.] Annual financial reports shall be kept on file [in the office of the Secretary of] at the Exchange and shall be subject to the inspection of any Stockholder, Member, participant, Member Organization and participant organization upon reasonable request being made to the Secretary of the Exchange.

Sec. 4-22. Attendance of Meetings by Electronic Means

Governors may participate in and hold any meeting of the Board of Governors or any committee thereof by means of a telephone conference or similar communications equipment by which each Governor participating in the meeting can hear each other, and participation in any meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE V *Chair[man], Vice Chair[man] and Officers of the Exchange*

Sec. 5-1. [Chairman of the Board of Governors] Board's Appointive Power

The Board of Governors shall appoint the officers of the Exchange as provided in these By-Laws and shall fix their duties, responsibilities, and terms of employment.

[The Chairman of the Board of Governors shall be the individual then holding the office of Chief Executive Officer of the Exchange. The office shall be his principal occupation to which he shall devote his full time. He shall have general care of the business of the Exchange and shall be responsible for the management and administration of its affairs. He shall be the presiding officer of the Board of Governors and may preside at meetings of the Exchange whenever he shall so elect. He shall not be permitted to create a tie vote when voting in the capacity of a Governor. It shall be his duty to uphold the By-Laws and Rules of the Exchange. The Chief Executive Officer of the Exchange shall be appointed by the Board of Governors pursuant to a written employment contract and for such compensation as the Board of Governors may fix subject to annual performance review by the Board of Governors or its Compensation Committee. During his incumbency, the Chairman shall not be a general or limited partner of a Member Organization or participant organization nor an employee, agent, consultant, officer, director (or person in a similar position) or stockholder of a Member Organization or participant organization.]

Sec. 5-2. Chair of the Board of Governors

The Chair of the Board shall preside at all meetings of the Board at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board. The Board shall select its Chair from among the members of the Board who are Independent Governors.

Sec 5-3 Vice-Chair[man]

The Vice-Chair[man] shall be an individual who, anytime within the prior three (3) years, has been a Member primarily engaged in business on the Exchange's equity market or equity options market or is a general partner, executive officer (vice-president or above) or a Member associated with a Member Organization primarily engaged in business on the Exchange's equity market or equity options market. In case a vacancy shall occur in the office of the Vice-Chair of the Board of Governors, the Nominating, Elections and Governance Committee shall select a successor to serve the remainder of the unexpired term, subject to approval by the Board.

[Sec. 5-3. Chairman's Appointive Power]

[Subject to the approval of the Board of Governors, the Chairman of the Board of Governors shall appoint the other officers of the Exchange as provided in these By-Laws and such additional officers of the Exchange as he from time to time may determine are required for the efficient management and operation of the Exchange and shall fix their duties, responsibilities, and terms of employment. Subject to approval of the Board of

Governors, he may also terminate officers' employment at any time. All such appointed officers shall report to the Chairman of the Board of Governors and be responsible to the Board of Governors for the proper performance of their duties.]

Sec. 5-4. Chief Executive Officer

The Chief Executive Officer shall be the chief executive officer of the Exchange and shall have general supervision over the business and affairs of the Exchange. The Chief Executive Officer shall have all powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.

[Power and Jurisdiction of Chairman over Employees]

[The Chairman of the Board of Governors shall have such power and jurisdiction over all other employees of the Exchange as may be delegated to him by the Board of Governors.]

Sec. 5-5. President

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

[Acting Chairman and Vacancies in Office of Chairman or Vice Chairman]

[During the extended absence or inability to act of the Chairman of the Board of Governors, the Board of Governors shall designate the Vice-Chairman, Chief Operating Officer or another senior officer to assume the duties of the Chairman on an ad interim basis. An extended absence or inability to act of the Chairman of the Board of Governors will occur if the Chairman is unable to fulfill his or her duties for a period longer than four weeks. The Board of Governors shall select a successor to the Chairman of the Board of Governors if that office becomes permanently vacant. In case a vacancy shall occur in the office of the Vice-Chairman of the Board of Governors, the Nominating, Elections and Governance Committee shall select a successor to serve the remainder of the unexpired term, subject to approval by the Board.]

Sec. 5-6. Reserved

Sec. 5-7. Other Officers

The other officers of the Exchange shall be one or more Vice Presidents, a Secretary, a Treasurer, one or more Assistant Secretaries and Assistant Treasurers, a Chief Examiner, one or more Examiners, and such other officers as the Board of Governors may determine or may approve and appoint.

Sec. 5-[7]8. Powers and Duties of the Secretary

Unless otherwise determined by the Board of Governors, the Secretary of the Exchange shall record all proceedings of the meetings of the Exchange, the Board of Governors and all committees thereof and the Stockholders, in books to be kept for that purpose, and shall attend to the giving and serving of all notices for the Exchange and the Board of Governors. He shall have charge of the corporate seal, the certificate books, transfer books and list of permit holders, as compiled by the Membership Services Department of the Exchange, and Stockholders and such other books and papers as the Board of Governors may direct. He may appoint a transfer agent of the Exchange, subject to the approval of the Board of Governors. He shall perform all other duties ordinarily incident to the office of Secretary and shall have such other powers and perform such other duties as may be assigned to him by the [Chairman of the] Board of Governors.

Sec. 5-[8]9. Powers and Duties of the Treasurer

Unless otherwise determined by the Board of Governors, the Treasurer shall have charge of all the funds and securities of the Exchange. When necessary or proper, unless otherwise ordered by the Board of Governors, he shall endorse for collection on behalf of the Exchange checks, notes and other obligations, and shall deposit the same to the credit of the Exchange in such banks or depositories as the Board of Governors may designate and shall sign all receipts and vouchers for payments made to the Exchange. He shall sign all checks made by the Exchange, except when the Board of Governors shall otherwise direct. He shall enter regularly, in the books and records of the Exchange to be kept by him for the purpose, full and accurate account of all moneys received and paid by him on account of the Exchange. Whenever required by the Board of Governors, he shall render a statement of the financial condition of the Exchange. He shall at all reasonable times exhibit his books and accounts to any Governor of the Exchange, upon application at the office of the Secretary during business hours. He shall have such other powers and shall perform such other duties as may be assigned to him from time to time by the [Chairman of the] Board of Governors. He shall give such bond, if any, for the faithful performance of his duties as shall be required by the Board of Governors and any such bond shall remain in the custody of the [Chairman of the] Board of Governors.

Sec. 5-[9]10. Powers and Duties of Vice Presidents and Assistant Officers

Unless otherwise determined by the Board of Governors, each Vice President and assistant officer of the Exchange shall have the powers and perform the duties of his respective superior officer. Vice Presidents and assistant officers shall have such rank as shall be designated by the [Chairman, subject to the approval of the] Board of Governors. Vice Presidents may be designated as having responsibility for a specific aspect of the

Exchange's affairs, in which event each such Vice President shall be superior to the other Vice Presidents in relation to matters within his area of responsibility. [The Chairman of the Board of Governors shall be the superior officer of the Vice Presidents.] The Treasurer and the Secretary of the Exchange shall be the superior officer of the assistant treasurers and assistant secretaries, respectively.

Sec. 5-11[0]. Delegation of Office

The Board of Governors may delegate the powers or duties of any officer of the Exchange to any other officer or to any Governor from time to time.

Sec. 5-12[1]. Resignations

Any officer may resign at any time by submitting his written resignation to the Chair[man] of the Board of Governors or the Secretary of the Exchange. Such resignation shall take effect at the time of its receipt by the Chair[man] or the Secretary unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

ARTICLE VI [*Equity Based Compensation*] Reserved

[Sec. 6-1. Stock Incentive and Option Plans]

[Without the prior approval of the holders of a majority of the then outstanding shares of Common Stock, the Exchange shall not at any time adopt any stock incentive or option plan or arrangement, or any other equity based compensation plan or arrangement, for the benefit of its Governors or officers that authorizes the issuance of stock, stock options or any other securities exercisable or exchangeable for or convertible into any equity interest in the Exchange representing more than 10% of the Common Stock outstanding at such time.]

ARTICLE VII [[]Reserved[]]

ARTICLE VIII *Presiding Floor Officials of the Exchange*

Sec. 8-1. Presiding Options Exchange Officials

The Chairs[men] of the Options Committee and Foreign Currency Options Committee, or their designees, shall preside over the options trading floor and foreign currency options trading floor, respectively, of the Exchange. They shall maintain order on the respective trading floors and the premises immediately adjacent thereto. For breaches of order, they may exclude Members, participants and Member Organizations and participant organizations (as applicable) and employees from the respective trading floors and the immediately adjacent premises, or may impose fines consistent with Exchange rules, or both. They shall administer the provisions of these By-Laws and the Rules of the Exchange pertaining to the respective trading floors and the immediately

adjacent premises of the Exchange, except there are no Options Exchange Officials on XLE and the provisions of these By-Laws and the Rules of the Exchange pertaining to XLE shall be administered by the Exchange. They shall impose penalties as prescribed by the Options Committee or Foreign Currency Options Committee, as applicable, for breaches of their rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors, except that regarding XLE, appropriate Exchange staff may impose the penalties as authorized in the By-Laws and the Rules of the Exchange.

Delegation of powers

The Chairs[m]en of the Committee on Options and the Committee on Foreign Currency Options may delegate to another member or subcommittee of such Committee, any of the powers and authority conferred upon them in this Section.

Nothing in this Section shall preclude Exchange staff from imposing fines for breaches of Exchange rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Further, nothing in this Section shall preclude Exchange officers from participating in the removal of Members, participants, Member Organizations and participant organizations and associated persons, along with the Options Exchange Officials.

ARTICLE IX [Trustees of Stock Exchange Fund] Reserved

[Sec. 9-1. Trustees of Stock Exchange Fund—How Appointed]

[There shall be no less than six nor more than eight trustees of the Stock Exchange Fund, composed of the Chair[man] of the Board of Governors, two (2) members of the Board of Governors, and up to five (5) other persons who are considered to be qualified. Each of the trustees, other than the Chair[man], shall be appointed by the Board of Governors to serve for three (3) years or until his successor is duly appointed.]

[Sec. 9-2. Exercise of Power]

[Four (4) of the Trustees of the Stock Exchange Fund shall be competent to act for the Trustees of the Stock Exchange Fund in all matters within their jurisdiction under these By-Laws.]

[Sec. 9-3. Duties]

[The Trustees of the Stock Exchange Fund shall hold such securities and other property of the Exchange, real or personal, as shall be vested in them by order of the Board of Governors, with full power to invest the same and to sell and re-invest the proceeds of such sales, as they may deem proper, without being limited in investments to so-called "legal investments".]

[Sec. 9-4. Transfer of Assets]

[The Board of Governors shall have power and authority to direct transfers of assets of the Stock Exchange Fund, for such purposes as they may deem proper, and such direction shall be full and complete authorization for any action taken by the Trustees of the Stock Exchange Fund in compliance therewith.]

[Sec. 9-5. Agent of Trustees]

[The Trustees shall, with approval of the Board of Governors, appoint as Agents, either U.S. registered broker-dealers and/or banks (as defined in Section 3 of the Exchange Act) to hold the securities of the Exchange for safekeeping, to collect the interest, dividends and income therefrom for the Treasurer of the Exchange. Said Agents shall also, from time to time, make deliveries of securities held for the Trustees of the Stock Exchange Fund as the Trustees of the Stock Exchange Fund shall direct.]

[Sec. 9-6. Reports]

[The Trustees of the Stock Exchange Fund shall submit to the Finance Committee at least quarterly a statement of the investments of the Exchange held by them in their capacity of Trustees of the Stock Exchange Fund. The Finance Committee shall forward that report to the Board of Governors with its recommendation.]

ARTICLE X *Standing Committees*

Sec. 10-1. Standing Committees

(a) The Standing Committees of the Exchange shall consist of: an Executive Committee, an Admissions Committee, an Allocation, Evaluation and Securities Committee, an Audit Committee, [an Automation Committee,] a Business Conduct Committee, a Compensation Committee, a Finance Committee, a Foreign Currency Options Committee, [a Marketing Committee,] a Nominating, Elections and Governance Committee, a Quality of Markets Committee, and an Options Committee. Each of such Committees shall be composed of not more than nine (9) members, including ex-officio members, except the Options Committee, and the Foreign Currency Options Committee, which shall each consist of not more than twelve (12) members, including ex-officio members. The Chair[man] of each Standing Committee shall be a member of the Board of Governors and at least one other person on each Committee shall be a Governor.

(b) All members[, except the Chairmen, of the Standing Committees (but excluding the Nominating, Elections and Governance Committee and the Executive Committee)] shall be appointed by the [Executive Committee, subject to the approval of the] Board of Governors. The appointments of all Committees, shall be made as promptly as possible after each annual meeting of Stockholders, and each appointee shall serve for one year or until his successor is duly appointed.

(c) No more than one person affiliated with the same Member Organization or participant organization shall be eligible for service on the same Standing Committee. If by change of affiliation, merger or otherwise two or more persons from the same Member Organization or participant organization are serving on the same Standing Committee, the number of such persons shall be reduced to one through a resignation or resignations, or if necessary, by action of the Standing Committee. The vacancy or vacancies thus created shall be filled by the person or persons selected by the [Executive Committee, subject to the approval of the] Board of Governors.

Sec. 10-2. General Duties and Powers of Committees

Each Standing Committee shall administer the provisions of these By-Laws and the Rules of the Board of Governors pertaining to matters within its jurisdiction. Each Standing Committee shall make such rules and regulations with respect to matters within its jurisdiction as it shall deem appropriate and shall have such other powers and duties as may be delegated to it by the Board of Governors.

Sec. 10-3. Proceedings of Special and Standing Committees

(a) Except as herein otherwise prescribed, and subject always to the control and supervision of the Board of Governors, each Standing Committee and Special Committee shall determine the manner and form in which its proceedings shall be conducted, and shall make such regulations for its government as it shall deem proper and may act at a meeting or without a meeting, and through a quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in these By-Laws or the rules of the Exchange, the decision of a majority of those members of any Committee voting at a meeting at which a quorum is present, provided at least two (2) such members vote, shall be the decision of the Committee.

(b) Each Standing and Special Committee may appoint such subcommittees as it may deem necessary for the efficient discharge of its duties. Each such subcommittee shall consist of at least one (1) member of the Committee appointing it and such other persons as such Committee may designate but shall be smaller in size than the Committee to which it reports. Each such subcommittee shall report to the Committee appointing it. Any statement made to such a subcommittee shall for all purposes be deemed to be a statement made to the Standing or Special Committee which appointed such subcommittee.

