

EXHIBIT 3A



New language
[deleted language]

The redacted text of the Sixth Amended and Restated Operating Agreement appears below; redacted portions are noted as Business Confidential.

BOSTON OPTIONS EXCHANGE GROUP, LLC

**[FIFTH]SIXTH AMENDED AND RESTATED
OPERATING AGREEMENT**

This [FIFTH]SIXTH AMENDED AND RESTATED OPERATING AGREEMENT is made as of [January 26, 2005,]_____, 2008, by and among **MX US 2, Inc.**, a Delaware corporation (“MX”) and a wholly owned subsidiary of **Bourse de [Montreal] Montréal Inc.**, a company incorporated in Quebec, Canada (the [“Bourse[”]”), **Boston Stock Exchange, Inc.**, a corporation organized under the laws of Delaware (“BSE”), **Interactive Brokers Group LLC**, a limited liability company [“BSE”), **IB Exchange Corporation**, a corporation organized under the laws of [Connecticut (“IB”) Delaware (“IB”), **Citigroup Financial Products Inc.**, a corporation organized under the laws of Delaware (“Citigroup”), **Strategic Investments II, Inc.**, a corporation organized under the laws of Delaware (“Strategic Investments”), **Citadel Derivatives Group LLC**, a limited liability company organized under the laws of Delaware (“Citadel”), **Credit Suisse First Boston Next Fund Inc.**, a corporation organized under the laws of Delaware (“CSFB”), **Lab Morgan Corp.**, a corporation organized under the laws of Delaware (“Lab Morgan”), **UBS Americas Inc.** (f/k/a UBS (USA) Inc.), a corporation organized under the laws of Delaware (“UBS”), **Aragon Solutions Ltd.**, a company organized under the laws of the British Virgin Islands (“Aragon”), **Morris Consulting, LLC**, a limited liability company organized under the laws of Illinois (“Morris Consulting”), **Boston Options Exchange Group, LLC**, a limited liability company organized under the laws of Delaware (“BOX”) and all other Persons who become a party hereto as Members of BOX, in accordance with the terms hereof and the **Bourse**, for the purpose of recording their agreement regarding the affairs of BOX and the conduct of its business.

WHEREAS, on January 16, 2002 the Bourse, BSE and IB caused a Certificate of Formation (the "**Certificate**") in the form of **Exhibit 1** hereto to be filed with the Office

of the Secretary of State of the State of Delaware for the purpose of commencing the existence of BOX pursuant to the Act (as defined below);

WHEREAS, the Bourse, BSE, and IB originally formed BOX for the purpose of developing and operating an electronic market as a facility of [the] BSE for trading (i) options on Individual U.S. Equities, U.S. equity indices and U.S. Exchange traded funds and (ii) single stock futures;

WHEREAS, the Bourse, BSE, IB and BOX are parties to that certain Operating Agreement of BOX, dated as of January 17, 2002 (the "**Original Operating Agreement**"), as amended by an Amended and Restated Operating Agreement among the parties thereto dated as of June 21, 2002 (the "**Amended Operating Agreement**"), as amended by a Second Amended and Restated Operating Agreement among the parties thereto dated as of July 25, 2003 (the "**Second Amended Operating Agreement**"), as amended by a Third Amended and Restated Operating Agreement among the parties thereto dated as of January 23, 2004 (the "Third Amended Operating Agreement")[and]; as amended by a Fourth Amended and Restated Operating Agreement among the parties thereto dated as of July 13, 2004 (the "**Fourth Amended Operating Agreement**"), and as amended by a Fifth Amended and Restated Operating Agreement among the parties thereto dated as of January 26, 2005 (the "**Fifth Amended Operating Agreement**"); [and]

WHEREAS, BSE, effective as of the date hereof, transferred all of its respective record and beneficial ownership interest in Class A Membership Units to MX;

WHEREAS, the Members desire to amend and restate the [Fourth] Fifth Amended Operating Agreement upon the terms and conditions hereinafter set forth.

Accordingly, the parties hereby agree to amend and restate the [Fourth] Fifth Amended Operating Agreement as follows:

Article 1

Definitions

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

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

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

"**Advisors**" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

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

"Agreement" means this [Fifth] Sixth Amended and Restated Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

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

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

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

[**"Bourse License"** means the license, to be entered into between the Bourse and BOX, from the Bourse to BOX of the right to use the name "Bourse de Montreal" in connection with the business of BOX.]

