

**File No. SR-Amex-2004-50
Amendment No. 2**

EXHIBIT C

SECOND RESTATED
CERTIFICATE OF INCORPORATION
OF
THE AMEX MEMBERSHIP CORPORATION

Under Section 805 of the New York Not-for-Profit Corporation Law

Second Restated Certificate of Incorporation
of
THE AMEX MEMBERSHIP CORPORATION

Under Section 805 of the New York Not-for-Profit Corporation Law.

The undersigned, being the Chairman of the Board of Directors and the Secretary, respectively, of The Amex Membership Corporation, hereby certify:

- (1) The name of the corporation is The Amex Membership Corporation (the "Corporation").
- (2) The Certificate of Incorporation of the Corporation was filed by the Department of State on October 1, 1971, under the New York Not-for-Profit Corporation Law and the Corporation was formed under the name American Stock Exchange, Inc.
- (3) This Second Restated Certificate of Incorporation is being filed under Article 8 of the Not-for-Profit Corporation Law to further amend and restate the Certificate of Incorporation, as amended and restated to date, (a) to amend Section 2 to reflect the full name of the statute under which the Corporation was formed, (b) to amend Section 5 relating to service of process, (c) to amend Section 6 relating to memberships and voting rights, (d) to amend Section 7 relating to required consents, (e) to amend Section 8 relating to the nomination and election of the Directors of the Corporation, the Governors of American Stock Exchange LLC ("Amex" or the "Exchange"), members of the Amex Adjudicatory Council, and the Trustees of the Amex Gratuity Fund, (f) to amend Section 9 relating to the authorization of the issuance of additional memberships in the Corporation, (g) to add a new Section 10 relating to the limitation of liability of Directors, (h) to add a new Section 11 relating to the indemnification of Directors and officers, (i) to add a new Section 12 relating to books and records of the Corporation, (j) to add a new Section 13 relating to conduct by officers, Directors and employees of the Corporation, (k) to add a new Section 14 relating to jurisdictional issues, (l) to add a new Section 15 relating to cooperation with the Securities and Exchange Commission and Amex by the Corporation and its officers, Directors and employees, (m) to add a new Section 16 relating to confidential information of Amex pertaining to its self-regulatory function, (n) to add a new Section 17 relating to further compliance by the Corporation regarding Sections 12, 13, 14, 15 and 16 hereof, (o) to amend Section 18 relating to amendments to this Second Restated Certificate of Incorporation, (p) to add a new Section 19 to add definitions for certain terms for the purposes of

this Second Restated Certificate of Incorporation, and (q) to renumber certain Sections.

- (4) The Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

1. Name. The name of the Corporation is The Amex Membership Corporation.
2. Status as Not-for-Profit Corporation. The Corporation is a corporation as defined in Section 102(a)(5) of the New York Not-for-Profit Corporation Law. The Corporation is a Type A corporation under Section 201 of the New York Not-for-Profit Corporation Law.
3. Purposes; Limitation on Activities. (a) The Corporation's purposes are:
 - (i) to conduct and carry on the functions of a "board of trade" within the meaning of that term in Section 1410 of the New York Not-for-Profit Corporation Law by fostering the interests of its members who have the right to trade, and trading or permitting others to trade, securities in an auction market for trading equity securities, options and other derivative securities; provided, that, in carrying out the foregoing purposes, the activities of the Corporation shall be limited to, directly or indirectly, holding, acquiring, exchanging, or disposing of equity or other interests in Amex and exercising the rights incident to such ownership; and
 - (ii) to conduct and carry on only activities incidental to and in furtherance of the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the New York Not-for-Profit Corporation Law.
- (b) The Corporation shall not, directly or indirectly:
 - (i) incur or guarantee any indebtedness for borrowed money;
 - (ii) without the prior written approval of a majority of the Board of Directors of the Corporation, incur any liability or make any expenditure unless such liability or expenditure is reasonable in amount and reasonably related to its corporate purposes as set forth in paragraph 3(a) above; and
 - (iii) except as set forth in paragraph 3(a) above, shall not engage in any other business activities.