(c) One or more governors may be appointed on a temporary basis to any Standing Committee by its Chair[man] to effect a quorum when one is lacking for a meeting of such Committee.

Sec. 10-4. Vacancies in Standing Committees—Ad Interim Appointments

The [Executive Committee shall appoint, subject to the approval of the] Board of Governors[,] shall appoint a person to fill any vacancy [other than Chairman occurring in

any Standing Committee except the Nominating, Elections and Governance Committee and the Executive Committee]. Should special exigencies require, the Chair[man] of the Board of Governors may fill any such vacancy ad interim until the next regular meeting of the Board of Governors.

Sec. 10-5. Continuation of Committees

The members of each Standing Committee at the time of an annual meeting shall constitute such Committee until either a new Committee is appointed or a Committee ad interim is appointed.

Sec. 10-6. Admissions Committee

(a) At least 50% of the members of the Admissions Committee shall be permit holders or participants or be associated with a Member Organization or participant organization.

(b) The Admissions Committee shall have jurisdiction over the issuance of permits and over applications by non-members for admission as foreign currency options participants. The Admissions Committee shall also have jurisdiction over the revocation of permits and foreign currency options participations; provided that the Business Conduct Committee shall also have jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters, as provided in these By-Laws (including, without limitation, Article XVII hereof) and the rules of the Exchange. It shall exercise its powers subject to policies established by the Board of Governors from time to time. All applications for a permit, all applications by non-members for admission as foreign currency options participants, all applications for reinstatement of any permit suspended for insolvency of its holder, and any application for readmission of a person who has been expelled from the Exchange shall be referred to the Admissions Committee for review and action. The purchase of a foreign currency options participation by a member of the Exchange shall be sufficient to confer foreign currency options participant status upon such member.

(c) The Admissions Committee shall exercise the powers given it by these By-Laws and by resolution of the Board of Governors.

(d) No Member shall form a Member Organization that is a partnership and no Member or Member Organization that is a partnership shall admit any person to partnership in such organization without the prior approval of the proposed partner or partners by the Admissions Committee. The Admissions Committee shall have supervision over partnership arrangements, and copies of all articles of partnership, or any changes therein, shall be presented to the Admissions Committee for approval before the effective date thereof, except that if such articles or changes therein have been approved by a registered national securities exchange, the Admissions Committee may waive this requirement.

(e) All applications to qualify and register a corporation or other entity as a Member Organization or participant organization, and all applications for reinstatement of any qualification or registration of a Member Organization or participant organization, shall be referred to the Admissions Committee which shall investigate and act thereon. The Admissions Committee shall have supervision over Member corporation (and similar) arrangements, and copies of the articles of incorporation, by-laws and all amendments thereto shall be filed with the Admissions Committee for approval.

(f) If in a Member Organization that is a partnership the only general partner thereof, who was a Member of this Exchange, dies or resigns, the remaining partners of such Member Organization may request the Admissions Committee to permit a continuing partnership consisting of all said remaining partners and no others (except that the estate of a deceased Member may be a partner thereof) to have the status of a Member Organization for such period, not exceeding sixty (60) days from the date of such death or resignation, as the Admissions Committee may determine and under such conditions as it may fix. The Admissions Committee in its discretion may, at any time during such period, withdraw such permission and upon such withdrawal such status shall terminate.

(g) If in a Member Organization that is a corporation the only officer, who was a Member of this Exchange, dies or resigns, the remaining officers may request the Admissions Committee to permit the corporation to have the status of a Member Organization for such period, not exceeding sixty (60) days from the date of such death or resignation, as the Admissions Committee may determine and under such conditions as it may fix. The Admissions Committee in its discretion may, at any time during such period, withdraw such permission and upon such withdrawal such status shall terminate.

Sec. 10-7. Options Allocation, Evaluation and Securities Committee

(a) The Options Allocation, Evaluation and Securities Committee shall consist of nine (9) members. Such Committee shall be composed of core members and annual members. Annual members shall be chosen pursuant to the number and categories of persons as provided in Rule 500. Such core Committee members shall serve for three (3) year terms. Annual members shall serve for one (1) year terms. The Options Allocation, Evaluation and Securities Committee shall have jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. It shall be responsible for appointing specialists, alternate or assistant specialists or odd-lot dealers on the options and foreign currency options trading floors. It shall establish standards for the periodic review and evaluation of their performance and shall be empowered to suspend or revoke their appointments upon showing of reasonable cause therefor.

(b) Reserved.

(c) The Options Allocation, Evaluation and Securities Committee shall consult with the Options or Foreign Currency Options Committees or any person or group as necessary in order to utilize their expertise in the performance of its functions. The

Options Committee shall be empowered to make temporary appointments of specialists, assistant specialists, registered option traders, or other types of floor market makers until permanent appointments are made by the Options Allocation, Evaluation and Securities Committee.

(d) Such Committee shall have supervision over all questions pertaining to options admitted to dealings on the Exchange which directly affect the issuers thereof, and shall have supervision over all questions pertaining to or arising out of the listing of options or the admitting of options to dealings on the Exchange, or the removal of options from such listing or from dealings on the Exchange.

(e) For the purposes of these By-Laws, and the Rules of the Exchange, references to the "Allocation, Evaluation and Securities Committee" shall mean the Options Allocation, Evaluation and Securities Committee.

Sec. 10-8. Reserved

[Reserved.]

Sec. 10-9. Audit Committee

(a) The Audit Committee shall consist of at least three (3) members, the exact number to be determined from time to time by the Board of Governors. All members shall be Independent Governors. The term "Independent Governor" will be defined as a Governor who has no material relationship with the Exchange or any affiliate of the Exchange, any Member of the Exchange or any affiliate of such Member, or any issuer of securities that are listed or traded on the Exchange or a facility of the Exchange. The term "material relationship" will be defined as a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-making of the Governor.

(b) The Audit Committee shall perform the following primary functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Exchange's financial reporting process and the financial information that is provided to the Stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; (C) select, evaluate and, where appropriate, replace the Exchange's independent auditors (or nominate the independent auditors to be proposed for ratification by the Stockholders); and (D) direct and oversee all the activities of the Exchange's internal audit function, including but not limited to management's responsiveness to internal audit recommendations.[have responsibility for dealings with the Exchange's external auditors, which includes: (i) sole responsibility for the appointment, retention and replacement of such auditors; (ii) direct oversight over such auditors; (iii) review, at least annually, of the qualification and performance of such auditors; (iv) direct authority to resolve disagreements between management and such auditors regarding financial reporting; (v) responsibility to ensure the rotation of the lead

and concurrent auditors every five years and certain other auditors every seven years, with time out periods; (vi) evaluation of the independence of external auditors, including ensuring that, other than deferred tax and compliance services, external auditors do not engage in certain non-audit services, as identified in the Audit Committee Charter, when they conduct audits for the Exchange, and approval of non-audit services where appropriate; (vii) review of the "management letter" and reply thereto; and (viii) the ability to meet with external auditors without Exchange officers or employees.]

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

[The Audit Committee shall review any legal matters that may materially impact the Exchange's financial statements and all examination, inspection or other reports made by any regulatory agency with regulatory oversight for the Exchange and the Exchange's responses thereto.]

The Audit Committee shall review, at least annually, compliance with the Exchange's Code of Conduct with the assistance of the General Counsel's office.

The Audit Committee shall have the authority to conduct special reviews of any alleged improper conduct with respect to Exchange related activity, operations, finance or regulation.

The Audit Committee shall establish procedures for the receipt, retention, and treatment of complaints received by the Exchange regarding accounting, internal accounting controls, or other auditing matters and confidential anonymous submissions by Exchange employees regarding questionable accounting practices.

The Audit Committee may select and engage its own advisor(s) to assist it in carrying out its duties.

The Audit Committee shall determine the appropriate amount of funding to be provided by the Exchange for the purpose of paying: (i) compensation to external auditors retained by the Audit Committee to prepare or issue an audit report; (ii)

compensation to adviser(s) employed by the Audit Committee that it determines are necessary to carry out its duties; and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate to carry out its duties in respect of external auditors.

The Audit Committee shall have the authority to compel to appear and/or provide documents or other information, by Members, Member Organizations, associated persons of Member Organizations, members of the Board of Governors, committee members, Exchange officers or Exchange employees.

(c) The Audit Committee shall meet at least once every calendar quarter.

(d) The Audit Committee shall recommend for appointment by the Board of Governors a qualified Exchange employee or independent contractor, the Referee, to review Options Exchange Official rulings concerning the nullification and/or adjustment of transactions, and to act in the capacity of an Options Exchange Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange rules, Equity Floor Procedure Advices and Option Floor Procedure Advices. The Audit Committee shall determine that the Referee has sufficient expertise in the area of securities trading to act in the capacity of an Options Exchange Official respecting initial rulings concerning requests for relief and to conduct reviews of Options Exchange Official rulings, and possesses sufficient knowledge of Exchange rules and the relevant sections of the [Securities] Exchange Act [of 1934, as amended,] and the rules thereunder.

Sec. 10-10. [Automation Committee] Reserved

[The Automation Committee shall consist of five (5) Governors, including its Chairman who shall be a Stockholder Governor or an Independent Governor. The Automation Committee shall periodically review and approve automation plans affecting the trading floors, subsidiaries and the Exchange's administrative areas, including regulatory departments and offices. The Automation Committee shall ensure that such plans are consistent with the strategic objectives of the Exchange. The Automation Committee shall report to the Board of Governors on at least a quarterly basis.]

Sec. 10-11. Business Conduct Committee

(a) The Business Conduct Committee shall, in accordance with the Rules of the Board of Governors of the Exchange, have exclusive jurisdiction to:

(i) monitor compliance with the Exchange Act, the rules and regulations thereunder, these By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any committee of the Exchange, by Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations;

(ii) examine into the business conduct and financial condition of Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; and

(iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange.

(b) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) finds that a violation within the disciplinary jurisdiction of the Exchange has been committed. The jurisdiction of this Committee and its designee (including a Hearing Officer or Hearing Panel) shall not extend to the enforcement of rules and regulations of the Options Committee relating to order, decorum, health, safety and welfare on the trading floors, or to hearings held by and sanctions imposed by such committees relating to such matters, except as permitted by the rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.

(c) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall have authority, whenever it shall appear that a Member Organization is in violation of Rule 703 of the Rules of the Board of Governors to direct a general partner(s) or an executive officer(s) of such Member Organization to appear before the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) for examination upon forty-eight (48) hours notice, either oral or in writing and, after such examination, such Committee or Committee's designee (including a Hearing Officer or Hearing Panel) shall have authority to suspend such Member Organization until the requirements of Rule 703 are fully met. Any such suspension directed by the Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) shall be subject to review by the Board of Governors. In the event of a reversal by the Board of Governors of the suspension imposed by such Committee or the Committee's designee (including a Hearing Officer or Hearing Panel), a Member Organization or officer, partner, director (or person in a similar position) or [s]Stockholder thereof shall be prohibited from instituting a lawsuit in any forum against the Exchange or the members of the Business Conduct Committee, or the Committee's designee (including a Hearing Officer or Hearing Panel), or hold the Exchange, any member of such Committee, or the Committee's designee (including a Hearing Officer or Hearing Panel) liable in damages based in whole or in part upon the suspension imposed by such Committee or by the Committee's designee (including a Hearing Officer or Hearing Panel).

(d) The Business Conduct Committee may prescribe regulations for the carrying of securities on margin by Members, participants and Member Organizations and participant organizations for customers; and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.

(e) The Business Conduct Committee or its designee (including a Hearing Officer or Hearing Panel) may prohibit trading by a Member, participant or Member Organization or participant organization which is excessive in view of such person's or organization's capital.

(f) The Business Conduct Committee may require detailed financial reports of a Member, participant or Member Organization or participant organization, and such other operational reports as it may deem advisable.

(g) The Business Conduct Committee shall have supervision over the advertising of Members, participants and Member Organizations and participant organizations.

(h) The Business Conduct Committee shall consist of nine (9) members as follows: three (3) Independent Governors; one (1) Member or person associated with a Member Organization who conducts equity business on XLE; one (1) Member who conducts options business at the Exchange; and four (4) persons who are Members or persons associated with a Member Organization.

Sec. 10-12. Compensation Committee

(a) The Compensation Committee shall act in an advisory capacity to the Board of Governors in reviewing and recommending the compensation of the senior officers of the Exchange. Such Committee shall have the authority to select and engage consultants to assist in its reviews. The Compensation Committee shall have the authority to establish and administer annual performance reviews of senior officers in connection with its compensation recommendations.

(b) The Compensation Committee shall consist of five (5) members as follows: the Vice-Chair[man] of the Board of Governors; and four (4) Independent Governors. The Chair[man] of the Committee shall be one (1) of the Independent Governors.

Sec. 10-13. Reserved

[Reserved.]

Sec. 10-14. Executive Committee

(a) The Executive Committee shall be appointed by the Board of [the following nine (9)] Governors[;], which shall determine the size of the Executive Committee. The Executive Committee shall consist of the Chair[man] of the Board of Governors, who shall be the Chair[man] of the Committee[;], the Vice-Chair[man] of the Board of Governors[;], the Stockholder Governor, and [the Chairman of the Finance Committee; the Chairmen] a number of [two (2) floor committees; two (2) Stockholder Designated Governors equal to at least 20% of the total number of [and two (2) Independent Governors. The Board of] Governors on the Executive Committee, and such other Governors as [shall select and approve the latter six (6) Committee members or, at

its discretion, designate the Chairman of] the Board of Governors may appoint [to select such members, subject to the approval of the Board of Governors].

(b) When the Board of Governors is not in session, the Executive Committee shall have and may exercise all the powers and authority of the Board of Governors which may lawfully be delegated to it by the Board of Governors under the DGCL and which are not in conflict with limitations created by the Board of Governors, the Certificate of Incorporation or these By-Laws. All actions of the Executive Committee shall be reported to the Board of Governors within ten (10) days thereof but not later than the start of the next meeting of the Board of Governors.

(c) Reserved. [The Executive Committee shall appoint members of the Standing Committees (excluding their Chairmen), subject to the approval of the Board of Governors.]