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

[**"BOX Confidential Information"** means any confidential or proprietary information of BOX, including any confidential or proprietary information conveyed to BOX pursuant to this Agreement or any Related Agreements.]

"BOX Confidential Information" includes any financial, scientific, technical, trade or business secrets of BOX and any financial, scientific, technical, trade or business materials that BOX treats, or is obligated to treat, as confidential or proprietary, including, but not limited to, innovations or inventions belonging to BOX and confidential information obtained by or given to BOX about or belonging to its suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others. The definition of "BOX Confidential Information," with respect to any Person, shall not include information which: (i) is publicly known through publication or otherwise through no wrongful act of such Person; or (ii) is received by such Person from a third Party who rightfully discloses it to such Person without restriction on its subsequent disclosure.

"**BOX Market**" means the market that will be developed and operated by BOX pursuant to Section 3.1 hereof.

"**BOX Options Participant**" means a firm or organization that is registered with BOX pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an order flow provider or market maker.

"**BOX Products**" means (i) option contracts on Individual U.S. Equities, (ii) option contracts on U.S. Equity indices, (iii) option contracts on U.S. Exchange traded funds, (iv) [single stock futures on] Individual U.S. Equities and (v) such other products as the Board may from time to time approve for Trading on the BOX Market.

["**BSE**" has the meaning set forth in the preamble.]

"**BOXR**" means Boston Options Exchange Regulation, LLC, a limited liability company organized under the laws of Delaware. BOXR is a wholly-owned subsidiary of BSE and BSE has delegated certain regulatory obligations and functions to BOXR.

["**BSE Cap**" *Business Confidential.*]

"**BSE**" means Boston Stock Exchange, Inc., a corporation organized under the laws of Delaware, and includes its successors and assigns, *provided* that any such successor or assign is an SRO or a national securities exchange pursuant to the Exchange Act and *provided further* that BOX consents in writing to the naming of each such respective successor or assign. For the avoidance of doubt, a transaction that results in a change of control of BSE shall not be deemed to require the consent of BOX hereunder unless such transaction would cause the separate corporate existence of BSE to cease or would result in the termination or cessation of BSE's status as an SRO or a national securities exchange pursuant to the Exchange Act.

["**BSE License**" means the license, to be entered into between BSE and BOX, from BSE to BOX of the right to use the name "Boston Stock Exchange" in connection with the name and business of BOX.]

"**Capital Account**" *Business Confidential.*

"**Capital Contribution**" means the amount of cash and the fair market value of all property and/or services contributed to BOX by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of BOX. Any reference in this Agreement to the Capital Contribution of a Member shall include the Capital Contribution of any prior Member in respect of the same Unit or Units.

"**Certificate**" has the meaning set forth in the recitals hereto.

“Chief Executive Officer” or “CEO” has the meaning set forth in Section 4.7 herein.

“Class A Member” shall mean (i) each of [Bourse (with respect to 3,325 Units), BSE, IB (with respect to 2,375 Units), Citigroup (with respect to 475 Units), Citadel, CSFB, Lab Morgan, UBS, and Aragon] the parties identified as holders of Class A Membership Units on the attached Schedule A, (ii) any transferee of all or any portion of the Class A Membership Units of a Class A Member who has been admitted to BOX as an additional Member in accordance with the terms of this Agreement, (iii) any Class B Member who has converted Class B Membership Units into Class A Membership Units pursuant to Section 2.5(d) hereof, or (iv) any other Person who has been admitted to BOX as a Class A Member in accordance with the terms of this Agreement.

“Class A Membership Units” or “Class A Units” shall mean equal units of limited liability company interest in BOX, including an interest in the ownership and profits and losses of BOX and the right to receive distributions from BOX as set forth in this Agreement.

“Class B Dividend” shall mean, with respect to any fiscal year, the greater of (i) 3% of the sum of the Purchase Price per annum plus any accrued and unpaid dividends compounded thereon (which shall accrue until the earlier of December 31, 2014 or the dissolution of BOX) or (ii) the dividend paid, with respect to such fiscal year, if any, on the Class A Membership Units on an as-if converted basis. For clarification purposes, the amount described in clause (i) of the preceding sentence shall only be payable in the event of a dissolution as defined in Section 2.5(b).