4. New York Office. The office of the Corporation within the State of New York is to be located in the City and the County of New York.

5. Address for Service of Process. The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

The Amex Membership Corporation
86 Trinity Place
New York, New York 10006
Attention: Secretary

6. Memberships; Rights Upon Liquidation; Voting Rights. The classes of membership in the Corporation shall include regular memberships (“Regular Memberships”) and options principal memberships (“Options Principal Memberships” and, together with the Regular Memberships, the “Memberships”). There shall be up to 834 Regular Memberships and up to 30 Options Principal Memberships. The number, qualifications, rights, duties and obligations of, and the limitations and restrictions upon, each such class of Memberships to the extent not provided for herein, shall be as provided in the By-Laws of the Corporation (the “By-Laws”) and the Amex Constitution. The Corporation shall make available one Regular Trading Right (as such term is defined in Section 13 below) with respect to each Regular Membership, and one Options Principal Trading Right (as such term is defined in Section 13 below) with respect to each Options Principal Membership. The Corporation shall not otherwise make Regular Trading Rights or Options Principal Trading Rights (as such term is defined in Section 13 below) available for any purpose, and no Regular Trading Rights or Options Principal Trading Rights shall be transferred or leased apart from the Membership in respect of which it was made available. The exercise, transfer and lease of Trading Rights, as well as the conditions under which they may be exercised, are subject to the Amex Constitution as amended from time to time.

In the event of any voluntary or involuntary final liquidation, dissolution or winding up of the affairs of the Corporation after paying or making provisions for the payment of all liabilities of the Corporation, the assets and funds of the Corporation shall be distributed equally among the then existing Regular Memberships who shall have paid all fees and charges for which such Membership is liable in accordance with the provisions of the By-Laws or otherwise, until each such Regular Membership shall have received (or there shall have been set aside for payment to him) the amount of \$26,000; provided, however, that in the event that a Regular Membership is, at the time of such liquidation, dissolution or winding up of the affairs of the Corporation, indebted to the Corporation for any unpaid fees and charges, he shall nonetheless be entitled to share in the distribution of the funds and assets of the Corporation equally with other Regular Memberships to the extent herein provided, but any such arrears shall be deducted by the Corporation from any share to which he may be entitled.

If there shall be remaining funds and assets of the Corporation after such payment shall have been made in full to each Regular Membership or provision made therefor, such remaining assets and funds shall be distributed equally among the then existing Options Principal Memberships who shall have paid all fees and charges for which such Membership is liable, in accordance with the provisions of the By-Laws or otherwise, until each such Options Principal Membership shall have received (or there shall have been set aside for payment to him) the amount of \$15,000; provided, however, that in the event an Options Principal Membership is, at the time of such liquidation, dissolution or winding up of the affairs of the Corporation, indebted to the Corporation for any unpaid fees and charges, he shall nonetheless be entitled to share in the distribution of the funds and assets of the Corporation equally with other Options Principal Memberships to the extent herein provided, but any such arrears shall be deducted by the Corporation from any share to which he may be entitled.

If there shall be remaining funds and assets of the Corporation after such payments shall have been made in full (or provision made therefor) to each such Regular Membership and each such Options Principal Membership, as aforesaid, such remaining assets and funds of the Corporation shall be distributed among the then existing Regular Memberships and Options Principal Memberships pursuant to a formula providing that each Regular Membership shall receive the same amount as each other Regular Membership and each Options Principal Membership shall receive the same amount as each other Options Principal Membership, but that each Regular Membership shall receive twice the amount received by each Options Principal Membership.