(d) Arbitration. As of October 1, 1998, every [m]Member, participant or [m]Member Organization or participant organization (as defined by Exchange rules and hereinafter referred to in this subsection as "members") shall be subject to the Code of Arbitration Procedure of the National Association of Securities Dealers, Inc. ("NASD") for every claim, dispute, or controversy, arising out of or in connection with the securities business of any member of the Exchange, including disputes outlined in Section 1, Section 6 and Section 8 of Rule 950. For the purposes of Rule 950, each member shall be subject to, and shall abide by, the NASD Code of Arbitration Procedure as if such member were a "member" of the NASD. With respect to claims, disputes, or controversies filed with the Exchange prior to October 1, 1998, the Executive Committee shall establish and review proposed arbitration policies, procedures and rule change filings including the method of selecting panels.

(e) With respect to claims, disputes, or controversies filed with the Exchange prior to October 1, 1998, the following remains in effect:

(i) Member Controversies: Any dispute, claim or controversy between or among parties who are Members, participants, Member Organizations, participant organizations or persons associated with a Member Organization or a participant organization, arising in connection with the securities business of such Member, participant, Member Organization, participant organization and/or associated person in his/her capacity as an associated person shall be administered by the Arbitration Department of the Exchange pursuant to Rule 950 of the Rules of the Board of Governors.

(ii) Public Customer Controversies: Any dispute, claim or controversy between a public customer(s), in his/her capacity as such, and a Member, participant, Member Organization, participant organization and/or associated person in connection with the securities business of such Member, Member Organization, participant and/or associated person in connection with his/her

activities as an associated person shall be administered pursuant to Rule 950, Section 44 of the Rules of the Board of Governors.

(iii) It may be deemed conduct inconsistent with just and equitable principles of trade for a Member, participant, Member Organization, participant organization, or person associated with a Member Organization or participant organization to fail to submit to arbitration on demand under the provisions of this By-Law, or to fail to provide any document properly requested pursuant to discovery or to fail to honor an award of the arbitration panel.

Sec. 10-15. Finance Committee

The Finance Committee shall consist of [the following nine (9) members:] the Chair[man] of the Board of Governors, who shall [not] be the Chair of the Committee, [permitted to create a tie vote;] the Vice-Chair[man] of the Board of Governors, [; one (1) Stockholder Governor; four (4) Independent] a number of Designated Governors equal to at least 20% of the total number of voting members on the Finance Committee, and such other Governors as the Board of Governors may appoint. The Finance Committee shall also include two (2) Members or persons associated with a Member Organization, who may be Governors, one of whom conducts business [primarily] on XLE or on the equity options floor; provided, however, that if such Committee members are not Governors, they shall serve in a non-voting capacity. [The Chairman of the Committee shall be either the Vice-Chairman, a Stockholder Governor or a Member Governor.] The Budget Subcommittee of the Finance Committee shall be chaired by a Governor. The Finance Committee shall have charge of the funds of the Exchange. It shall serve in an advisory capacity to the Board of Governors in the investment from time to time of the funds of the Exchange, and in the sale from time to time of any of the securities held by the Exchange.

The Finance Committee shall examine the accounts and vouchers of the Exchange and report the result of its examination to the Board of Governors. It shall prepare and present to the Board of Governors at its first regular meeting in December of each year an estimate of the income of the Exchange for the succeeding calendar year and its recommendations as to the appropriations for expenses for said period. It may at any time recommend additional appropriations or the increase or decrease of any appropriations made by the Board of Governors and shall make reports and recommendations to the Board of Governors as to the financial policy of the Exchange. Not less than three (3) days prior to the date upon which dues of Members become payable it shall make a report and recommendation to the Board of Governors as to the amount thereof.

The Finance Committee shall have such other powers and duties as may be delegated to it by the Board of Governors.

The Finance Committee shall assist the Board of Governors in the preparation of the annual budget and make recommendations thereon, oversee the

review of contracts, approve unbudgeted expenditures, assist the Audit Committee with respect to special reviews relating to financial matters and review any other financial matter that it deems appropriate.

[••• Supplementary Material: -----]

[The Board of Governors has adopted the following directives which are applicable to the Finance Committee in the exercise of its duties, powers and authority under the By-Laws:

.01 The Committee may authorize the expenditure of any budgeted line item expense (non-capital expenditure) up to ten per cent (10%) in excess of the amount budgeted without further approval by the Board of Governors;

.02 The Committee may authorize the expenditure of any budgeted capital line item (capital expenditure) up to ten per cent (10%) in excess of the amount budgeted without further approval by the Board of Governors;

.03 The Committee may authorize the expenditure of any budgeted capital line item, unspecified as to project, without approval by the Board of Governors up to an amount set by the Board at the time the latter approves the budget. If any project within an unspecified capital line item is planned to exceed an expenditure of a maximum per project amount set by the Board at the time it approves the budget, Board approval shall be required for the particular expenditure.

.04 If any capital expenditure in excess of the budgeted amount exceeds one hundred ten per cent (110%) of any specified capital line item, it shall require Board approval.

.05 The Committee may delegate to the staff of the Exchange so much of its authority to make expenditures as it deems appropriate.

.06 The Committee shall perform its functions and act with the same powers and limitations for the Exchange and all subsidiaries of the Exchange.

.07 The Board of Governors has set a limitation of \$25,000 on the amount which the Finance Committee may authorize to be spent for any budgeted capital line item, unspecified as to project, without Board approval.]

Sec. 10-16. Reserved

[Reserved.]

[Hearing Committee]

[Rescinded.]

Sec. 10-17. Foreign Currency Options Committee

At least 50% of the members of the Foreign Currency Options Committee shall be permit holders or participants or be associated with a Member Organization or participant organization.

The Foreign Currency Options Committee shall have general supervision of the dealings of Members, participants and Member Organizations and participant organizations on the foreign currency options trading floor, and of the premises of the Exchange immediately adjacent thereto. It shall make or recommend for adoption, and administer, such rules as it may deem necessary for the convenient and orderly transaction of business upon the foreign currency options trading floor.

The Foreign Currency Options Committee shall have supervision of the activities on the foreign currency options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of Members, participants and Member Organizations and participant organizations active on the foreign currency options trading floor. It shall have supervision over all foreign currency options floor employees of Members, participants and [m]Member Organizations and participant organizations, and shall make and enforce such rules with respect to such employees as it may deem necessary.

The Foreign Currency Options Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the foreign currency options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of such Committee, it is contrary to the welfare or interest of the Exchange. It shall also have supervision over the location of equipment and the assignment and use of space on the foreign currency options trading floor.

The Foreign Currency Options Committee shall have supervision over relations with other options exchanges in the areas of foreign currency options trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and the Options Committees as appropriate.

The Foreign Currency Options Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the foreign currency

options trading floor and the immediately adjacent premises of the exchange facility and shall be empowered to impose penalties for violations thereof.

The Foreign Currency Options Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to foreign currency options trading and over administration of such Rules as it deems appropriate.

The Foreign Currency Options Committee shall consult with the Quality of Markets Committee on all matters of policy and all matters which are to be presented to the Board of Governors by the Foreign Currency Options Committee.

Sec. 10-18. [~~Marketing Committee~~] Reserved

[The Marketing Committee shall act in an advisory capacity to the officers of the Exchange in marketing the services of the Exchange.]

Sec. 10-19. Nominating, Elections and Governance Committee

(a) The Nominating, Elections and Governance Committee shall consist of five (5) [~~persons~~] members as follows: [~~three (3)~~ four (4) Independent Governors[, (one of whom must be a Designated Independent Governor) [~~one (1) Stockholder Governor;~~] and one (1) Member Governor. The Nominating, Elections and Governance Committee shall select its Chair[man] from among the members of such Committee who are Independent Governors.

(b) [No member of the Nominating, Elections and Governance Committee shall be appointed to serve on such Committee consecutively for more than two (2) full terms of one year each from and after the effective time of the Merger. No member of the Nominating, Elections and Governance Committee shall be eligible for a position on the Board of Governors to be filled for the term commencing immediately after the next annual meeting of the stockholders of the Exchange.] As promptly as possible after each annual meeting of Stockholders, the Board of Governors shall appoint the Nominating, Elections and Governance Committee, and from time to time the Board of Governors shall fill any vacancies created on such Committee. The Nominating, Elections and Governance Committee may submit nominations for its successors, some or all of whom may be approved by the Board of Governors.

(c) The Nominating, Elections and Governance Committee shall have supervision over the balloting at all meetings of Members, Member Organization Representatives, Member Organizations and Stockholders. The Nominating, Elections and Governance Committee shall administer these By-Laws and any other rules, regulations and procedures governing voting that may be established from time to time by the Board of Governors at all elections and meetings of Members, Member Organization Representatives, Member Organizations and Stockholders and shall make or recommend

for adoption such rules, recommendations and procedures as it may deem necessary for the conduct of such voting.

(d) [The Nominating, Elections and Governance Committee shall select all Chairmen of Standing Committees in accordance with this Article X and subject to the approval of the Board of Governors.] Reserved

(e) A person is not eligible for an independent nomination for a position on the Board of Governors, nor shall the Nominating, Elections and Governance Committee nominate any person for a position on the Board of Governors if one or more other persons associated with such person's Member Organization or participant organization would be serving an unexpired term or terms on the Board of Governors upon the commencement of such nominee's term of office in the event of such nominee's election. The Nominating, Elections and Governance Committee shall nominate no more than one person associated with the same Member Organization or participant organization to fill vacancies on the Board of Governors and regardless of the number of vacancies to be filled. For purposes of these By-Laws, the term "person associated with the same Member Organization or participant organization" means, with respect to any person associated with a Member Organization or participant organization, any other person who is a partner, officer, director (or person in a similar position), or holder of ten percent (10%) or more of the outstanding shares of the same Member or participant organization or of a Member Organization or participant organization that directly controls, is controlled by or is under common control with such Member Organization or participant organization. Participation in a joint account does not per se constitute an association with the same Member Organization or participant organization.

(f) A candidate may run for only one of the vacancies for Governor in any election.

(g) No more than one (1) person associated with the same Member Organization or participant organization shall be certified by the Nominating, Elections and Governance Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating, Elections and Governance Committee shall not certify any such candidate. A person who has previously accepted nomination by the Nominating, Elections and Governance Committee for one (1) category of Governor pursuant to Section 3-6 or 28-3 of these By-Laws is not eligible to qualify as an independently nominated candidate in any category. There may be no independent nominations of incumbent Governors whose terms are not set to expire at the next annual meeting of Stockholders.

(h) The names of all Designated Nominees, together with the names of the nominees to be elected as the Stockholder Governor[s] and Independent Governors, whose nominations conform with the requirements of these By-Laws, shall be sent to the [s]Stockholders of the Exchange by the Secretary of the Exchange.

(i) The names of the persons nominated by the Nominating, Elections and Governance Committee shall be identified on the ballot by an appropriate legend or symbol. In the event that there are more nominations of persons than there are vacancies on the Board of Governors which may be filled by such persons, the number of such persons who may be elected to serve on the Board of Governors in each category shall also be indicated on the ballot.

Sec. 10-20. Options Committee

At least 50% of the [M]members of the Options Committee shall be permit holders or be associated with a Member Organization.

The Options Committee shall have general supervision of the dealings of Members on the equity and index options trading floor, and of the premises of the Exchange immediately adjacent thereto. It shall make or recommend for adoption, and administer, such rules as it may deem necessary for the convenient and orderly transaction of business upon the equity and index options trading floor.

The Options Committee shall have supervision of the activities on the equity and index options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of Members active on the equity and index options trading floor. It shall have supervision over all equity and index options floor employees of Members, and shall make and enforce such rules with respect to such employees as it may deem necessary.

The Options Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the equity and index options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the Options Committee, it is contrary to the welfare or interest of the Exchange. It shall also have supervision over the location of equipment and the assignment and use of space on the equity and index options trading floor.

The Options Committee shall have supervision over relations with other options exchanges in the areas of trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and the Foreign Currency Options Committees.

The Options Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the equity and index options trading floor and the immediately adjacent premises of the Exchange and shall be empowered to impose penalties for violations thereof.

The Options Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to equity and

index options trading and over administration of such Rules as it deems appropriate. The Options Committee shall consult with the Quality of Markets Committee on all matters of policy and all matters which are to be presented to the Board of Governors by the Options Committee.

Sec. 10-21. Quality of Markets Committee

There shall be a Quality of Markets Committee. The Quality of Markets Committee shall provide advice and guidance to the Board of Governors on the Exchange's competitive position in new and existing products and the quality and depth of markets. The Quality of Markets Committee shall also provide advice and guidance on issues relating to the fairness, integrity, efficiency and competitiveness of the information, order handling and execution mechanisms of the Exchange and systems operated by the Exchange from the perspective of investors, both individual and institutional, retail firms, specialist and registered options trader firms, listed companies and other participants of the Exchange. The Quality of Markets Committee will have broad representation that shall include at least as many Independent Committee members as [it does] the combined number of Stockholder Committee members and Member Committee members. The Quality of Markets Committee shall include a number of Member Committee members that is equal to at least 20 percent of the total number of members of the Quality of Markets Committee.

ARTICLE XI Appeals

Sec. 11-1. When Allowed

(a) An appeal to the Board of Governors from a decision of a Standing Committee may be taken by a Member or Member Organization interested therein or a foreign currency options participant or a foreign currency options participant organization interested therein by filing with the Secretary of the Exchange written notice of appeal within ten (10) days after the decision has been rendered. A member of a Standing Committee taking part in the hearing of a matter, may by filing written notice with the Secretary of the Exchange within ten (10) days after a decision has been made thereon, appeal therefrom to the Board of Governors.

(b) Notwithstanding the foregoing, any appeal from a decision of the Nominating, Elections and Governance Committee regarding the eligibility of any candidate for election to the Board of Governors shall be heard by [a special committee of] the Board of Governors [composed of not less than a majority of all Governors who are not then candidates for office on the Board of Governors]. An affected candidate or interested party may appeal by filing a written notice thereof with the Secretary of the Exchange within seven (7) days after a decision. Said notice shall also state the reasons for his appeal and the relief requested. He may appear before the [special committee] Board of Governors and present arguments concerning the decision. An appropriate record shall be kept. The decision of the [special committee] Board of Governors shall be final.