“Class B Member” shall mean (i) each of [Strategic Investments (with respect to 500 Units), Bourse (with respect to 370 Units), IB (with respect to 265 Units), and Citigroup (with respect to 25 Units)] the parties identified as holders of Class B Membership Units on the attached Schedule A, (ii) any transferee of all or any portion of the Class B Membership Units of a Class B Member who has been admitted to BOX as an additional Member in accordance with the terms of this Agreement or (iii) any other Person who has been admitted to BOX as a Class B Member in accordance with the terms of this Agreement.

“Class B Membership Units” or “Class B Units” shall be identical to Class A Membership Units except as otherwise expressly provided in this Agreement.

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

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

[**“Competing Business”**] means any electronic market for the Trading of any of the BOX Products.

"Competitor" shall mean any securities market that derives 25% or more of its revenue from the trading of options contracts.

"Conversion" has the meaning set forth in Section 2.5(d) hereof.

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

"Directors" has the meaning set forth in Section 4.1(a) hereof. [Each] For the avoidance of doubt, the Regulatory Director is considered a Director, as set forth in Section 4.1(a) hereof. Each Director other than the Regulatory Director shall be a "manager" within the meaning of the Act.

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

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

"Effective Date" means the date hereof.

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

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

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

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

["IB License" means the license, to be entered into by IB and BOX, from IB to BOX of the right to use the name "Interactive Brokers Group" in connection with the business of BOX.]

"IB Offer Period" has the meaning set forth in Section 8.6([b]a)(ii) hereof.

"IB Transfer" has the meaning set forth in Section 8.6([b]a)(i) hereof.

"IB Transfer Notice" has the meaning set forth in Section 8.6([b]a)(i) hereof.

"Indemnitees" has the meaning set forth in Section 14.1 hereof.

"Individual U.S. Equities" means (i) U.S. ordinary shares, (ii) foreign shares trading as U.S. dollar-denominated, U.S. registered American depository receipts, (iii) single stock futures and (iv) foreign ordinary shares trading in the U.S. as foreign

ordinary shares whether or not these also trade as U.S. dollar-denominated U.S. registered American depository receipts.

"Initial BSE Asset Contribution" has the meaning set forth in Section 7.1(b) hereof.

"Initial Capital Contributions" has the meaning set forth in Section 7.1(d).

"Initial IB Asset Contribution" has the meaning set forth in Section 7.1(a) hereof.

"Initial Operating Budget" has the meaning set forth in Article 6 hereof.

"Launch Date" means February 6, 2004.

"Liquidation Preference Amount" means, with respect to any Class B Membership Unit, an amount equal to the Purchase Price of the Class B Unit plus all accrued but unpaid Class B Dividends with respect thereto.

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

"Major Action" has the meaning set forth in Section 4.4(b) hereof.

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

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

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

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

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

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

"Neutral Arbitrators" has the meaning set forth in Section 13.1(a) hereof.

"New Issuance" has the meaning set forth in Section 8.6([c]b)(i) hereof.

"New Issuance Notice" has the meaning set forth in Section 8.6([c]b)(i) hereof.

"New Issuance Period" has the meaning set forth in Section 8.6([c]b)(ii) hereof.

"Non-Market Matters" has the meaning set forth in Section 3.2(a)(ii) hereof.

"Nonrecourse Debt" *Business Confidential.*

"Nonrecourse Deductions" *Business Confidential.*

"Non-Transferring Member" has the meaning set forth in Section 8.3 hereof.

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

"Permitted Recipients" are comprised of: (A) BSE's Chief Regulatory Officer and only those members of his regulatory staff responsible for regulatory technology and budget, counsel to BSE's Chief Regulatory Officer, or staff of BSE's internal audit department (it being agreed and understood, for purposes of this definition that these roles may be performed for BSE by Nasdaq employees serving comparable regulatory functions for Nasdaq), (B) any member of the BSE Board serving on the BOX Committee, as defined herein, or the BSE Regulatory Oversight Committee, (C) Nasdaq's Chief Regulatory Officer and his staff in the Office of General Counsel, (D) any member of the Nasdaq Board of Directors serving on the Nasdaq Regulatory Oversight Committee, and (E) any Professional Services provider.

"Person" means any individual, partnership, corporation, association, trust, limited liability company, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.

"Professional Services" means services performed by outside counsel, consultants, Regulatory Outsourcing, or subcontractors for the benefit of BOX or the BOX Market.

"**Proposed IB Transferee**" has the meaning set forth in Section 8.6([b]a)(i) hereof.

"**Proposed New Member**" has the meaning set forth in Section 8.6([c]b)(i) hereof.

