

EXHIBIT 5

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EXHIBIT 5A

New language
[deleted language]

Constitution of the Boston Stock Exchange, Incorporated

Article I

Secs. 1 –2 *no change*

Sec. 3.

Definitions

Unless the context requires otherwise, the terms defined in the Constitution apply to the Rules and vice versa.

(a) Associated Person or Person Associated

"Associated Person" or "Person Associated" with a "Member" or a "Broker or Dealer" shall have the meanings assigned to such terms pursuant to Sections 3(a)(21) and 3(a)(18), respectively, of the Securities Exchange Act of 1934.

(b) BOX

The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"), as defined in Chapter I, Section 1(6) of the Rules of the Boston Options Exchange Facility ("BOX Rules").

(c) BOX Options Participant

The term "BOX Options Participant" or "BOX Participant" means a firm or organization that is registered with the Exchange for the purposes of participating in options trading on BOX, as

defined in Chapter I, Section 1(40) of the BOX Rules.

(d) BOXR

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

(e) BOXR Board

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

(f) BOXR Nominating Committee

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

(g) Electronic Access Member ("EAM")

The term "Electronic Access Member", or "EAM", means a natural person who is a member of the Exchange for the purposes of being treated as such under the Constitution and Rules of the Exchange, except that the following provisions of the Constitution shall not apply to EAMs: Article IX, Sections 1 and 2; Article XI, Sections 1-8, 12-13; and Article XVII in its entirety. EAMs shall vote in the same capacity as other BSE members, except with respect to Exchange ownership matters, specifically those matters related to mergers, consolidations, dissolution, liquidation, transfer, or conversion of the assets of the Exchange. EAMs hold non-transferable permits to represent equity customer orders as agent or to conduct trading as a specialist on the Exchange.

[(g)] (h) Membership

The term "membership" refers to the members of the Exchange, and does not refer to the allied members.

[(h)] (i) Member

The term "Member" means a natural person who is a Member of the Exchange in accordance

with Article IX and includes within its meaning an EAM or allied member of the Exchange except that the following provisions of the Constitution shall not apply to EAMs: Article IX, Sections 1 and 2; Article XI, Sections 1-8, 12-13; and Article XVII in its entirety. EAMs shall vote in the same capacity as BSE Members, except with respect to Exchange ownership matters, specifically those matters related to mergers, consolidations, dissolution, liquidation, transfer, or conversion of the assets of the Exchange. A Member may be associated as a Member with no more than one Member Firm or Member Corporation.

[(i)] (j) Member Organization

The term "Member Organization" means any broker or dealer which is a Member Firm or Member Corporation of the Exchange which qualifies as a Member Organization in accordance with Article IX, Section 4 hereof. If a member organization is a partnership, it may be referred to as a "Member Firm" and, if a corporation, as a "Member Corporation".

[(j)] (k) Allied Member

The term "allied member" means a natural person who is:

- i) a general partner in a member-firm, or an employee who controls such member firm but who is not a member of the Exchange, or
- ii) an employee of a member corporation who is not a member of the Exchange, and who is
 - a. one of the persons elected to administer the affairs of the corporation, or
 - b. a person who controls such corporation.

[(k)] (l) Non-member

The term "non-member" means any person not a member, allied member or member organization.

[(l)] (m) Exchange and Board of Governors

The terms "Exchange" and "Board of Governors" shall, whenever appropriate, include or mean the Chairman, any other officer or employee or any committee to whom the Board of Governors shall have delegated any of its powers or duties.

[(m)] (n) Publicly Held Security

The term "publicly held security" means any class of equity security issued by a member corporation which is owned beneficially by one hundred or more persons who are not members, allied members or employees of the member corporation.

[(n)] (o) Voting Stock

The term "voting stock" means stock in a member corporation the holders of which are entitled to vote for the election of the directors of such corporation.

[(o)] (p) Non-voting Stock

The term "non-voting stock" means stock of any class in a corporation other than voting stock.

[(p)] (q) Rules of the Exchange or Rules of the Board of Governors

The term "Rules of the Exchange" or "Rules of the Board of Governors" shall refer to Rules of the Board of Governors adopted pursuant to the provisions of this Constitution.

Articles II – VIII – *no change*

Article IX

Sec. 1.

Number of Memberships

The Membership of the Exchange shall consist of 224 Members of the Exchange, other than EAMs, each of whom shall, upon liquidation, dissolution or winding up of the affairs of the Exchange, have distributive rights in its assets. An Electronic Access Member shall vote in the

same capacity as other BSE members, except with respect to Exchange ownership matters, specifically those matters related to mergers, consolidations, dissolution, liquidation, transfer, or conversion of the assets of the Exchange or any of its subsidiaries.

Sec. 2.

Transfer of Membership

(a) A Member in good standing may transfer ownership of the membership to a person approved by the Exchange. An EAM may not transfer any interest in, or rights or privileges inherent in, the permission granted to them by the Exchange allowing such EAM to conduct certain trading activities on the Exchange.

(b) – *no change*

Secs. 3 – 11 – no change

Sec. 12 Ownership Concentration and Affiliation Limit in BSX

(a) For purposes of this Article, and unless the context otherwise requires, the terms “Affiliate” and “Unit” shall have the same meaning specified in the BSX Group LLC Amended and Restated Operating Agreement.

(b) Ownership Limitation. For as long as the BSX Group, LLC, operates a facility of the BSE no Member of the BSE, either alone or with any Affiliate shall, at any time, own beneficially any interest in BSX representing in the aggregate more than 20% of the then outstanding Units of BSX (the “Ownership Limitation”).

(c) Without prior SEC approval, the BSE or any entity with which it is affiliated shall not directly acquire or maintain an ownership interest in a BSE Member. In addition, no BSE Member shall be or become an Affiliate of the Exchange or any Affiliate of an Affiliate of the BSE. Nothing herein shall prohibit a Member from acquiring or holding an equity interest in the BSX Group, LLC that is permitted by the Ownership Limitation contained in Section (b) of this Article.

(d) Disciplinary Action. A Member shall have 180 days to cure an inadvertent violation of Section (a) of this Article. In the event such violation is not cured during such time, the Member shall have all trading rights and privileges suspended, and shall also be subject to any appropriate disciplinary action.

Article X - XX

no change

Article XXI

[Market-Maker Membership]

Sec. 1.

BSX

(a) BSX Group, LLC is the operator of the BeX, a facility of the Exchange (as defined in Section 3(a)(2) of the Exchange Act). BSX Group, LLC is responsible for the operation of the business of the Exchange related to the trading of equity securities. All of the assets and liabilities of the Exchange that solely support or derive from the business of the Exchange related to the trading of equity securities reside within and accrue to BSX Group, LLC. The BSE regulates all trading occurring on its facilities in accordance with the Rules of the Exchange and the Exchange Act.

(b) The books, records and premises of BSX Group, LLC are the books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, directors employees and agents of BSX Group, LLC are the officers, directors, employees and agents of the Exchange for the purposes of the Act.

RULES OF THE BOSTON STOCK EXCHANGE

Chapter XVIII

Conduct

Sections 1 – 5 No Change.

SEC.6. Pursuant to Article IX, Section 12 of the Constitution, the Exchange shall: (1) provide notice to the Member within five business days of learning of the events contemplated by this Rule (2) allow the Member fifteen calendar days to cure any such failure to comply contemplated by this Rule (3) in the event that the Member does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing before a Hearing Panel consisting of a Hearing Officer who shall be the Chairman of the Panel and at least two members of the Hearing Committee to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the existence of a violation no later than ten calendar days following the date of such hearing.