(c) Notwithstanding the foregoing, any appeal from a decision of the Allocation, Evaluation and Securities Committee pursuant to Rule 511(e) of the Rules of the Board of Governors shall be heard by a special committee of the Board of Governors composed of three (3) Governors, of whom at least one (1) shall be an Independent Governor. The member requesting review shall be permitted to submit a written statement to and/or appear before this special committee. The Secretary of the Exchange shall certify the record of the Allocation, Evaluation and Securities Committee's hearing and its written decision and shall submit these documents to the special committee. The special committee's review of the Allocation, Evaluation and Securities Committee's action shall be based solely on the record, the written decision and any statement submitted by the member. The special committee shall prepare and deliver to the member a written decision and reasons therefor. If the special committee affirms the Allocation, Evaluation and Securities Committee's action, the action shall become effective ten (10) days from the date of the special committee's decision. There shall be no appeal to the Board of Governors from any decision of the special committee.

Sec. 11-2. Advisory Committees on Appeals

On all appeals to the Board of Governors from a decision of a Standing Committee in accordance with Section 11-1 of these By-Laws, an advisory committee of three (3) Governors, of whom at least one (1) shall be an Independent Governor, appointed by the Chair[man] of the Board of Governors, shall examine the record on appeal and give an advisory opinion thereon to the Board of Governors.

Sec. 11-3. Appeal from Decisions of Hearing Officer, Hearing Panel or Business Conduct Committee

(a) An appeal in a disciplinary proceeding to the Board of Governors may be taken by a respondent in a disciplinary proceeding by filing written notice thereof in accordance with Section 11-1(a) of these By-Laws. An appeal may also be taken by the Exchange staff by petitioning the Board of Governors within ten (10) days after the decision, for permission to proceed with such appeal.

(b) An appeal taken by a respondent or by the staff (after approval by the Board of Governors) will be based on the written record, however, the parties will have the right to request an oral argument before the Board of Governors or an Advisory Committee thereof.

ARTICLE XII *Permits—Eligibility—Election—Initiation Fee*

Sec. 12-1. Right to Issue Permits and Non-Transferability

(a) In addition to all other powers granted to the Board of Governors by law, the Certificate of Incorporation, these By-Laws or otherwise, the Board of Governors shall have the power to issue permits in one or more classes or series and, unless otherwise provided in the resolution of the Board of Governors or the rules of the Exchange

establishing such class or series, in unlimited number to conduct business on the Exchange or on specific facilities of, or operated by, the Exchange, and to adopt by resolution or to set forth in the rules of the Exchange such rules with respect to such permits as the Board of Governors may from time to time determine in its sole discretion to be advisable, including, without limitation, the rules governing the terms and conditions of such permits and the number, types and attributes thereof at any time authorized for issuance, the transferability or non-transferability of such permits, the termination and/or suspension of rights and privileges appertaining to permits, the qualifications that must be met for a person to be issued any such permit, and the dues, fees and other charges to be paid to the Exchange in connection with such permits and by persons applying for, using, holding or (if allowed) transferring such permits, and for firms and organizations with which such persons are affiliated or associated in any manner. Such permits shall confer upon any person only such rights, privileges and obligations as are expressly set forth in these By-Laws, the rules of the Exchange and any resolution of the Board of Governors. The Board of Governors may authorize any committee thereof or the Chair[man] of the Board of Governors to exercise any powers of the Board of Governors with respect to such permits.

(b) Except as otherwise set forth in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a Member pursuant to these By-Laws and the rules of the Exchange, including, without limitation, the right to vote (exclusively through the Member Organization Representative of the Member Organization identified by such holder as its primary affiliation) and to conduct business on the Exchange as provided in these By-Laws and such rules. Except as otherwise provided in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, no permit may be sold, transferred (by operation of law or otherwise), leased or otherwise encumbered by any person to whom such permit is issued by the Exchange.

Sec. 12-2. Eligibility

Every applicant for a permit, other than a corporate Member that has been issued a permit pursuant to Section 12-4 of these By-Laws, and every non-member seeking admission as a foreign currency options participant must be a natural person of at least twenty-one (21) years of age.

Sec. 12-3. Number Held

Except as otherwise provided in the rules of the Exchange, no person may hold more than one (1) permit.

Sec. 12-4. Admission of Corporation

A corporation may be issued a permit by the Exchange, provided such corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its capital stock is owned by the Exchange.

Sec. 12-5. Application

(a) Every applicant for a permit and every non-member seeking admission as a foreign currency options participant upon acquisition of an existing foreign currency options participation shall file an application in writing with the Membership Services Department of the Exchange in such form as the Admissions Committee may prescribe from time to time, shall appear before such Committee if required thereby, and shall submit such information as such Committee may direct.

(b) All applications will be reviewed preliminarily by the staff of the Exchange. If the staff recommends that the applicant not be issued a permit or not be admitted as a foreign currency options participant, he shall be notified in writing of the reasons therefor and may, within fifteen (15) days of the receipt thereof, file a request with the Admissions Committee for its consideration of his application, together with a written statement setting forth his opinion as to why the staff recommendation is in error or insufficient to preclude the issuance to him of a permit or his admission as a foreign currency options participant.

(c) If the staff of the Exchange recommends that the applicant be issued a permit or be admitted as a foreign currency options participant or if the applicant files a request with the Admissions Committee pursuant to Section 12-5(b) of these By-Laws, such Committee shall review and act upon the permit application or the application for admission as a foreign currency options participant, as the case may be. The affirmative vote of a majority of Admissions Committee members present or participating at the time of voting shall be required to issue a permit or to admit an applicant as a foreign currency options participant, subject to any posting and/or notice requirements of the Exchange.

(d) If the Admissions Committee votes favorably upon the candidate, his name shall be posted upon the website of the Exchange for a period of seven (7) days and shall also appear in the Exchange's Weekly Bulletin [(mailed) to the Members]. An objection by a Member of the Exchange to the issuance to a candidate for a permit or to the admission of a non-member as a foreign currency options participant upon acquisition of an existing foreign currency options participation shall be in writing addressed to the Admissions Committee and filed at any time with the Membership Services Department.

(e) If during the seven (7) day posting period no objection to the issuance to the applicant of a permit or to the admission of the non-member as a foreign currency options participant has been received, his status as a Member or his admission as a foreign currency options participant shall become effective, with respect to permits, upon the expiration of the posting period and, with respect to foreign currency options participations, upon the expiration of the posting period and upon his acquisition by transfer of a foreign currency options participation.

(f) If the Admissions Committee votes unfavorably upon the candidate, his name shall not be posted. He shall be notified in writing of the specific grounds for denial of a permit or admission as a foreign currency options participant and shall have a right to a hearing before the Admissions Committee, conducted in accordance with procedures set forth in the notice of hearing sent to the applicant. In the event of a favorable vote his name shall be posted and his application process shall proceed in accordance with Sections 12-5(d) and (e) of these By-Laws. In the event of an unfavorable vote by the Admissions Committee, the applicant may appeal to the Board of Governors for review of such Committee's action.

(g) If during the seven (7) day posting period an objection or objections to the issuance of a permit to the applicant or to the applicant's admission as a foreign currency options participant have been received, the Admissions Committee shall reconsider its favorable vote on the candidate upon the expiration of such period. If the Admissions Committee reaffirms its favorable vote, the applicant shall thereupon be issued a permit or be admitted as a foreign currency options participant upon his acquisition by transfer of a foreign currency options participation, as the case may be. If the Admissions Committee rescinds its favorable vote, changing it to unfavorable, the applicant shall have the rights of notice, hearing and review as provided in Section 12-5(f) of these By-Laws. If, after hearing and review, unfavorable action on his application is reversed, his status as a Member or his admission as a foreign currency options participant shall become effective in accordance with this subsection (g) and without the requirement of an additional posting or notice period.

(h) The Chair[man] of the Board of Governors or his designate may, in his discretion, reduce any permit and/or foreign currency options participation related notice and/or posting period requirements, including, without limitation, any such requirements involving new permit holders or foreign currency options participants and concerning transfers of foreign currency options participations, as the Chair[man] may deem appropriate if the Chair[man] or his designate shall determine that such action is in the best interests of the Exchange. The Chair[man] or designate may condition any reduction of the posting period upon receipt of an indemnity or other form of security which he or his designate deems adequate to protect the interests of the Exchange, Members, participants, Member Organizations and participant organizations, Stockholders, investors and the public interest.

(i) The provisions of this Section shall not apply to a corporation that is issued a permit under Section 12-4 of these By-Laws. In addition, the provisions of this Section shall not apply to any Member who was issued a permit in connection with the Demutualization Merger or any participant who owned a foreign currency options participation immediately prior to the Demutualization Merger and retained such foreign currency options participation after the Demutualization Merger; provided, however, that each such Member and participant shall provide to the Admissions Committee and the Exchange not later than the date specified in transitional rules of the Exchange adopted pursuant to Section 12-12 of these By-Laws such documentation and information as the Admissions Committee or the Exchange may request. The consequences and sanctions

applicable to Member, participants and Member Organizations and participant organizations of the failure to furnish any such documentation and information shall be as set forth in the rules of the Exchange.

Sec. 12-6. Rights and Privileges

(a) Upon receipt of a permit, a person shall, except as otherwise set forth in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, have all the rights and privileges and shall be under all the duties and obligations of a Member in accordance with these By-Laws and the rules of the Exchange, and, if permitted in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, enter into foreign currency options transactions on the Exchange.

(b) Notwithstanding anything to the contrary contained in these By-Laws or the rules of the Exchange, the ability of a permit holder to exercise any right or privilege of a Member is subject to such holder's compliance with applicable registration, testing, capital, fitness, allocation, deposit, bonding or other rules, requirements or procedures of the Exchange as may be established from time to time relating to trading on the Exchange (in any particular security, capacity or otherwise), use of given services of, or facilities of or operated by, the Exchange, engaging in any particular line of business at the Exchange, maintaining employees or agents at the Exchange, and to the payment of applicable fees, dues and other charges.

Sec. 12-7. Rights and Privileges of Corporate Member

A corporation to which a permit is issued under the provisions of Section 12-4 of these By-Laws shall be entitled to all the rights and privileges of a [m]Member [in] of the Exchange, except as otherwise specifically provided in these By-Laws and the rules and regulations adopted pursuant hereto.

Sec. 12-8. Maintenance of Qualifying Permit Holder and Member Organization Representative

Each Member Organization must have a Member Organization Representative and must be qualified by a permit holder who is associated with such organization. In the event that such Member Organization Representative or permit holder dies, ceases to be associated with the Member Organization or otherwise is unable to serve as such, such organization shall replace such Member Organization Representative or permit holder through which such Member Organization is qualified promptly, as specified in the rules of the Exchange, provided that until such replacement is effected the ability of other officers or agents of the Member Organization to act temporarily for such organization shall be as set forth in the rules of the Exchange. The penalties and other consequences of a Member Organization failing to designate or replace a Member Organization Representative within the time period specified above shall be as provided in the rules of the Exchange. The rules of the Exchange may provide for appropriate procedures

concerning the designation and replacement of, and any other matters pertaining to, Member Organization Representatives.

Sec. 12-9. Acceptance of Certificate of Incorporation, By-Laws and Rules

(a) No person issued a permit or nonmember admitted as a foreign currency options participant shall be entitled to the rights and privileges thereof until he has pledged in writing to abide by the Certificate of Incorporation, these By-Laws and all rules and regulations of the Exchange (which, for all purposes under these By-Laws, shall be deemed to include any dues, fees and other charges imposed by the Exchange), in each case as they have been or shall be from time to time amended. This Section shall not apply to a corporation issued a permit under the provisions of Section 12-4 of these By-Laws, except that such corporation, upon receipt of a permit, shall be bound by the provisions of the Certificate of Incorporation, these By-Laws and all rules and regulations of the Exchange, in each case as they have been or shall be from time to time amended, unless specifically exempted therefrom.

(b) No Member Organization or participant organization shall be entitled to the rights and privileges thereof until it has pledged in writing to abide by the Certificate of Incorporation, these By-Laws and all rules and regulations of the Exchange, in each case as they have been or shall be from time to time amended.

(c) No registration as an approved lessor shall become effective or entitle such person or entity to the privileges thereof, until such person or a designated representative of such entity has pledged to abide by the Certificate of Incorporation, these By-Laws and all rules and regulations of the Exchange, in each case as they have been or shall be from time to time amended.

Sec. 12-10. Inactive Nominees

A Member Organization may designate an individual as an "Inactive Nominee." The Member Organization shall pay a fee for the privilege of maintaining the Inactive Nominee status.

The following requirements shall apply to Inactive Nominees:

(a) To be eligible for Inactive Nominee status, an individual must be approved as eligible to hold a permit in accordance with these By-Laws and the rules of the Exchange.

(b) An Inactive Nominee shall have no rights or privileges of a permit holder unless and until said Inactive Nominee becomes an effective permit holder and all applicable Exchange fees are paid.

(c) An Inactive Nominee's status will terminate after six (6) months unless it has been reaffirmed in writing by the Member Organization or terminated prior thereto.

Further, the Inactive Nominee's status must be reaffirmed in writing every six (6) months thereafter to remain in effect.

Sec. 12-11. Use of Facilities of Exchange

The Exchange shall not be liable for any damages sustained by a Member, participant or Member Organization or participant organization growing out of the use or enjoyment by such person or organization of the facilities afforded by the Exchange to such person or organization for the conduct of their business. The Options Clearing Corporation shall not be liable to a Member, participant or Member Organization or participant organization with respect to the use, non-use or inability to use the Intermarket Options Linkage, including without limitation the content of orders, trades, or other business facilitated through the Intermarket Options Linkage, the truth or accuracy of the content of messages or other information transmitted through the Intermarket Options Linkage, or otherwise.

Sec. 12-12. Certain Transitional Rules

(a) The rules of the Exchange may specify such transitional provisions concerning, without limitation: (i) the status, rights and obligations following the Demutualization Merger of persons who were lessors and lessees in respect of Exchange memberships, parties to A-B-C Agreements, Members, Member Organizations, Inactive Nominees and equitable titleholders prior to the Demutualization Merger; (ii) the procedures to be followed, forms to be submitted and other requirements to be satisfied by Members, Inactive Nominees and Member Organizations at the time of the Demutualization Merger in respect of the issuance of permits and the continuation of such Members', Inactive Nominees' and organizations' status as Members, Inactive Nominees and Member Organizations (and the penalties and other consequences for failing to comply with such procedures or to submit such forms); (iii) the designation and replacement of Member Organization Representatives; and (iv) other appropriate matters concerning the transition and continuity of the Exchange and its Members and Member Organizations. In the event of any conflict between such transitional provisions and any otherwise applicable provision of these By-Laws or the rules of the Exchange, such transitional provisions shall govern.