"**Purchase Price**" means the purchase price (\$6,367.80 per unit) paid by Class B Members to acquire Class B Membership Units from BOX.

"**Regulatory Authority**" means BSE as the non-equity, non-Member SRO authority of BOX and, together with and pursuant to delegated authority from BSE, the Boston Options Exchange Regulation LLC as approved by the SEC. Notwithstanding the foregoing, the Regulatory Authority may be changed, provided any such new Regulatory Authority is an SRO, by a vote of the Board and the approval of the SEC.

"**Regulatory Authority Rules**" means rules of the Regulatory Authority, including for the avoidance of doubt, the BOX Rules, that constitute "rules of an exchange," within the meaning of Section 3 of the Exchange Act, and that pertain to the BOX Market.

"**Regulatory Deficiency**" means the operation of BOX (in connection with matters that are not Non-Market Matters) or the BOX Market (including, but not limited to, the System) in a manner that is not consistent with the Regulatory Authority Rules and/or the SEC Rules governing the BOX Market or BOX Options Participants, or that otherwise impedes the Regulatory Authority's ability to regulate the BOX Market or BOX Options Participants or to fulfill its obligations under the Exchange Act as an SRO.

"**Regulatory Director**" means the individual designated as such by BSE pursuant to Section 4.1(b). The Regulatory Director must be a member of the senior management of the regulation staff of the Regulatory Authority, who is separated from the business operations of BSE via effective information barriers. The Regulatory Director shall not be an employee, officer or director of The NASDAQ OMX Group, Inc. ("Nasdaq") or its Affiliates, other than BSE and BSE's subsidiaries.

"**Regulatory Outsourcing**" shall mean all BOX-related regulatory functions that are outsourced by BSE to the Financial Industry Regulatory Authority ("FINRA") or other service provider that is an SRO.

"**Regulatory Services Agreement**" means the Regulatory Services Agreement entered into [between Boston Options Exchange Regulation LLC and] by and among BSE, BOXR, BOX, and Nasdaq, dated [April 4, 2002,] [_____], 2008, as amended from time to time[.] ["**Regulatory Services Provider**" shall initially mean Boston Options Exchange Regulation LLC and thereafter the provider of regulatory services contemplated by the], or any subsequent Regulatory Services Agreement entered into by BOX and any other party that is an SRO that will serve as the Regulatory Authority in place of BSE, as approved by the SEC.

"Related Agreements" means the Technical and Operational Services Agreement, the Regulatory Services Agreement[, the Bourse License, the BSE License, the IB License] and any other agreement among or between any of the Members and BOX, or to which the Members or BOX are otherwise parties, in all cases necessary for the conduct of the business of BOX.

"SEC" means the United States Securities and Exchange Commission.

"SEC Rules" means the Exchange Act and such statutes, rules, regulations, interpretations, releases, orders, determinations, reports, or statements as are administered, enforced, adopted or promulgated by the SEC.

"Senior Executive" has the meaning set forth in Section 4.7 hereof.]

"SRO" means a self-regulatory organization pursuant to Section 3 of the Exchange Act.

"System" means the technology, know-how, software, equipment, communication lines or services, services and other deliverables or materials of any kind to be provided by the Bourse (or any applicable third party) as may be necessary or desirable for the operation of the BOX Market.

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

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

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

"Technical and Operational Services Agreement" means the Technical and Operational Services Agreement entered into by the Bourse and BOX, dated [April 4, 2002,] September 25, 2005, as amended from time to time.

"Total Votes" has the meaning set forth in Section 4.3(a) hereof.

"Trading" means the availability of the System to authorized users for entering, modifying, and canceling orders concerning the BOX [products] Products.

"Transferee" has the meaning set forth in Sections 8.2 and 8.3 hereof.

"Transfer Notice" has the meaning set forth in Sections 8.2(a) and 8.3(a) hereof.

"Transferring Member" has the meaning set forth in Sections 8.2 and 8.3 hereof.

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

"Units" shall mean Class A Membership Units and Class B Membership Units. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to BOX (which rights [, except as otherwise specifically provide in this Agreement with respect to BSE,] shall be vested in only duly admitted [members] Members of BOX), or to exercise any right of a [member] Member of BOX under this Agreement, the Act or other applicable law.

"Unpermitted Deficit" has the meaning set forth in Section 10.2 hereof.

1.2. **Other Definitions**

The words "include," "includes," and "including" where used in this [agreement] Agreement are deemed to be followed by the words "without limitation."