If upon any such final liquidation, dissolution or winding up of the affairs of the Corporation the initial amount payable to each Regular Membership (\$26,000 less any arrears due from such Regular Membership) is not paid in full, the Regular Memberships shall share equally in any distribution of the assets and funds of the Corporation and the Options Principal Memberships shall have no right whatsoever to share in such distribution of the assets and funds of the Corporation, and if upon any such final liquidation, dissolution or winding up of the affairs of the Corporation, the initial amount payable to each Regular Membership (\$26,000 less any arrears due from such Regular Membership) shall have been paid in full (or provisions made therefor), but the initial amount payable to each Options Principal Membership (\$15,000 less any arrears due from such Options Principal Membership) is not paid in full, the Options Principal Memberships shall share equally in the distribution of such assets and funds of the Corporation as remain available for distribution.

Neither the consolidation or merger of the Corporation, nor the sale, lease or conveyance of all or a part of its assets shall be deemed a final liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of the foregoing provisions of this Section 6.

Except as herein or by statute specifically provided and except as may be provided by the By-Laws with respect to the voting rights of any particular class of Memberships, the Regular Memberships and the Options Principal Memberships shall

have the right equally to vote together as a single class in any election for any elected official, Director, trustee or person authorized under the By-Laws and upon all amendments to this Certificate of Incorporation and on any other matter which may be submitted to a vote of the Memberships, including matters described in Section 7 hereof.

If any amendment to this Second Restated Certificate of Incorporation is proposed and the effect of such amendment is to adversely affect the rights upon dissolution, final liquidation or winding up of the affairs of the Corporation to which the Options Principal Memberships may be entitled, such amendment must be approved by the affirmative vote of at least sixty-six and two-thirds per cent (66 $\frac{2}{3}$ %) of the Options Principal Memberships voting as a separate class; provided, however, that any amendment of this Second Restated Certificate of Incorporation so as to authorize additional Memberships of any existing class of Memberships shall not be deemed to affect adversely the rights of Options Principal Memberships upon dissolution, final liquidation or winding up of the affairs of the Corporation.

7. Required Consents.

(a) The Amex Limited Liability Company Agreement and/or the Amex Constitution restricts the power of Amex to take certain actions without the consent of the Corporation, including the following (each of the following being a “Requested Consent”):

- (i) the sale, issuance, transfer or other disposition in any single transaction or series of transactions of (A) any limited liability company interests or other equity security of Amex or any securities convertible into or exchangeable for, or options rights or warrants to acquire, any such equity securities or (B) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any equity securities or containing profit participation features) (such securities described in clauses (A) and (B), collectively, “Equity Securities”); and
- (ii) to authorize, grant or issue any Trading Rights other than the Regular Trading Rights, the Options Principal Trading Rights or the Limited Trading Permits, in each case, issued in accordance with this Second Restated Certificate of Incorporation and the Amex Constitution (as in effect on the date of filing of this Second Restated Certificate of Incorporation).

Promptly upon receiving a written request for a Requested Consent from Amex, the Secretary of the Corporation shall call a meeting of the holders of the Memberships entitled to vote thereat to vote on the Requested Consent. If, and only if, the required number of Memberships are voted in favor of authorizing such Requested

Consent, the proper officers of the Corporation shall promptly grant the Corporation's consent to Amex. Any Requested Consent shall be granted by the Corporation only upon the affirmative vote of a majority of the Regular Memberships and the Options Principal Memberships voted (as a single class) at a meeting duly called and convened and at which a quorum is present (a "Duly Convened Meeting"). If a proposed Required Consent is not approved at the Duly Convened Meeting convened with respect thereto, such Required Consent shall not be submitted again to the Membership for a period of ninety (90) days.

(b) The Corporation shall not sell, issue, transfer or otherwise dispose of any Equity Security of Amex or permit any of its affiliates to sell, issue, transfer or otherwise dispose of any Equity Security of Amex without the affirmative vote of a majority of the Regular Memberships and the Options Principal Memberships voted (as a single class) at a Duly Convened Meeting. If any such sale, issuance, transfer or other disposition is not approved at the Duly Convened Meeting convened with respect thereto, such sale, issuance, transfer or other disposition shall not be submitted again to the Membership for a period of ninety (90) days.