(b) No person shall be relieved of any monetary or other obligations to the Exchange or any responsibility in relation to any matter within the disciplinary jurisdiction of the Exchange as a consequence of the Demutualization Merger or the NASDAQ OMX Merger. Without limiting the generality of the foregoing, no person shall, by virtue of the Demutualization Merger or the NASDAQ OMX Merger, be relieved of any obligation in respect of any pledge or other document submitted under or pursuant to Section 12-9 of these By-Laws (or any predecessor provision), and any such pledge or other document entered into prior to the Demutualization Merger or the NASDAQ OMX Merger shall remain in full force and effect.

(c) Any person who was a Member, Inactive Nominee, participant or Member Organization or participant organization or approved lessor of a foreign currency options participation immediately before the time that the Demutualization Merger became effective and who received a permit or which has continued to be an Inactive Nominee, participant, Member Organization or participant organization or approved lessor of a foreign currency options participation in connection with such Demutualization Merger shall be deemed to have pledged to abide by the Certificate of Incorporation, these By-Laws and all rules and regulations of the Exchange (which, for all purposes under these By-Laws, shall be deemed to include any dues, fees and other charges imposed by the Exchange), in each case as they have been or shall be from time to time amended.

ARTICLE XIII Member Organizations - Trading-Specialist and Floor Brokerage Operations

Sec. 13-1. Qualification

Notwithstanding any provision in these By-Laws or the rules of the Exchange to the contrary, the Board of Governors may permit a [m]Member of this Exchange to qualify an entity as a Member Organization and may permit a foreign currency options participant to qualify an entity as a foreign currency options participant organization, subject to such terms and conditions as may from time to time be prescribed by rule or may be imposed by the Board of Governors. The purchase of a foreign currency options participation by a member of the Exchange shall be sufficient to qualify the Member Organization of such a member as a foreign currency options participant organization.

Sec. 13-2. Qualifications

Only an organization whose principal purpose is the transaction of business as a broker or dealer in securities may be qualified as a Member Organization (provided, however, that this sentence shall not apply to an organization sought to be qualified as a foreign currency options participant organization by a non-member foreign currency options participant).

A Member Organization shall be organized under the laws of a jurisdiction approved by the Admissions Committee.

If it appears to the Admissions Committee that the business form of a Member Organization or participant organization is being used to evade financial responsibility, such organization shall not be registered as a Member Organization or participant organization.

Sec. 13-3. Exclusion of Banks and Investment Trusts

No bank and no investment trust may be qualified or registered as a Member Organization or participant organization.

Sec. 13-4. Provisions of By-Laws and Rules Applicable to Member and Participant Organizations

For the purpose of enforcing these By-Laws and the Rules of the Exchange, and unless otherwise specifically provided therein, any provision hereof or thereof applicable to a Member Organization that is not a corporation shall apply likewise to a Member Organization that is a corporation and any provision hereof applicable to a foreign currency options participant organization that is not a corporation shall apply likewise to a foreign currency options participant organization that is a corporation; any provision applicable to a partner of a Member Organization that is not a corporation shall apply likewise to an officer or director of a Member Organization that is a corporation and any provision applicable to a partner of a foreign currency options participant organization that is not a corporation shall apply likewise to an officer or director of a foreign currency options participant organization that is a corporation; and any provision applicable to a special or limited partner of a Member Organization that is not a corporation shall apply likewise to a holder of stock, other than an officer or director, of a Member Organization that is a corporation and any provision applicable to a special or limited partner of a foreign currency options participant organization that is not a corporation shall apply likewise to a holder of stock, other than an officer or director, of a foreign currency options participant organization that is a corporation.

Sec. 13-5. Liability of Officers, Directors and Substantial Stockholders

Any officer, director or substantial stockholder of a Member Organization that is a corporation who commits any act or omission which violates these By-Laws or the Rules of the Exchange shall be personally liable and subject to the same discipline and penalties as a [m]Member of the Exchange. A [m]Member of the Exchange who is an officer of a Member Organization that is a corporation shall be liable and subject to the same discipline and penalties for any act or omission of said corporation or any officer, director, or employee thereof, as if the same were committed by him personally, but the Board of Governors may, in its discretion, by the affirmative vote of [fourteen (14)] a majority of all Governors, relieve him from the penalty therefore.

Sec. 13-6. Conditions to Member Organization Status

To obtain and maintain the status of a Member Organization, an organization shall: (a) be a broker or dealer duly registered under the Exchange Act; (b) be duly qualified by a permit holder who is primarily affiliated with such organization for purposes of voting as provided in these By-Laws; (c) have submitted to the Admissions Committee an application for such status in the form approved by such Committee or the Exchange and any other information and materials requested by such Committee or the Exchange; (d) have had such application approved by the Admissions Committee; and (e) meet such other requirements as are set forth in these By-Laws or the rules of the Exchange.

Sec. 13-7. Violation of Terms of Registration

Upon any violation of the terms and conditions of its registration, or if at any time the requirements thereof are not met, the Board of Governors may terminate the registration of a Member Organization by the affirmative vote of [fourteen (14)] a majority of all Governors.

Sec. 13-8. Termination of Registration

A [m]Member of the Exchange who has qualified a Member Organization or a Member Organization may apply to the Board of Governors for termination of the registration of the Member Organization. Such termination shall become effective upon such date as the Board of Governors may determine and in no event shall it be effective until and unless the Member Organization and the Member have discharged all commitments and liabilities to the Exchange and to its Members and Member Organizations, or have made provision therefor satisfactory to the Business Conduct Committee. If the Member who has qualified the Member Organization is prevented by death or incapacity from applying for the termination of such registration, the application may be made under the same terms and conditions as herein provided by his legal representative.

Sec. 13-9. Absence or Disability of an Officer, Member of the Exchange

During the unavoidable absence or disability of an officer (or person in a similar position) of a Member Organization who is a member of the Exchange, any officer or director (or person in a similar position) of such Member Organization shall have the privilege of effecting transactions on the Exchange in the name of the Member Organization.

Sec. 13-10. Application to Member Organizations

Whenever necessary for the proper conduct of business of the Exchange, the By-Laws and the Rules of the Exchange shall be construed so as to apply to Member Organizations.

ARTICLE XIV Dues, Fines, Net Commissions and Other Charges— Penalties for Non-Payment

Sec. 14-1. Fees, Dues and Other Charges

(a) The Board of Governors shall have the power (i) to establish, assess and levy such fees, dues and other charges (including, without limitation, any extraordinary assessments) upon permit holders, Members, participants, Member Organizations and participant organizations, lessors, lessees, owners of foreign currency options participations, and any other persons using the facilities or services of the Exchange, and upon applicants for and persons being admitted, registered, qualified and/or initiated to any such status, in each case as the Board of Governors may from time to time establish by resolution or in the rules of the Exchange (which shall be deemed to include any

schedule of fees, dues, other charges and penalties as may be in effect from time to time), (ii) to establish rebates, credits and discounts with respect to any of the foregoing, (iii) to establish programs whereby the Exchange shares or permits any person to participate in any identified source of revenues (less any expenses or other charges as the Exchange shall determine) of the Exchange, (iv) to provide for the direct reimbursement to the Exchange of any cost, expense or category thereof, and (v) except insofar as otherwise specified or provided for in these By-Laws, to establish and assess penalties and late charges for failure to pay any fees, dues or charges owed to the Exchange, including, without limitation, termination of a permit or participation (which permit or participation may be reissued) and forfeiture of all rights as a Member, Member Organization or participant organization, permit holder or (with respect to a foreign currency options participation) an owner, lessor or lessee. The Board of Governors may authorize any committee thereof or the Chair[man] of the Board of Governors to exercise any powers of the Board of Governors with respect to the assessment of fees, dues, other charges and penalties authorized in accordance with this Section.

(b) Without limiting the generality of the provisions of Section 14-1(a) of these By-Laws, the Board of Governors may, from time to time, fix and impose charges upon Members participants or Member Organizations or participant organizations, measured by their respective net commissions on transactions effected on the Floor of the Exchange. Such charges shall be payable at such times and shall be collected in such manner as may be determined by the Board of Governors.

(c) The obligation of Members, participants and Member Organizations and participant organizations to abide by the provisions of these By-Laws and the rules of the Exchange shall include, without limitation, the obligation to pay all applicable fees, dues and other charges imposed thereon by these By-Laws or the rules of the Exchange.

Sec. 14-2. Reserved

[Reserved.]

Sec. 14-3. Corporate Member Exempt

A corporate Member issued a permit under the provisions of Section 12-4 of these By-Laws shall not be liable for dues.

Sec. 14-4. May Be Waived for Members in Military Service

The Board of Governors may waive dues and assessments of any Member or foreign currency options participant who is in the active military or naval service of the United States.

Sec. 14-5. Penalty for Non-Payment

A Member, participant, Member Organization or participant organization or an employee thereof using facilities or services of the Exchange, or enjoying any of the privileges therein, who shall not pay dues, foreign currency options users' fees, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions shall, after due notice, be reported by the Controller of the Exchange to the Board of Governors. The Board of Governors may suspend or terminate any permit or rights and privileges of a foreign currency options participation of any Member, foreign currency options participant, Member Organization or participant organization or employee thereof until payment is made in full to the Exchange of such Member's, participant's, or Member Organization's or participant organization's entire outstanding account balance of all dues, foreign currency options users' fees, fees, other charges, other monies due and owed the Exchange, fines and/or other monetary sanctions.

Fines and/or other monetary sanctions shall be payable on the day after their imposition.

Should payment of dues, foreign currency options users' fees, fees, charges, or other monies due and owed the Exchange, fines and/or other monetary sanctions not be made within one (1) year after payment is due, the foreign currency options participation of the delinquent may be disposed of by the Admissions Committee upon at least ten (10) days written notice mailed to the address registered with the Exchange.

Sec. 14-6. Liability for Dues Until Transfer

Notwithstanding the death or expulsion of a Member, until the transfer of his permit, if transferable, he shall continue to be liable for dues to the Exchange, as from time to time fixed by the Board of Governors, and notwithstanding the death or expulsion of a foreign currency options participant, until the transfer of his foreign currency options participation he shall continue to be liable for such foreign currency options users' fees as are assessed from time to time against such participant by the Board of Governors.

Sec. 14-7. Dues on Transfer of Participation

When a permit, if transferable, or foreign currency options participation is transferred, the transferee shall pay to the transferor on the date of transfer the unexpired portion of the foreign currency options users' fees, as the case may be, for the current half year.

Sec. 14-8. Reserved

[Reserved.]

Sec. 14-9. Reserved

[Reserved.]

Sec. 14-10. Service Fee

Members, participants and Member Organizations and participant organizations, who are not also members of a subsidiary of the Exchange but who use or benefit from the facilities or services of such subsidiary, may be required by the Board of Governors to pay fees or charges to the Exchange for such use or benefit; provided, however, that such fees or charges may be imposed only if they are similar in structure and rate to those imposed by such subsidiary on its own members using or benefiting from the same facilities or services.

Sec. 14-11. Claims by Former or Deceased Members

When a Member is in debt to another Member or foreign currency options participant, the death of the creditor [m]Member shall not affect the rights of such creditor foreign currency options participant or Member, his organization or estate in respect of such debt.

Sec. 14-12. Effect of Suspension or Termination on Payment of Fees

The suspension or termination of a permit shall not relieve the holder thereof or its Member Organization from any obligation to pay any applicable dues, fees or other charges billed or accrued through the time of such suspension or termination, and any fines or penalties assessed before or after the time of such suspension or termination.

ARTICLE XV *Transfer of Foreign Currency Options Participations*

Sec. 15-1. Transfer of Foreign Currency Options Participations

A transfer of equitable title only to a foreign currency options participation shall be made upon submission of the name of the transferor and the transferee thereof to the Admissions Committee. A transfer may not be effected pursuant to a lease agreement. Notice of this transfer shall be posted upon the website of the Exchange and shall also appear in the Weekly Bulletin [mailed to the Members and/or foreign currency options participants] at least seven (7) days in advance of the transfer's effective date. Notice of the proposed transfer shall specify the date on which the proposed transfer will become effective.

Exceptions to Notice

Notice to the Members and foreign currency options participants of the proposed transfer of a foreign currency options participation may be waived by the Admissions Committee when the transferee is a corporation issued a permit under the provisions of Section 12-4 of these By-Laws, or where the transferee is the Exchange or a nominee to hold the foreign currency options participation for the Exchange.

Transfer of Equitable Title

A transfer of equitable title only to a foreign currency options participation shall be made upon submission of the name of the transferor and the transferee thereof to the Admissions Committee. A transfer may not be effected pursuant to a lease agreement. Notice of this transfer shall be posted upon the website of the Exchange and shall also appear in the Weekly Bulletin [mailed to the members and/or foreign currency options participants] at least seven (7) days in advance of the transfer's effective date. Notice of the proposed transfer shall specify the date on which the proposed transfer will become effective.

Lease of Foreign Currency Options Participation

(a) A foreign currency options participant may lease the legal title to his foreign currency options participation to a person approved by the Exchange in accordance with these By-Laws and such rules as the Board of Governors may adopt.

(b) A foreign currency options participant shall notify the Exchange in writing prior to any lease of his foreign currency options participation and shall register with the Exchange as an "approved person" of a lessee. An approved person shall be required to file such information and applications as the Exchange may prescribe.

(c) If a foreign currency options participant proposing to lease legal title to his foreign currency options participation holds such foreign currency options participation subject to an A-B-C Agreement, the foreign currency options participant shall obtain the consent of the organization party thereto in writing prior to the transfer. The A-B-C Agreement shall provide for such leasing arrangement. A foreign currency options participant organization may not enter into a lease of a foreign currency options participation with any of its associated persons.

(d) Upon termination of the lease for any reason, the legal title to the foreign currency options participation subject to this lease shall not be considered for transfer to any person unless and until the lessor, or his legal representative, has provided the Exchange with written notice of the name of the person applying to hold legal title to the foreign currency options participation and such person has made application. Such written notice shall be provided to the Exchange (i) within sixty (60) days of the date of termination of the lease or (ii) at any time prior to termination of the lease. The failure to provide such notice or for such person to make application within thirty (30) days of such notice shall authorize the Admissions Committee to dispose of the foreign currency options participation formerly subject to this lease, including the lessor's interest therein.