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

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

Article 2

Organization

2.1. **Formation and Continuation of BOX.** Each of the parties hereto hereby (a) ratifies the formation of BOX as a limited liability company under the Act, the execution of the Certificate and the filing of the Certificate in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of BOX shall be Boston Options Exchange Group LLC. The principal place of business of BOX shall be located at 100 Franklin Street, Boston, MA 02110. The Board may, at any time, change the name or the principal place of business of BOX and shall give notice thereof to the Members.

2.2. **Registered Agent and Office.** The registered agent for service of process on BOX in the State of Delaware required to be maintained by §18-104 of the Act shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808 and the registered office of BOX in the State of Delaware shall be c/o Corporation Service Company at the same address. The Board may at any time change the registered agent of BOX or the location of such registered office and shall give notice thereof to the Members.

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

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

2.5. **The Units.**

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

(b) **Class B Membership Units.** In the event of the dissolution of BOX, Class B Members will be entitled to receive, of remaining BOX assets after satisfaction of amounts due to BOX creditors in accordance with the Act and applicable law, their Liquidation Preference Amount, prior to any distribution of assets to Class A Members. If there are insufficient assets to pay all Class B Members their full Liquidation Preference Amount, the assets shall be distributed pro rata among the Class B Members. For purposes of this Agreement, a merger or consolidation of BOX in which its members do not retain control or a majority of the voting power in the surviving corporation, or a sale of all or substantially all of BOX's assets, will each also be deemed to be a dissolution of BOX pursuant to this Section 2.5.

(c) **Class B Members Consent.** Notwithstanding anything to the contrary in this Agreement, BOX agrees to secure the consent and approval of all Class B Members prior to: (i) the issuance of any debt, other than capital leases and bank lines of credit, that will rank senior to or be pari passu with the Class B Membership Units; (ii) the issuance of additional Class B Membership Units; and (iii) the use of any other financing method by BOX or its Affiliates that would have the effect of reducing the priority of the Class B Membership Units in the event of the dissolution of BOX within the meaning of Section 2.5(b), collectively; (a "**Financing Event**"). Prior to a Financing Event, the Chairman of the [BOX] Board shall provide written notice to the holders of Class B Units of the Financing Event, and such notice shall give the Class B Unit holders at least fifteen (15) business days after receipt of the notice to notify the Chairman of the [BOX] Board whether the Class B Unit holder intends to grant consent. In the event a Class B Member withholds such consent and subject to the conversion rights specified in Section 2.5(d), BOX shall have the option to redeem such Class B Member's Class B Membership Units at the Liquidation Preference Amount.

(d) **Conversion.** Upon notice to BOX, any Class B Member may elect to cause all or a portion of its Class B Membership Units to convert to an equal number of Class A Membership Units ("**Conversion**"). Without the need of any action by any person, the conversion shall automatically occur the later of (i) ten (10) business [(10)] days following receipt by BOX of the aforementioned notice, (ii) such time as specified in such notice, or (iii) the delivery to BOX of all certificates representing the Class B Membership Units to be converted. Notwithstanding the foregoing, prior to the dissolution of BOX, the Chairman of the [BOX] Board shall provide written notice to the holders of Class B Units of the amount of assets available for distribution on a per Unit basis to holders of Class A Membership Units and Class B Membership Units upon dissolution, and such notice shall give the Class B Unit holders at least five (5) business days after receipt of the notice to notify the Chairman of the [BOX] Board whether the Class B Unit holder intends to exercise the conversion right. BOX shall issue certificates representing the new Class A Membership Units in accordance with this Agreement. Except for the right to designate a Director in accordance with Section 4.1, all rights related to the Class B Membership Units will terminate automatically upon any conversion into Class A Membership Units.

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

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

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

2.8 **Certificates.**

(a) All Units shall be represented by one or more certificates (a “**Unit Certificate**”), issued to the registered owner of such Units by BOX. Each such Unit Certificate shall be denominated in terms of the number and class of Units in BOX evidenced by such Unit Certificate and shall be signed by at least one officer of BOX on behalf of BOX. [On the date hereof,] BOX shall [issue] have issued to each Person one or more Unit Certificates in the name of such Person to represent the Units owned by such Person as of the date hereof.

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

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

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

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

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

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

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

(e) Legends.