(c) Any sale, issuance, transfer or other disposition in any single transaction or series of transactions of (A) any equity securities of the Corporation or AMC Acquisition Sub, Inc. or any securities convertible into or exchangeable for, or options rights or warrants to acquire, any such equity securities or (B) any notes or debt securities containing equity features (including, without limitation, any notes or debt securities convertible into or exchangeable for any equity securities or containing profit participation features) (such securities described in clauses (A) and (B), collectively, "Equity Securities") shall be subject to prior approval by the Securities and Exchange Commission pursuant to the rule filing procedure under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder; provided that the foregoing shall not apply to any sale, transfer or other disposition of Memberships of the Corporation. Any attempt to issue or transfer any Equity Securities or any rights thereunder in violation of the preceding sentence shall be null and void ab initio.

8. Election and Nomination of Governors; Other Elections.

(a) The Corporation shall vote its Equity Securities of Amex that are entitled to vote so as to cause the Initial Governors of Amex (as defined in the Amex Limited Liability Company Agreement as in effect on the date of filing of this Second Restated Certificate of Incorporation) to be elected to the Board of Governors of Amex as of the date of filing of this Second Restated Certificate of Incorporation.

(b) The Memberships shall have the right to elect any Directors of the Corporation in accordance with the procedures set forth in the By-Laws.

(c) The Memberships shall have the right to elect any Governors, members of the Amex Adjudicatory Council (“Council Members”) and Trustees of the Amex Gratuity Fund (“Trustees”) that the Corporation is entitled to vote upon in accordance with the Amex Constitution and the procedures set forth in the By-Laws.

(d) At such times as the Corporation shall be required by the By-Laws, the Secretary of the Corporation shall call a meeting of the holders of the Memberships entitled to vote thereat to vote on (i) the nominees for Director of the Corporation who shall have been nominated in accordance with the By-Laws and (ii) the nominees for Governor, Council Members and Trustees who shall have been nominated in accordance with the By-Laws and the Amex Constitution. The Corporation shall vote its Equity Securities of Amex that are entitled to vote so as to elect nominees as Governors, Council Members and Trustees who shall have received a plurality of the votes cast by the Memberships at a Duly Convened Meeting.

(e) Except for any action described in Sections 7(a), 7(b), 8 or 9 of this Second Restated Certificate of Incorporation, or with regard to any other action that the Board of Directors deems appropriate, the Corporation shall not be required to submit to a vote of Memberships any action that requires the vote or written consent of the Corporation as a holder of Equity Securities of Amex, except as may be required by law.

9. Issue of Additional Memberships. Upon receiving a written request from Amex for an amendment to this Second Restated Certificate of Incorporation to authorize the issue of additional Memberships of any class, the Secretary of the Corporation shall call a meeting of the holders of Memberships entitled to vote thereat to vote on such request in accordance with the By-Laws. Such an amendment may be authorized, and such additional Memberships may be issued, only upon the affirmative vote of a majority of the Regular Memberships and the Options Principal Memberships voted (as a single class) at a Duly Convened Meeting. Any such issue of additional Memberships shall be effected only by distributing with respect to each Membership without consideration a right or an equal number of rights (“Rights”) which, in combination with a specified number of other rights, may be surrendered for a newly issued Membership. The Rights will be transferable by the holders thereof and, subject to the requirements of the Amex Constitution as to the qualification of members of Amex, the Corporation will issue one new Membership of the specified class, without additional consideration (but subject to any initiation or other fees as may be applied) to each holder who holds the required number of Rights in exchange for such required number of Rights. Any new Regular Membership or Options Principal Membership issued in this manner will have the same rights and privileges as the Regular Memberships or Options Principal Memberships (including the availability of Regular Trading Rights or Options Principal Trading Rights, as the case may be) outstanding immediately before the issue.