Sec. 15-2. Contracts of Transferor

A foreign currency options participant proposing to transfer his foreign currency options participation shall not, after the seventh day of notice of the proposed transfer, make any contracts on the floor of the exchange facility pending the effective date of the proposed transfer unless the contract is expressly made on behalf of another foreign currency options participant or on behalf of a foreign currency options participant

organization which will continue to be a foreign currency options participant organization notwithstanding the completion of such transfer or unless the foreign currency options participant is also a Member (who does not also hold a foreign currency options permit) and is proposing to transfer only his foreign currency options participation (in which case the member shall be prevented only from making any foreign currency option contracts on the floor of the exchange facility after the seventh day of notice of the proposed transfer unless either of the exceptions set forth above applies).

No contract made by a foreign currency options participant proposing to transfer his foreign currency options participation or by his foreign currency options participant organization after the said seventh day shall if the transfer becomes effective, be the basis of a claim against the proceeds of the transfer thereof under Section 15-3 of these By-Laws, but may, if the transfer is to another partner in the foreign currency options participant organization in which the transferring foreign currency options participant is a partner or officer, constitute the basis of a claim under said Section 15-3 of these By-Laws, against the proceeds of the subsequent transfer of such foreign currency options participation by the partner or officer to whom it is transferred.

On the seventh day after notice of a proposed transfer of the foreign currency options participation has been given [mailed] to the Members and the foreign currency options participants, all exchange contracts of the foreign currency options participant proposing to make the transfer and of his foreign currency options participant organization, unless such organization will continue to be a foreign currency options participant organization notwithstanding the completion of such transfer, shall mature and if not settled shall be closed out as in the case of an insolvency, unless the same are assumed or taken over by another foreign currency options participant or foreign currency options participant organization; provided, however, that, in the case of a foreign currency options participant who is also a Member (and does not hold a foreign currency options permit) proposing to transfer only his foreign currency options participation, the provisions of this sentence shall apply only to the foreign currency option contracts of such foreign currency options participant and of his foreign currency options participant organization (and shall not apply even to the latter contracts if such organization will continue to be a foreign currency options participant organization notwithstanding the completion of such transfer).

Effect of Involuntary Transfers

Notice of a transfer to be made pursuant to a sale of a foreign currency options participation by the Admissions Committee shall be sent to the Members and the foreign currency options participants as in the case of a voluntary transfer, and shall have the same effect in respect to open contracts and unmatured debts and obligations of the foreign currency options participant or former foreign currency options participant as in the case of a voluntary transfer.

Sec. 15-3. Disposition of Proceeds of Sale of Foreign Currency Options Participation

Upon any transfer of a foreign currency options participation other than the transfer of legal title pursuant to a lease or any reversion thereof, or the transfer of legal title only to a foreign currency options participation subject to an A-B-C Agreement, whether made by a foreign currency options participant voluntarily or pursuant to a sale by the Admissions Committee, the proceeds thereof shall be applied to the following purposes and in the following order of seniority, viz.:

Claims of Exchange

First. The payment of such sums as the Board of Governors shall determine are or may become due to the Exchange by the foreign currency options participant whose foreign currency options participation is transferred or by the foreign currency options participant organization (that is not a corporation) in which such foreign currency options participant is a general partner;

Claims of Stock Clearing Corporation

Second. The payment of such sums as the Board of Governors shall determine are or may become due to Stock Clearing Corporation or of the Options Clearing Corporation by such foreign currency options participant or such organization

Certain Claims

Third. The payment to creditors who are Members, foreign currency options participants or Member Organizations or participant organizations of all filed claims as follows:

(a) Claims arising in the ordinary course of business from exchange contracts for the purchase, sale, borrowing or loaning of securities entered into on the Floor of the Exchange;

(b) Claims arising from exchange contracts entered into in the ordinary course of business other than those included in the preceding subsection;

(c) Claims arising from exchange contracts other than those included in the two preceding subsections, except those made for non-business purposes; and

(d) Claims arising from Members' contracts other than exchange contracts.

Pro Rata Payments of Claims

If the proceeds of the transfer of a foreign currency options participation are insufficient to pay all filed claims allowed by the Board of Governors of creditors who are Members, participants or Member Organizations or participant organizations, then so far as possible each of the above classes of claims shall be paid in full in the order of priority set forth and whenever said proceeds are insufficient to pay all claims in any

class, the claims in such class shall be paid pro rata except as provided in Sections 15-4 and 15-5 of these By-Laws.

Unmatured Contracts

All contracts which do not, pursuant to Section 15-2 of these By-Laws, mature by reason of the transfer of the foreign currency options participation may for purposes hereof be treated as though they had matured pursuant to said Section, and the amount due thereon may be fixed and determined by the Board of Governors on the basis of market values or such other basis as shall be deemed fair and equitable by the Board of Governors.

Contingent Claims

If a claim based on a contract is contingent or the amount that will be ultimately due thereon cannot for any reasons be immediately ascertained and determined, the Board of Governors may out of the proceeds of the foreign currency options participation reserve and retain such amount as it may deem appropriate pending the determination of the amount due on such claim.

Collateral

A claim shall be allowed by the Board of Governors only for the amount due thereon after the proceeds of the sale of all collateral held therefor or the fair value of such collateral as determined by the Board of Governors has been credited thereon and the Board of Governors may require that any such collateral shall be disposed of before passing on the claim.

Balance of Proceeds

Fourth. The surplus, if any, of the proceeds of the transfer of a foreign currency options participation shall be paid to the person whose foreign currency options participation is transferred, or to his legal representatives, upon the execution by him or them of a release or releases satisfactory to the Board of Governors, unless the Board of Governors shall determine either (a) that the protection of the creditors of the foreign currency options participant organization in which said foreign currency options participant is a general or limited partner or officer requires the use of said surplus or any part thereof or (b) that said foreign currency options participant has expressly agreed that said surplus shall be paid to such organization, in either of which events said surplus shall be paid over to such organization upon the execution by said foreign currency options participant of such organization of a release or releases satisfactory to the Board of Governors.

In the case of a foreign currency options participation subject to a lease, such surplus, if any, shall be paid to the lessor upon execution by him of the appropriate release or releases, subject, however to any determination by the Exchange, as provided

above, that such surplus should be paid to the foreign currency options participant organization or former foreign currency options participant organization with which the lessee of such foreign currency options participation is or was associated

Determination of Claims

An Advisory Committee of (3) Governors, of whom at least two (2) shall be Independent Governors, shall be appointed by the Chair[man] of the Board of Governors to examine the validity of claims asserted against the Members or the foreign currency options participants and give an advisory opinion to the Board of Governors thereon. The examination of the validity of the claims shall be made upon written submission of claimants and respondents with provision for these parties to request oral argument before the Advisory Committee. The Board of Governors, based upon the written record before the Advisory Committee, shall determine the payment of such sums that are or may become due to the claimants pursuant to these By-Laws and the rules of the Exchange. The decision of the Board of Governors shall be in writing and sent to the parties to the proceeding respecting the determination of claims.

Assignment of Foreign Currency Options Participation

The Exchange shall not recognize or give effect, except as may be permitted by these By-Laws and the rules, to any agreement or to any instrument entered into, or executed by a foreign currency options participant or his legal representative purporting to transfer or to assign the interest of the foreign currency options participant in the foreign currency options participation, or in the proceeds or any part thereof, or purporting in any manner to provide for the disposition of the foreign currency options participation, nor shall payment of such proceeds be made by the Exchange on the order of such foreign currency options participant.

Sale of Foreign Currency Options Participation Pursuant to a Collateral Agreement

The Exchange shall recognize and give effect to a valid instrument entered into, or executed by, a foreign currency options participant or his legal representative by which a foreign currency options participant, in consideration of a loan or guarantee of a loan by another person for the purpose of purchasing a foreign currency options participation, has authorized the lender or guarantor to sell the foreign currency options participation in specified circumstances; provided, however, that such sale shall be subject to the order of priorities set forth in this Article with respect to the disposition of the proceeds of a sale of the foreign currency options participation.

Sec. 15-4. Failure to File Claim

A foreign currency options participant or foreign currency options participant organization shall forfeit all rights under Section 15-3 of these By-Laws to share in the proceeds of a foreign currency options participation which has been transferred, unless such participant or organization files a statement of his or its claim with an Arbitration

Panel prior to the transfer; a claim filed subsequent to a transfer, to the extent allowed by said Panel, may be paid out of any surplus remaining after all other claims allowed by said Panel have been paid in full, and may be paid in preference to claims referred to in Section 15-5 of these By-Laws not already paid when it is filed.

Sec. 15-5. Claims of Partners, Etc.

Claims growing out of transactions between the foreign currency options participant whose foreign currency options participation is being disposed of and one of his partners or out of transactions between such foreign currency options participant and the foreign currency options participant organization in which he was a partner or officer at the time of such transactions shall not share in the proceeds of the foreign currency options participation of such participant until all other claims allowed by an Arbitration Panel have been paid in full.

Sec. 15-6. Foreign Currency Options Participation of Deceased Participant

When a foreign currency options participant holding his foreign currency options participation otherwise than by lease or subject to an A-B-C Agreement dies, his foreign currency options participation may be disposed of by the Admissions Committee.

Sec. 15-7. Death of a Partnership's or Corporation's Only Foreign Currency Options Participant

(a) If, upon the death of a foreign currency options participant who, at the time of his death, was a general partner of a foreign currency options participant organization that is not a corporation in which no other general partner thereof was a foreign currency options participant, the following conditions exist:

(i) the organizational documents of such organization provide for the continuance of the organization as a partnership or limited liability company of the surviving partners thereof and no others (except that the estate of the deceased foreign currency options participant may be a partner thereof);

(ii) the deceased foreign currency options participant shall have agreed in such organizational documents that such continuing organization, if permitted by the Admissions Committee to have the status of a foreign currency options participant organization, shall be entitled to have the use of his foreign currency options participation from the date of his death until the termination of such status of such continuing organization or until a foreign currency options participant be admitted to such organization as a general partner thereof, and that, insofar as may be necessary for the protection of creditors of the continuing firm organization, and subject to these By-Laws and the rules of the Exchange, the proceeds of his foreign currency options participation shall be an asset of the continuing partnership or limited liability company during such period; and

(iii) such continuing partnership or limited liability company shall be permitted by the Admissions Committee to have the status of a foreign currency options participant organization;

then upon the transfer of the foreign currency options participation of such deceased foreign currency options participant the proceeds thereof shall be applied to the same purposes and in the same order of priority as if such foreign currency options participant had continued to be a foreign currency options participant and a general partner in such continuing organization until the date of the termination of such status, or until a foreign currency options participant is admitted to such organization as a general partner thereof, whichever event occurs first.

(b) If, upon the death of a foreign currency options participant who at the time of his death was an officer of a foreign currency options participant organization of which no other officer was a foreign currency options participant, the following conditions exist:

(i) the deceased foreign currency options participant shall have agreed with the foreign currency options participant organization that said organization if permitted by the Admissions Committee to continue the status of a foreign currency options participant organization, shall be entitled to the use of his foreign currency options participation from the date of his death until the termination of such status of the organization, or until another officer of said organization shall be or becomes a foreign currency options participant, and that, insofar as may be necessary for the protection of the creditors of the organization, and subject to these By-Laws and the rules of the Exchange, the proceeds of his foreign currency options participation shall be an asset of the organization during such period, and

(ii) said organization shall be permitted by the Admissions Committee to have the status of a foreign currency options participant organization;

then upon the transfer of the foreign currency options participation of such deceased foreign currency options participant, the proceeds thereof shall be applied to the same purposes and in the same order of priority as if such foreign currency options participant had continued to be a foreign currency options participant and an officer of said organization until the date of the termination of such status, or until another officer of said organization is or becomes a foreign currency options participant, whichever event occurs first.

Sec. 15-8. Foreign Currency Options Participation of Expelled Participant

When a foreign currency options participant is expelled or becomes ineligible for reinstatement, his foreign currency options participation may be disposed of by the Admissions Committee.

Sec. 15-9. Claims Against Deceased, Suspended or Expelled Foreign Currency Options Participants

The death, expulsion or suspension of a foreign currency options participant shall not affect the rights of creditors under the provisions of Section 15-3 of these By-Laws.

Sec. 15-10. Claims by Former or Deceased Foreign Currency Options Participants

When a foreign currency options participant is in debt to another foreign currency options participant or Member, the death of the creditor foreign currency options participant or the transfer of his foreign currency options participation, either by himself voluntarily or pursuant to a sale by the Admissions Committee, shall not affect the rights of such creditor foreign currency options participant or Member, his organization, or estate, to share in the proceeds of the foreign currency options participation of the debtor foreign currency options participant under this Article, in the same manner and to the same extent as if such creditor foreign currency options participant had not died or his foreign currency options participation had not been transferred.

Sec. 15-11. Foreign Currency Options Participations Purchased by the Exchange

Foreign currency options participations may be purchased by the Exchange, at such time or times and at such price or prices as the Board of Governors may from time to time determine. Upon the purchase by the Exchange of any foreign currency options participation, such foreign currency options participation shall be cancelled and shall not be reissued.

ARTICLE XVI *Members' Contracts and Exchange Contracts*

Sec. 16-1. Members' Contracts

All contracts of a Member or participant of the Exchange or a Member Organization or participant organization with any [m]Member or participant of the Exchange or with any Member Organization or participant organization for the purchase, sale, borrowing, loaning or hypothecation of securities, or for the borrowing, loaning, or payment of money, whether occurring upon the Exchange or elsewhere, are Members' contracts.

Sec. 16-2. Exchange Contracts

An exchange contract is:

- (a) a Member's contract made on the Exchange; and
- (b) a Member's contract not made on the Exchange, unless made subject to the rules of another exchange, or unless the parties thereto have expressly agreed that the same shall not be an exchange contract.

Sec. 16-3. By-Laws and Rules Incorporated into Exchange Contracts

The provisions of these By-Laws and of the rules adopted pursuant hereto shall be a part of the terms and conditions of all exchange contracts. All such contracts shall be subject to the exercise by the Board of Governors and the Standing Committees of the Exchange of the powers with respect thereto vested in them by these By-Laws and rules adopted pursuant hereto.

Sec. 16-4. Deliveries through Registered Clearing Agencies

Clearance and settlement of transactions effected on the Exchange shall be made through one or more registered clearing agencies providing such services unless it is otherwise agreed by the parties to the transaction.