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

“THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF[,] THE [FIFTH AMENDED AND RESTATED] OPERATING AGREEMENT OF BOSTON OPTIONS EXCHANGE GROUP LLC, [DATED AS OF JANUARY __, 2005,] AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE “AGREEMENT”). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS

REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

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

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

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

Article 3

Purpose

3.1. **Purpose.** The purpose of BOX is to develop, own and operate an electronic market for [Trading] trading BOX Products and to engage in all related activities arising therefrom or relating thereto or necessary, desirable, advisable, convenient, or appropriate in connection therewith as the Members may determine. BOX shall not engage in any other business or activity except as approved in accordance with this Article 3 and Section 4.4(b)(ii) [hereof].

3.2. **Roles of [Founding Members.** It is the intention of] Certain Parties. The Regulatory Authority, the Bourse, [BSE, IB and BOX that the Bourse, BSE and IB

will initially] and IB will provide the [following] products and services set forth below to BOX:

[(a) Pursuant]

(a)

(i) BSE will provide SEC-approved SRO status for the BOX Market, the Regulatory Authority will provide the regulatory framework for the BOX Market and the Regulatory Authority, together with BOX, will have regulatory responsibility for the activities of the BOX Market. In addition, the Regulatory Authority will provide regulatory services to BOX pursuant to the Regulatory Services Agreement[, BSE will provide U.S. Securities and Exchange Commission approved self-regulatory organization ("SRO") services and status as the regulatory framework for the BOX Market. As the Regulatory Services Provider, BSE will have the sole regulatory responsibility for the activities of BOX. BSE will also provide certain administrative services.]. Nothing in this Agreement shall be construed to prevent the Regulatory Authority from allowing BOX to perform activities that support the regulatory framework for the BOX Market, subject to oversight by the Regulatory Authority.

(ii) The Regulatory Authority shall receive notice of planned or proposed changes to BOX (but not to include changes relating solely to one or more of the following: marketing, administrative matters, personnel matters, social or team-building events, meetings of Members, communication with Members, finance, location and timing of Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the BOX Market and de minimis items ("Non-Market Matters")) or the BOX Market (including, but not limited to, the System), pursuant to request for change procedures established by the mutual agreement of BOX and the Regulatory Authority, which will require an affirmative approval of such changes by the Regulatory Authority prior to implementation, not inconsistent with this Agreement. For the avoidance of doubt, planned or proposed changes subject to the foregoing sentence shall include, without limitation: (A) planned or proposed changes to the System; (B) the sale by BOX of any material portion of its assets; (C) taking any action to effect a voluntary, or which would precipitate an involuntary, dissolution or winding up of BOX; or (D) obtaining regulatory services from a regulatory services provider other than the Regulatory Authority. The Regulatory Authority shall also receive notice of any planned or proposed change, pursuant to which the BOX Market will cease to be a facility of BSE within the meaning of Section 3 of the Exchange Act, or any preliminary steps thereto. BOX shall not be required, however, to obtain consent from the Regulatory Authority for any planned or proposed change, pursuant to which the BOX Market will

cease to be a facility of BSE within the meaning of Section 3 of the Exchange Act, or any preliminary steps thereto, provided that any SEC approval required prior to such step shall have been obtained.

(iii) In the event that the Regulatory Authority, in its sole discretion, determines that the proposed or planned changes to BOX or the BOX Market (including, but not limited to, the System) set forth in Section 3.2(a)(ii) could cause a Regulatory Deficiency if implemented, the Regulatory Authority may direct BOX, subject to approval of the BOXR Board of Directors, to modify the proposal as necessary to ensure that it does not cause a Regulatory Deficiency. BOX will not implement the proposed change until it, and any required modifications, are approved by the BOXR Board of Directors. The costs of modifications undertaken pursuant to this Section shall be paid by BOX. Notwithstanding the foregoing, nothing in this Agreement shall be construed to allow the Regulatory Authority to prevent BOX from implementing changes approved by the SEC that allow the BOX Market to cease to be a facility of BSE within the meaning of Section 3 of the Exchange Act.

(iv) In the event that the Regulatory Authority, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, the Regulatory Authority may direct BOX, subject to approval of the BOXR Board of Directors, to undertake such modifications to BOX (but not to include Non-Market Matters) or the BOX Market (including, but not limited to, the System), including pursuant to the Technical and Operational Services Agreement, as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow the Regulatory Authority to perform and fulfill its regulatory responsibilities under the Exchange Act. The costs of modifications undertaken pursuant to this Section shall be paid by BOX.