10. Limitation of Liability. No Director of the Corporation shall have personal liability to the Corporation for monetary damages for breach of fiduciary duty as

a Director; provided, that nothing in this Section 10 shall eliminate or limit the liability of any Director if a judgment or other final adjudication adverse to such Director establishes that such Director's acts or omissions were in bad faith or were the result of active and deliberate dishonesty or that such Director personally gained in fact a financial profit or other advantage to which such Director was not legally entitled or that such Director's acts violated Section 719 of the New York Not-For-Profit Corporation Law ("Section 719").

11. Indemnification.

(a) The Corporation shall, to the fullest extent permitted by law, indemnify any person who is or was made, or threatened to be made, a party to any threatened, pending or completed, action, suit or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of the Corporation to procure a judgment in its favor (hereinafter a "Proceeding"), by reason of the fact that such person, or a person of whom such person is the legal representative, is or was a Director or officer of the Corporation, or is or was serving in any capacity at the request of the Corporation for any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against judgments, fines, penalties, excise taxes, amounts paid in settlement (with the written consent of the Corporation, which shall not be unreasonably withheld) and costs, charges and expenses (including attorneys' fees and disbursements). Notwithstanding the foregoing, no indemnification shall be provided to or on behalf of any Director or officer if a judgment or other final adjudication adverse to such Director or officer establishes that (i) his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so adjudicated, (ii) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or (iii) his or her acts violated Section 719. Persons who are not Directors or officers of the Corporation may be similarly indemnified in respect of service to the Corporation or to another such entity at the request of the Corporation to the extent the Board of Directors at any time denominates such person as entitled to the benefits of this Section 11.

(b) The Corporation shall, from time to time, reimburse or advance to any Director or officer or other person entitled to indemnification hereunder the funds necessary for payment of expenses, including attorneys' fees and disbursements, incurred in connection with any Proceeding, in advance of the final disposition of such Proceeding; provided, however, that such expenses incurred by or on behalf of any Director or officer or other person may be paid in advance of the final disposition of a Proceeding only upon receipt by the Corporation of an undertaking, by or on behalf of such Director or officer (or other person indemnified hereunder), to repay any such amount so advanced if a judgment or other final adjudication adverse to the Director or officer establishes that (i) his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and, in either case, were material to the cause of action so

adjudicated, (ii) he or she personally gained in fact a financial advantage to which he or she was not legally entitled, or (iii) his or her acts violated Section 719.

(c) The right to indemnification and advancement of expenses provided by, or granted pursuant to, this Section 11 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may have or hereafter be entitled under any law, By-Law, or agreement, vote of Memberships, if any, or of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(d) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 11 shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

(e) The Corporation shall have the power to purchase and maintain insurance to indemnify (i) itself for any obligation which it incurs as a result of the indemnification of any Director or officer under the provisions of this Section 11, (ii) any Director or officer in instances in which they may be indemnified under the provisions of this Section 11 or (iii) any Director or officer in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this Section 11, subject to the limitations imposed under Section 726 of the New York Not-for-Profit Corporation Law (or any successor section).

(f) To secure payment of any obligation of indemnification or advancement of expenses provided by, or granted pursuant to, this Section 11, the Corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to insure the payment of such sums as may become necessary to effect indemnification or advancement of expenses as provided herein.