ARTICLE XVII *Insolvency—Suspension—Reinstatement*

Sec. 17-1. Suspension for Insolvency on Declaration

A Member or foreign currency options participant who fails to perform his contracts, or is insolvent, or a Member who is a general partner or officer in a Member Organization or participant organization which fails to perform its contracts, or is insolvent, shall immediately inform the [Director,] Membership Services Department in writing that he or his organization is unable to meet his or its engagements, and prompt notice thereof shall be given to the Exchange. The permit of such Member or Member Organization shall thereby be suspended (or, in the case of a foreign currency options participant, such participant and its participant organization shall be suspended from exercising the privileges afforded to the holders of that status) until, after having settled with his creditors or the creditors of such organization, such permit has (or such rights and privileges have) been reinstated by the Admissions Committee.

Sec. 17-2. Suspension for Insolvency on Advice to Committee on Business Conduct

Whenever it shall appear to the Business Conduct Committee that a Member or foreign currency options participant or Member Organization or participant organization has failed to meet his or its engagements or is insolvent, or the Business Conduct Committee has been advised by the Board of Directors of Stock Clearing Corporation that such Member, participant or Member Organization or participant organization is in such financial condition that he or it cannot be permitted to continue in business with safety to his or its creditors or this Exchange, the Business Conduct Committee shall announce to the Members and foreign currency options participants the suspension of any permit or the rights and privileges of such Member, participant or Member Organization or participant organization, which suspension shall continue until the [m]Member's or participant's permit or rights and privileges have been reinstated as provided in these By-Laws.

Sec. 17-3. Investigation of Insolvency

Every Member, participant and Member Organization and participant organization whose permit or rights and privileges have been suspended under the provisions of this Article shall immediately afford every facility required by the Business Conduct Committee for the investigation of his or its affairs, and shall after the announcement of such suspension file with the [Director,] Membership Services Department and [Director,] Examinations Department a written statement covering all information required by said Committee, including a complete list of his or its creditors and the amount owing to each.

Sec. 17-4. Time for Settlement of Insolvent Member or Participant

If a Member or foreign currency options participant whose permit or rights and privileges have been suspended under the provisions of this Article fails to settle with his creditors and apply for reinstatement within six (6) months from the time of such suspension, or within such further time as the Board of Governors may grant, or fails to obtain reinstatement as hereinafter provided, his permit or participation may be terminated by the Admissions Committee.

Extension

The Board of Governors may, by the affirmative vote of [fifteen (15)] a majority of all Governors [present at a regular or special meeting of the Board of Governors], extend the time of settlement for periods not exceeding one (1) year each.

Sec. 17-5. Reinstatement of Insolvent Member or Participant

When a Member or foreign currency options participant whose permit or rights and privileges have been suspended under the provisions of this Article applies for reinstatement thereof, notice of such application shall be sent by the Secretary of the Exchange to each Member and foreign currency options participant of the Exchange and advertised in the weekly bulletin at least fourteen (14) days prior to the consideration by the Admissions Committee of said application. The applicant shall furnish to said Committee a list of his creditors, a statement of the amounts originally owing and the nature of the settlement in each case. If he furnishes satisfactory proof of settlement with all his creditors, said Committee may approve such reinstatement.

Appeal to Board of Governors

If the application for reinstatement be denied by the Admissions Committee, the applicant may appeal within ten (10) days thereafter to the Board of Governors, which may act on such reinstatement.

Sec. 17-6. Disciplinary Measures During Suspension for Insolvency

A Member or foreign currency options participant of the Exchange whose permit or rights and privileges have been suspended under the provisions of this Article, or his

Member Organization or participant organization, may be proceeded against by the Exchange for any offense committed by him either before or after the announcement of such suspension in all respects as if such suspension had not occurred.

Sec. 17-7. Rights of Member Suspended for Insolvency

A Member or foreign currency options participant whose permit or rights and privileges have been suspended under the provisions of this Article, and his Member Organization or participant organization, shall be deprived during the term of such suspension of all rights and privileges of a Member or foreign currency options participant, or a Member Organization or participant organization, except the right to have his or its business transacted at Members' or foreign currency options participants' commission rates.

ARTICLE XVIII *Offenses, Discipline, Penalties and Business Connections*

Sec. 18-1. Offenses, Discipline, Penalties

If a Member, participant or Member Organization or participant organization or any partner, officer, director (or person in a similar position) of, or persons employed by or associated with, any such person or organization is found in a disciplinary proceeding, brought in accordance with the By-Laws and Rules of the Exchange, to have committed a violation defined by Rule 960.1 of the Rules of the Board of Governors as within the disciplinary jurisdiction of the Exchange, the Business Conduct Committee shall be empowered to impose one or more of the disciplinary sanctions provided for in these By-Laws and Rule 960.1(a).

Sec. 18-2. Announcement of Penalties

Any disciplinary sanctions imposed by the Exchange upon any Member, participant or Member Organization or participant organization or any partner, officer, director (or person in a similar position) of, or persons employed by or associated with, any such person or organization shall be publicized in such manner as the Board of Governors may from time to time direct.

••• Supplementary Material: -----

Publicity on Fines, Censures and Disciplinary Actions

The Board of Governors has adopted the following directive:

The Board of Governors of the Philadelphia Stock Exchange, Inc. has approved a policy of publicizing fines, censures, and disciplinary actions imposed on Members and Member Organizations by the Exchange. In approving the policy the Board of Governors has

determined that such publicity shall be directed to the entire membership of the Exchange.

Sec. 18-3. Responsibility of Member or Participant for Acts of His Organization

A Member or a foreign currency options participant who is a general partner in a Member Organization or participant organization that is a partnership is liable for the same discipline and penalties for any act or omission of said organization as for his own personal act or omission. The Board of Governors, by the affirmative vote of [fifteen (15)] a majority of all Governors, may relieve him from the penalty therefor or may remit or reduce such penalty on such terms and conditions as the Board of Governors shall deem fair and equitable.

Sec. 18-4. Disapproval of Business

Whenever it shall appear to the Board of Governors that a Member or foreign currency options participant has formed a business entity or established an office or headquarters or is individually or through any member of his organization interested in a business entity, or has formed any business connection, whereby the interest or good repute of the Exchange may suffer, the Board of Governors may require the dissolution of any such business entity or the discontinuance of such business, office or headquarters or business connection, as the case may be.

Sec. 18-5. Effect of Suspension or Termination

When a Member's permit or a foreign currency options participant's rights and privileges are suspended under the provisions of this Article, such Member or participant shall be deprived during the term of such suspension of all rights and privileges of a Member or participant, but he may be proceeded against by the Exchange for any offense other than that for which such suspension was imposed.

The termination of any permit or rights and privileges of a Member or foreign currency options participant shall terminate all rights and privileges (but not the obligations) arising out of his possession of a permit (or, in the case of a foreign currency options participant, all rights and privileges (but not the obligations) afforded to the holder of that status), except such rights as he may have under the provisions of Sections 15-3 and 15-10 of these By-Laws.

ARTICLE XIX Reserved

ARTICLE XX *Vacancies Created By Expulsion, Suspension, or Termination*

Sec. 20-1. Office Vacated by Suspension or Termination

Upon the suspension or termination by the Exchange of any permit or the rights and privileges of a Member or a foreign currency options participant, whether for

insolvency or otherwise, any office in the Exchange held by him shall thereupon become vacant.

Sec. 20-2. Reserved

[Reserved.]

Sec. 20-3. Change in Status of Partner or Officer

A general partner or an officer of a Member Organization who is not himself a [m]Member of the Exchange, shall become ineligible to act as a Governor of the Exchange if he ceases to be a partner or officer of such organization (unless he shall be a partner or officer of another Member Organization), or if his organization ceases to be a Member Organization, or upon the suspension of such Member Organization. Upon the happening of any such event the office of Governor held by such person shall become vacant.

ARTICLE XXI Reserved

ARTICLE XXII *Amending The By-Laws*

Sec. 22-1. Amendments to By-Laws

These By-Laws may be amended by the affirmative vote of a majority of the entire Board of Governors and [, or by] the affirmative vote of the holders of a majority of the shares of Common Stock then issued and outstanding, at any regular or special meeting of the Board of Governors or the Stockholders (as the case may be). Amendments to the By-Laws shall not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Exchange Act and the rules promulgated thereunder.

ARTICLE XXIII Reserved

ARTICLE XXIV *Seal of the Exchange*

Sec. 24-1. Seal

The Exchange shall have such corporate seal as the Board of Governors may from time to time adopt as the corporate seal of the Exchange. The corporate seal of the Exchange shall be in such form as approved by the Board of Governors and may be altered at its pleasure. The corporate seal of the Exchange may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XXV *Fiscal Year of the Exchange*

Sec. 25-1. Fiscal Year

The Board of Governors shall have the power by resolution to fix the fiscal year of the Exchange. If the Board of Governors shall fail to do so, the Chief Executive Officer shall fix the fiscal year.

ARTICLE XXVI *Exchange Options Trading*

Sec. 26-1. Reserved

[Reserved.]

Sec. 26-2. Reserved

[Reserved.]

Sec. 26-3. Dealings

Dealings on the Exchange in options contracts issued by the Options Clearing Corporation, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of accounts and other matters relating to options trading, shall be subject to the By-Laws and Rules of the Exchange.

ARTICLE XXVII *Foreign Currency Options Trading*

Sec. 27-1. Foreign Currency Options Participants

The Board of Governors shall be authorized to issue foreign currency options participations. The number of foreign currency options participations that the Board of Governors shall be authorized to issue shall be the greater of: (a) 200; or (b) the total number of foreign currency options participations sold during the initial offering period for foreign currency options participations plus the greater of: (i) 10 percent of the foreign currency options participations sold during such offering period, or (ii) 25. The initial offering period for foreign currency options participations, the prices at which such participations may be purchased from the Exchange during such offering period, the circumstances under which a foreign currency options participation purchased during such offering period shall be revoked and the circumstances under which the price of such a participation shall be refunded to its purchaser shall be as described in Exchange Circular 82-1, entitled "Exchange Access Offer to Members and Nonmembers for Options on Foreign Currencies."

The Exchange may sell authorized but unissued foreign currency options participations at such times and at such prices as are consistent with the maintenance of a fair and orderly market. Foreign currency options participations may be transferred in accordance with the applicable Rules and By-Laws of the Exchange.

Notwithstanding anything to the contrary contained in these By-Laws or the rules of the Exchange, the Exchange may issue permits authorized by the Board of Governors

from time to time with rights and privileges to trade foreign currency options or which are otherwise similar to those incident to the possession of a foreign currency options participation.

Sec. 27-2. Foreign Currency Options Users' Fees

Without limiting the powers of the Board of Governors under Section 14-1 of these By-Laws, the Board of Governors may, from time to time, fix and impose appropriate foreign currency options users' fees to be paid to the Exchange by each foreign currency options participant for the use of the equipment and facilities of the Exchange and for the particular services and privileges afforded. Such users' fees shall be payable at such time and shall be collected in such manner as determined by the Board of Governors.

Sec. 27-3. Privileges and Obligations of Foreign Currency Options Participants

Upon admission as a foreign currency options participant, a person shall have all the rights and privileges and shall be under all the duties and obligations of a foreign currency options participant in accordance with these By-Laws and the rules of the Exchange. Without limiting the foregoing, a foreign currency options participant who meets all pertinent requirements imposed by the Foreign Currency Options Committee shall be entitled to: (i) be admitted to the Floor of the Exchange during business days, (ii) enter into foreign currency options transactions on the Exchange as a floor broker, retail member, Specialist or Registered Options Trader (provided, however, that approval of the Allocation, Evaluation and Securities Committee will be required before such a participant will be able to function in either of the latter two capacities), and (iii) such other privileges as may be subsequently granted by the Board of Governors. A foreign currency options participant shall not be required to pay the yearly dues imposed on each Member (unless such participant is also a Member). However, such a participant shall be subject to any foreign currency options users' fees imposed on foreign currency options participants by the Board of Governors; provided, however, that the yearly dues assessed against and paid to the Exchange during a particular year by a Member who is also a foreign currency options participant shall be credited in their entirety against the foreign currency options users' fees assessed against such a member during that year. A foreign currency options participant shall not be authorized to trade securities other than foreign currency options on the Exchange (unless such participant is also a member of the Exchange).

Sec. 27-4. A-B-C and Other Agreements

(a) Every applicant for a foreign currency options participation who is financing part or all of the cost of his foreign currency options participation through an A-B-C Agreement shall file the A-B-C Agreement along with his application for review by the Admissions Committee.

(b) An A-B-C Agreement is a contract between an applicant for a foreign currency options participation and the foreign currency participant organization with which the applicant is associated in which a portion of the risk of fluctuations in the value of the foreign currency options participation shall rest with the participant organization rather than with the applicant. The A-B-C Agreement shall be consistent with such requirements as the Exchange may prescribe from time to time.

(c) An A-B-C Agreement or other similar agreement that did not conform to the requirements established by the Exchange, having been entered into with the approval of the Exchange prior to the adoption of such requirements, shall have remained in effect until (i) October 31, 1983, or (ii) such earlier date as the agreement shall have terminated. A person shall not be held to violate the Exchange's By-Laws and rules with respect to any such agreement on which he relied during such period of time.

ARTICLE XXVIII *Stockholder Nominations—Stockholder Annual Elections—Stockholder Meetings*

Sec. 28-1. Place of Stockholder Meetings

All meetings of Stockholders shall be held at such place within or without the State of Delaware as may be designated by the Board of Governors from time to time. If no such place is designated by the Board of Governors, meetings of the Stockholders shall be held at the principal offices of the Exchange.

Sec. 28-2. Annual Stockholders Meetings

An annual meeting of Stockholders shall be held in each calendar year promptly following the annual meeting of Members and Member Organizations for such year, at such time the Board of Governors shall establish, for the purpose of electing Governors to replace those Governors whose terms shall be set to expire at such annual meeting and for the purpose of considering such other matters as may properly be brought before the meeting.

Sec. 28-3. Nomination of [Chairman and] Vice-Chair[man] of the Board of Governors; [Independent Nominations by Stockholders; Election of Nominees for] Stockholder Governor and Independent Governors

The Holder of Common Stock shall present for nomination to the Nominating, Elections and Governance Committee the candidates for Vice-Chair, Stockholder Governor and Independent Governors for placement on the ballot for election by the Holder of Common Stock at the Annual Meeting of Stockholders.

[(a) At any meeting of Stockholders at which the then current term of the Chairman of the Board of Governors shall expire, or a vacancy of the office of Chairman of the Board of Governors shall be filled, the Nominating, Elections and Governance Committee shall nominate the individual then holding the office of Chief Executive

Officer of the Exchange for election by the Stockholders to the Board of Governors in accordance with Article SIXTH of the Certificate of Incorporation.