(v) The Regulatory Authority shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Board; provided, however, that the foregoing sentence shall not be construed to require the consent of the Board to subcontracts entered into by the Regulatory Authority with FINRA in accordance with the terms of the Regulatory Services Agreement.

(b) *Business Confidential*

(c) *Business Confidential.*

Article 4

Governance

4.1. Board of Directors.

(a) The Members shall establish a Board of Directors of BOX (the "**Board**" or "**Directors**") to implement this Agreement. The Board shall be comprised of from six (6) to fifteen (15) Directors. [The] Except for the Directors previously designated by BSE, who shall cease to serve as Directors as of the effectiveness of this Agreement and be replaced by Directors designated by MX, the Directors serving on the Board immediately prior to the execution of this [Fifth Amended Operating] Agreement will hereby continue as Directors of BOX without any further action by any Member or other Person. Except as otherwise specifically provided in this Agreement or required under the Exchange Act, the Board will manage the development, operations, business and affairs of BOX[,] without the need for any approval of any Member or other Person. Upon the effectiveness of this Agreement, the Board shall be comprised as follows:

([b]i) IB [and the BSE] shall be entitled to designate two (2) Directors [each]. [The Bourse] MX shall be entitled to designate [three (3) Directors. Thereafter, if IB, Bourse or BSE maintains a Percentage Interest of *Business Confidential* or greater, IB and BSE shall have the right to retain/designate two (2) Directors and Bourse shall have the right to retain/designate three (3) Directors. If IB, the Bourse or BSE maintains a Percentage Interest of from *Business Confidential* it shall have the right to retain/designate one (1) Director.] five (5) Directors. Additionally, as long as BOX remains a facility of [the] BSE pursuant to Section 3(a)(2) of the Exchange Act [of 1934, as amended, the], BSE shall have the right to retain/designate one (1) Regulatory Director, whether or not [the BSE maintains any Percentage Interest or] BSE is admitted [to BOX] as a Member of BOX.

([c]ii) Citigroup, Strategic Investments, Citadel, CSFB, Lab Morgan, and UBS shall each be entitled to designate one (1) Director.

([d]iii) Mr. Will Easley of Aragon shall have the right to serve as a Director for the period of time in which he [serves in the capacity as a Senior Executive] owns no less than 100 units of BOX.

([e]iv) Transferees *Business Confidential* who purchase and hold a Percentage Interest of *Business Confidential* or greater and who are admitted to BOX as Members of BOX in accordance with this Agreement shall have the right to designate one (1) Director each.

([f]b) Each Director shall serve at the pleasure of the Member which designated such Director (or, in the case of the Regulatory Director, the Regulatory Authority) and

may from time to time be replaced by such Member (or, in the case of the Regulatory Director, the Regulatory Authority). Any such replacement must be a member of senior management or Board of Directors of the designating party or an Affiliate of such designating party or of its principal owner or owners, except for the Regulatory Director as otherwise provided herein. Each Member (or, in the case of the Regulatory Director, the Regulatory Authority) shall notify the other Members and the Regulatory Authority in writing of any person designated by it to serve as a Director and any replacement for such person promptly following such designation or replacement. The Board, by a majority of Total Votes, may terminate a Director (but not the Regulatory Director): (i) in the event such Director has violated any provision of this Agreement, any federal or state securities law; or (ii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors. The Regulatory Authority may terminate the Regulatory Director: (i) in the event such Regulatory Director has violated any provision of this Agreement, any federal or state securities law; or (ii) if the Regulatory Authority determines that such action is necessary or appropriate in the public interest or for the protection of investors. In the event the Regulatory Director ceases to serve for any reason, the Regulatory Authority shall appoint a new Regulatory Director in accordance with the requirements set forth herein.

([g]c) Subject to the provisions of [paragraph (e) paragraphs (a)(i) and (a)(iv) above and Section 4.4(b)(xi), in the event of the addition of any new Members or the transfer of interest from a Member to a Transferee Member, the Board shall determine the number of Board seats, if any, to be designated by the new or Transferee Member and will determine the disposition of the Board seats designated by any Transferring Member.

([h] d) *Business Confidential*.

([i]e) In the event that a Director has not been designated or is unable to attend or participate in any meeting of the Board or any committee thereof, the Member that designated or has the right to designate such Director (or, with respect to the Regulatory Director, the Regulatory Authority) may appoint an individual to attend such meetings as a non-voting advisor and to participate in the deliberations of such meetings. In each such case, in order to qualify as a non-voting advisor and to participate in any such meeting, such individual must satisfy the requirements, as set forth in this Agreement, applicable to the Director or Regulatory Director for whom such advisor is a substitute.