(g) The provisions of this Section 11 shall be a contract between the Corporation, on the one hand, and each Director and officer who serves in such capacity at any time while this Section 11 is in effect and any other person indemnified hereunder, on the other hand, pursuant to which the Corporation and each such Director, officer or other person intend to be legally bound. No repeal or modification of this Section 11 shall affect any rights or obligations with respect to any state of facts then or theretofore existing or thereafter arising or any Proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

(h) The right to indemnification and reimbursement and advancement of expenses provided in this Section 11 shall be enforceable by any person entitled to indemnification or advancement of expenses hereunder in any court of competent jurisdiction. The burden of proving that indemnification or reimbursement and advancement of expenses are not appropriate shall be on the

Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its Memberships) to have made a determination prior to the commencement of such action that indemnification or advances are proper in the circumstances nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its Memberships) that such person is not entitled to indemnification or to the reimbursement or advancement of expenses, shall constitute a defense to the action or create a presumption that such person is not so entitled. Such person shall also be indemnified for any expenses incurred in connection with successfully establishing his or her right to indemnification or advances, in whole or in part, in any such Proceeding.

(i) Any person entitled to be indemnified or to the reimbursement or advancement of expenses as a matter of right pursuant to this Section 11 may elect to have the right to indemnification (or advancement of expenses) interpreted on the basis of the applicable law (including, without limitation, Section 722 or any successor section thereto) in effect at the time of the occurrence of the event or events giving rise to the applicable Proceeding, to the extent permitted by law, or on the basis of the applicable law (including, without limitation, Section 722 or any successor section thereto) in effect at the time indemnification is sought. Such election shall be made, by a notice in writing to the Corporation, at the time indemnification is sought; provided that if no such notice is given, the right to indemnification shall be determined by the law in effect at the time indemnification is sought.

12. Books and Records. The Corporation shall keep at the office of the Corporation or such other locations within the United States as may from time to time be designated by the Board of Directors correct and complete books and records of account and minutes of the proceedings of its members, Board of Directors and committees, if any, and a list of the names, addresses and classes of membership of the members. Any of the foregoing books, minutes and records may be in written form or in any other form capable of being converted into written form within a reasonable time. To the extent that the foregoing books, minutes and records are related to the activities of Amex, such books, minutes and records shall be deemed to be the books, minutes and records of Amex for the purposes of Section 17(b) of the Securities Exchange Act of 1934, as amended, and shall be subject at all times to inspection and copying by the United States Securities and Exchange Commission and Amex.

13. Officers and Directors. With respect to conduct by the officers and Directors of the Corporation that relates to the activities of Amex, such officers and Directors shall be deemed to be the officers and Directors of Amex solely for the purposes of the removal and censure authority of the United States Securities and Exchange Commission pursuant to Section 19(h)(4) of the Securities Exchange Act of 1934, as amended.

For so long as the Corporation shall control, directly or indirectly, Amex, each officer, Director and employee of the Corporation shall give due regard to the

preservation of the independence of the self-regulatory function of Amex and to Amex's obligations under the Securities Exchange Act of 1934, as amended, and the rules thereunder, including, without limitation, Section 6(b) of such Act and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the Board of Governors of Amex relating to its regulatory functions (including disciplinary matters) or which would adversely affect the ability of Amex to carry out its responsibilities under the Securities Exchange Act of 1934, as amended.

14. Consent to Jurisdiction. For so long as the Corporation shall control, directly or indirectly, Amex, the Corporation shall, and its officers, Directors and employees by virtue of their acceptance of such position shall be deemed to, irrevocably submit to the exclusive jurisdiction of the United States federal courts, United States Securities and Exchange Commission, and Amex, for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to the activities of Amex, and the Corporation shall, and by virtue of their acceptance of any such position, the officers, Directors and employees of the Corporation shall be deemed to, waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States Securities and Exchange Commission as to such matters, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

15. Cooperation with the Securities and Exchange Commission. For so long as the Corporation shall control, directly or indirectly, Amex, the Corporation shall, and the officers, Directors and employees of the Corporation by virtue of their acceptance of such position shall be deemed to, agree to cooperate with the United States Securities and Exchange Commission and Amex, in respect of said Commission's oversight responsibilities regarding Amex and the self-regulatory functions and responsibilities of Amex. The Corporation shall take reasonable steps to ensure that its agents similarly cooperate with said Commission.