(b) The Vice-Chairman shall be recommended by the Chairman for nomination by the Nominating, Elections and Governance Committee and shall be elected by the Stockholders as set forth in Article SIXTH of the Certificate of Incorporation.

(c) No independent nominations for the positions of Stockholder Governor and Independent Governor, excluding Designated Independent Governors, may be made by any Stockholder unless written notice of such nomination shall have been given by such Stockholder to the Secretary of the Exchange not less than ninety (90) nor more than one hundred twenty (120) days prior to the first Monday in February (or such other deadline for the submission of such nominees established by the Board of Governors). Such notice, with respect to each proposed nominee therein, shall state such nominee's name and, in reasonable detail, the reasons for which such nominee is qualified to serve as a Stockholder Governor or an Independent Governor. Such nominee shall provide the Nominating, Elections and Governance Committee with such information as it may request from time to time in connection with determining whether he/she is so qualified. In addition, the Nominating, Elections and Governance Committee shall be required to apply the definition of "Independent" as such term is defined herein in evaluating the qualifications of the Independent Governors.

(d) If Governors are to be elected to fill vacancies differing in length, the nominees with the largest number of votes shall be elected for the longest terms.]

Sec. 28-4. Death, Withdrawal or Disqualification of Nominees for Stockholder or Independent Governors

In the case of the death, withdrawal or disqualification at any time in advance of any election of a nominee for Stockholder Governor or Independent Governor (not including the Designated Independent Governors), proposed or certified by the Nominating, Elections and Governance Committee to be filled at such election, the election for such position shall proceed at the appointed date therefore, notwithstanding such death, withdrawal or disqualification. In the event that by reason of such death, withdrawal or disqualification there are fewer candidates for such office of Governor than there are vacancies to be filled, the Nominating, Elections and Governance Committee, subject to approval by the Board of Governors, at a meeting held subsequent to such annual election, shall appoint a person to each office left vacant under such circumstances, the person to be appointed to serve until [the fourth Wednesday of March following the next annual meeting of stockholders of the Exchange or until] his successor is elected and qualified or until his earlier resignation or removal.

Sec. 28-5. Votes Required

When a quorum is present at any meeting of the Stockholders, the vote of the holders of a majority of the outstanding capital stock of the Exchange entitled to vote at

such meeting, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by any express provision of applicable law or the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question. The nominees receiving, at a meeting of Stockholders held for the purpose of such election, the highest number of votes for the category of Governor for which they were respectively nominated as candidates shall be declared elected as Governors of those offices. In the case of a tie, the names of the nominees involved in such tie shall be referred to the Board of Governors, which shall make the selection as to who among such tying nominees shall serve as Governor.

Sec. 28-6. Special Meetings of Stockholders

Except as otherwise specifically provided by law, special meetings of the Stockholders may be called at any time only by the Chair[man] of the Board of Governors, by the affirmative vote of a majority of the Board of Governors or by the affirmative vote of the holders of a majority of the Common Stock then outstanding. Upon the call of a special meeting of the Stockholders by the Chair[man] or by the Board of Governors, the Secretary of the Exchange shall give prompt written notice of such meeting to be held at such time as the Chair[man] or the Board of Governors may fix, subject to the provisions of Section 28-7 of these By-Laws. Business transacted at any special meeting called pursuant to this Section shall be limited to the purposes stated in the notice therefor.

Sec. 28-7. Notice of Stockholders Meetings

(a) Except as otherwise provided in Section 28-7(b) of these By-Laws, any notice of any annual or special meeting of Stockholders that is required or permitted to be given under these By-Laws shall be in writing and state the place, date, hour and purpose of such meeting and shall be given not less than ten (10) nor more than fifty (50) days before the date of such meeting to each Stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States Mail, postage prepaid, directed to the Stockholder at his or its address as it appears on the books and records of the Exchange. Such notice may be given in the name of the Board of Governors, the Chair[man] of the Board of Governors, any Vice President, the Secretary or any Assistant Secretary. Whenever notice is required to be given under any provision of law or of the Certificate of Incorporation or these By-Laws, a written waiver thereof, signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at any meeting with respect to which such person is entitled to notice under any provision of law, the Certificate of Incorporation or these By-Laws shall constitute a waiver of such notice of such meeting, except when such person attends such 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. Neither the business to be transacted at, nor the purpose of, any annual or special meeting of Stockholders need be specified in any written waiver of notice unless so required by the Certificate of Incorporation.

(b) An Exchange Representative shall deliver a Member Vote Notice to the Trustee (as each such term is defined in the Trust Agreement) in accordance with the Trust Agreement.

Sec. 28-8. Vote of Stockholders

Except as otherwise provided by law or the Certificate of Incorporation, at every meeting of the Stockholders each Stockholder shall be entitled to one vote in person or by proxy for each share of the capital stock of the Exchange owned by such Stockholder entitled to vote at such meeting. All elections by the Stockholders shall be by written ballot unless otherwise provided in the Certificate of Incorporation. Except as otherwise specifically provided by law, all other votes may be taken by voice unless the Nominating, Elections and Governance Committee determines that it be taken by ballot, in which latter event the vote shall be taken by secret written ballot.

Sec. 28-9. Quorum of Stockholders—Proxies

At all meetings of the Stockholders, the holders of a majority of the outstanding capital stock of the Exchange entitled to vote at any such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, except as otherwise provided by applicable law or by the Certificate of Incorporation. The Stockholders present at a duly organized meeting thereof can continue to do business until adjournment, notwithstanding the withdrawal of enough votes of such Stockholders to leave less than a quorum. If a meeting (including any adjourned meeting) cannot be organized because of the absence of a quorum, those Stockholders entitled to vote at such meeting and present in person or represented by proxy may, except as otherwise provided by law, adjourn the meeting to such time and place as they may determine, without notice other than announcement at such meeting, until a quorum shall be present or represented. All proxies shall be executed in writing and shall be filed with the Secretary of the Exchange not later than the day on which exercised. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period.

Sec. 28-10. Lists of Stockholders Entitled to Vote

The officer who has charge of the lists of Stockholders shall prepare and make, at least ten (10) days before every meeting of the Stockholders, a complete list of the Stockholders entitled to vote at the meeting, arranged in alphabetical order, showing their names and addresses and the number of votes they are entitled to cast. 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 said 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 thereof, and may be inspected by any Stockholder who is present.

Sec. 28-11. Determination of Record Dates

The Board of Governors may fix in advance a record date to determine the Stockholders entitled to notice of or to vote at any meeting of the Stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or for the purpose of any other lawful action. Such date shall be not more than sixty (60) nor less than ten (10) days before the date of any such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed, the record date for determining the Stockholders entitled to notice of or to vote at a meeting thereof shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of the Stockholders of record entitled to notice of or to vote at a meeting thereof shall apply to any adjournment of the meeting; provided, however, that the Board of Governors may fix a new record date for the adjourned meeting.

Sec. 28-12. Governance of Stockholders

The Chair[man] of the Board of Governors, or if there be none, or in his/her absence, the Vice Chair[man] of the Board of Governors, or if there be none, or in his/her absence, any person designated by resolution of the Board of Governors shall preside over all meetings of the Stockholders. To the maximum extent permitted by law, such presiding person shall have the power to administer any such meeting in accordance to the procedures pertaining thereto as may be set from time to time by such presiding person and/or the Nominating, Elections and Governance Committee (in each case subject to any procedures to the contrary established by the Board of Governors), including, but not limited to, any such procedures respecting the time allotted to Stockholders and any other persons in attendance at such meeting to speak.

Sec. 28-13. Action Without Meeting

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

ARTICLE XXIX [*Restrictions on Transfer of Stock of the Exchange*] Capital Stock**Sec. 29-1. [Amount of Shares Transferable] Certificates**

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

[No stockholder of the Exchange may sell, transfer (by operation of law or otherwise) or otherwise dispose of any shares of Class A Common Stock except in blocks of 100 shares per sale, transfer or disposition.]

Sec. 29-2. [Conditions to Transfer] Signatures

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

[(a) No sale, transfer or other disposition of the capital stock of the Exchange shall be effected except (i) pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws, (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the Board of Governors that such sale, transfer or other disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws, (iii) 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 or (iv) pursuant to such procedures as the Chairman of the Board of Governors (or his designee) may adopt from time to time with respect to such transactions.]

[(b) No sale, transfer or other disposition of the capital stock of the Exchange shall be effected by any holder of such stock until all amounts due and owing by such holder to the Exchange (whether any such amounts relate to such holder's status as a Stockholder, Member, participant or Member Organization or participant organization of the Exchange or otherwise) shall have been paid in full.]

Sec. 29-3. [Lockup] Stock Ledger

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

(b) The Exchange shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote

such shares and to receive notice of meetings, and for all other purposes. The Exchange shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Exchange shall have express or other notice thereof.

[No Stockholders shall, if requested by the Exchange or any underwriter of equity securities of the Exchange, sell or otherwise transfer or dispose of any shares of capital stock of the Exchange held by such Stockholder during the 180-day period following the effective date of a registration statement of the Exchange filed under the Securities Act in respect of that class of capital stock. If requested by the Exchange or any such underwriters, each Stockholder shall execute an agreement to the foregoing effect. The Exchange may impose stop-transfer instructions with respect to the shares (or securities) subject to the foregoing restriction until the end of said 180-day period.]

Sec. 29-4. [Non-Registration of Stock] Transfers of Stock

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

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

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

(d) Except for the one (1) share of Series A Preferred Stock, the remaining authorized shares of Preferred Stock shall not be issued. The one (1) authorized share of Series A Preferred stock shall be issued and outstanding, and shall initially be held by the Trust pursuant to the Trust Agreement. The Exchange shall not issue Preferred Stock (other than the one (1) share of Series A Preferred Stock) unless the resolution or resolutions providing for the issuance of such Preferred Stock shall have been filed with and approved by the Commission under the Exchange Act. Preferred Stock, including the Series A Preferred Stock, may not be transferred or assigned in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.

[The Exchange reserves the right to not register any transfer of capital stock of the Exchange in violation of the provisions of this Article XXIX.]

Sec. 29-5. [Transfer Expenses] Cancellation

Each certificate for capital stock surrendered to the Exchange for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section 29.6 until such existing certificate shall have been canceled.

Sec. 29-6. Lost, Stolen, Destroyed, and Mutilated Certificates

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

Sec. 29-7. Fixing of Record Date

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

Sec. 29-8. Dividends

Subject to the provisions of the Certificate of Incorporation, the Board may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Exchange as and when they deem appropriate. Notwithstanding the foregoing, dividends shall not be paid using Regulatory Funds.

[The Exchange shall be entitled to the reimbursement of its expenses incurred in connection with any transfer of capital stock of the Exchange, and may condition the registration of such transfer on the prior payment in full of such expenses.]

[ARTICLE XXX *General Provisions*]

[Sec. 30-1. Stock Certificates]

[(a) Subject to Section 30-1(e) of these By-Laws, every Stockholder shall be entitled to have a certificate, signed by, or in the name of the Exchange by, the Chief Executive Officer, the President or a Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Exchange, certifying the number of shares of capital stock of the exchange owned by him. If the Exchange shall be authorized to issue more than one class or series of stock, the designations, preferences, and relative, participating, optional or other special rights of each class and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Exchange shall issue to represent such class of stock.]

[(b) Where a stock certificate is signed (i) by a transfer agent or an assistant transfer agent of the Exchange or (ii) by a transfer clerk acting on behalf of the Exchange and a registrar, the signature of any of such Chief Executive Officer, President, Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary may be a facsimile. In case any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers of the Exchange, whether because of death, resignation or otherwise, such certificate or certificates may nevertheless be adopted by the Exchange and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Exchange.]

[(c) The Board of Governors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Exchange alleged to have been lost or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Governors may, in its sole discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate, or his legal representative, to advertise the same in such manner as it shall require and/or 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 or destroyed.]

[(d) Upon surrender to the Exchange or the transfer agent of the Exchange of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Exchange to issue a new certificate to the person entitled thereto, cancel the older certificate and record the transaction upon its books.]

[(e) In the event that, at the effective time of the Merger, any person who is entitled to receive capital stock of the Exchange in connection with the Merger shall not have paid to the Exchange in full all amounts due and owing from such person to the Exchange at such time, the Exchange may retain the stock certificate(s) evidencing such stock until such time as all such amounts are paid in full to the Exchange, and the Exchange shall be deemed to have in its favor a perfected lien on such stock represented

by such certificate until the payment in full of such due and owing amounts. In the event that such amounts are not paid in full within 180 days after the effective time of the Merger, the Exchange shall be entitled to sell such capital stock and to use the proceeds from such sale to pay such due and owing amounts, in which case the balance of such proceeds shall be paid by the Exchange to the holder of such capital stock.]

[Sec. 30-2. Closing of Transfer Books]

[The Board of Governors may close the stock transfer books of the Exchange for a period not exceeding sixty (60) days preceding the date of any meeting of Stockholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect or for a period not exceeding sixty (60) days in connection with obtaining the consent of Stockholders for any purpose. In lieu of closing the stock transfer books as aforesaid, the Board of Governors may fix in advance a date, not exceeding sixty (60) days preceding the date of any meeting of Stockholders, or the date for the payment of any dividends, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the Stockholders entitled to notice of, and to vote at, such meeting and any adjournment thereof, or entitled to receive payment rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and in such case such Stockholders and only such Stockholders as shall be Stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Exchange after any such record date fixed as aforesaid.]

[Sec. 30-3. Registered Stockholders]

[The Exchange shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares of stock to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice hereof, except as otherwise provided by the applicable laws of Delaware. The Exchange reserves the right to not register any transfer of capital stock of the Exchange in violation of the provisions of these By-Laws and the Certificate of Incorporation.]

[Sec. 30-4. Dividends]

[(a) Subject to the provisions of applicable law, the Certificate of Incorporation or any agreement by which the Corporation is duly bound, dividends upon the capital stock of the Exchange may be declared by the Board of Governors at any regular or special meeting and may be paid in cash, in property, or in shares of capital stock, provided that

no portion of any such dividends shall include any revenues received by the Exchange from regulatory fines, fees or penalties.]

[(b) Before the payment of any dividend, there may be set aside out of the funds of the Exchange available for dividends such sum or sums as the Board of Governors may from time to time, in its absolute discretion, deem 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 of Governors shall deem in the interests of the Exchange, and the Board of Governors may modify or abolish any such reserve in the manner in which it was created.]