16. Confidential Information. All confidential information of Amex pertaining to the self-regulatory function of Amex, including books, minutes and records of Amex reflecting such confidential information (including but not limited to regulatory investigations, examinations, disciplinary matters, and to the extent designated by Amex as confidential, trading data and practices) which shall come into the possession of the Corporation, the officers, Directors, employees or agents of the Corporation, shall be retained in confidence by the Corporation and the officers, Directors, employees and agents of the Corporation and shall not be used for any non-regulatory purposes. The Corporation shall take reasonable steps to ensure that its agents will comply with this section. Nothing in this Certificate of Incorporation shall be interpreted as to limit or impede the rights of the United States Securities Exchange Commission or Amex to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of the Corporation, and the

officers, Directors, employees or agents of the Corporation to disclose such confidential information to said Commission or Amex.

17. Further Compliance. The Corporation shall take reasonable steps to ensure that its officers, Directors and employees comply with Sections 12, 13, 14, 15 and 16 hereof, which shall include obtaining a written agreement from such individuals, as a condition to their initial or continued employment or service as a Director, that they will comply with or consent to, as the case may be, such provisions.

18. Amendments. The Corporation reserves the right to amend, alter, change or repeal any provision of this Second Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred in this Second Restated Certificate of Incorporation on Memberships, Directors, officers and other persons are subject to this reservation. For so long as the Corporation shall control, directly or indirectly, Amex, before any change or addition to the Certificate of Incorporation or By-laws of this Corporation shall be effective, the same shall be submitted to the Board of Governors of the Exchange and if said Board shall determine that the same constitutes a “rule of an exchange” as such term is defined in the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder and must be filed with or filed with and approved by the United States Securities and Exchange Commission before the same may be effective, under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder, then the same shall not be effective until filed with or filed with and approved by said Commission, as the case may be.

19. Definitions. The terms defined in this Section 13 shall have the following meanings for the purposes of this Second Restated Certificate of Incorporation:

“Amex Adjudicatory Council” means the Adjudicatory Council of Amex established in accordance with the Amex Constitution.

“Amex Constitution” means the Constitution of Amex as is in effect from time to time.

“Amex Gratuity Fund” means the Gratuity Fund of Amex established in accordance with the Amex Constitution.

“Amex Limited Liability Company Agreement” means the limited liability company agreement of Amex by and among Amex and its interestholders as is in effect from time to time.

“Directors” means persons elected to serve on the Board of Directors of the Corporation in accordance with the By-Laws.

“Governors” means persons elected to serve on the Board of Governors of Amex in accordance with the Amex Constitution.

“Limited Trading Permits” means trading permits issued by the Exchange in accordance with Article IV, Section 1(h) of the Amex Constitution.

“Options Principal Trading Rights” means all of the rights of every kind to trade on the Exchange appurtenant to the Options Principal Memberships.

“Regular Trading Rights” means all of the rights of every kind to trade on the Exchange that are appurtenant to the Regular Memberships.

“Trading Rights” means all rights of every kind to trade through the facilities of the Exchange (including, without limitation, the Regular Trading Rights, the Options Principal Trading Rights and the Limited Trading Permits).

(5) The above amendments to and restatement of the Corporation’s Restated Certificate of Incorporation were authorized by a majority vote of Memberships at a meeting, as provided in Section 613(c) of the New York Not-for-Profit Corporation Law.

[Remainder of page is intentionally left blank]

IN WITNESS WHEREOF, we have subscribed this document on _____, 2004 and do hereby affirm, under the penalties of perjury, that the statements contained therein have been examined and are true and correct.

Name:
Title:

Name:
Title:

Pursuant to Section 804(a)(i) of the Not-for-Profit Corporation Law consent is hereby given to the filing of this Certificate of Amendment to the Certificate of Incorporation. This consent however, shall not be construed as approval by the Attorney General of the purposes or objects of such corporation.

Assistant Attorney General

Date