(f) The BOXR Board of Directors (“**BOXR Board**”) shall include at least two (2) BOXR Options Participant directors (but not less than twenty percent (20%) of all directors on the BOXR Board) selected in accordance with the BOXR Limited Liability Company Agreement and By-Laws, as approved by the SEC in Securities Exchange Act Release Number _____ [insert date], and at least four (4) directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates, or any Regulatory Outsourcing provider (other than service solely as a director of BOXR and/or BSE). For so long as BOXR remains a facility of BSE pursuant to Section 3(a)(2) of the Exchange Act, BOXR shall also have the right to recommend at least ten percent (10%) of the BOXR Board (but no fewer than one (1) director) for election to the BOXR Board, and BSE

shall elect the individuals recommended by BOX if they satisfy the requirements for such directors established by the BOXR Limited Liability Company Agreement and By-Laws, as approved by the SEC in Securities Exchange Act Release Number _____ . A BOXR director recommended by BOX shall: (1) have the right to attend all BOXR Board meetings and committees thereof; (2) receive equivalent notice of BOXR Board meetings and committees thereof as other BOXR directors; and (3) receive a copy of the meeting materials provided to other BOXR directors, including, without limitation, agendas, action items and minutes.

The BSE Board of Directors (“**BSE Board**”) shall delegate all actions and decisions relating to the Regulatory Authority Rules, regulation of the BOX Market (except regulatory actions and decisions delegated to the BSE Regulatory Oversight Committee) and appeals from regulatory decisions of the BOXR Board to a Committee of the BSE Board, herein called the “**BOX Committee.**” The BOX Committee shall be comprised of a BOX Options Participant representative, in accordance with BSE’s By-Laws, as approved by the SEC in Securities Exchange Act Release Number _____, to serve as a representative of BOX Options Participants, and four (4) other directors who do not have a material direct or indirect relationship with Nasdaq, its Affiliates or any Regulatory Outsourcing provider (other than service as directors of BSE and/or BOXR). At least 50% of the BOX Committee must be Public Directors, as defined in BSE’s By-Laws, as approved by the SEC in Securities Exchange Act Release Number _____ . For so long as BOX remains a facility of BSE pursuant to Section 3(a)(2) of the Exchange Act, BOX shall have the right to designate one (1) non-voting participant to the BSE Board. The non-voting participant shall: (1) have the right to attend all meetings of the BOX Committee and all BOX-related deliberations of the BSE Board and committees thereof (collectively, “**BOX-Related Meetings**”); (2) receive equivalent notice of **BOX-Related Meetings** as BSE directors; and (3) receive a copy of the meeting materials provided to BSE directors, including agendas, action items and minutes for all **BOX-Related Meetings.**

BSE agrees that the directors sitting on the BOXR Board or any committees thereof or the BOX Committee, or otherwise engaged in BOX-Related Meetings (other than by membership on the BSE Regulatory Oversight Committee) shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider (other than service as directors of BSE and/or BOXR). BSE further agrees that all other persons permitted to attend meetings of the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-Related Meetings shall not have a material direct or indirect relationship with Nasdaq or its Affiliates or any Regulatory Outsourcing provider unless they are (i) Permitted Recipients, (ii) BOXR directors, officers or employees, (iii) other parties making presentations to directors of the BSE Board engaged in BOX-Related Meetings, the BOXR Board, the BOX Committee or the BSE Regulatory Oversight Committee if such parties’ participation is only to the extent necessary to make such presentations, or (iv) consented to by BOX. For the avoidance of doubt, for purposes of this Section 4.1(f), "material direct or indirect relationship" shall include, without limitation, any of the following: being an Affiliate; serving as a board member, employee, officer, consultant,

advisor, or any Regulatory Outsourcing provider; being a party to any contractual or other relationship pursuant to which more than \$50,000 is paid; reporting to, controlling, being controlled by or holding an investment greater than 5% in any such Person; and being a parent, child, sibling, spouse or in-law of such Person.

4.2. **Authority and Duties of Board; Committees.**

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

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

(c) **Executive Committee.** There may be an executive committee of the Board consisting of [at least one or more] the Chairman of the Board, Vice-Chairman of the Board, CEO, one (1) Director designated by IB, as long as IB is a Member, and two (2) Directors designated by [each of IB, BSE and the Bourse] MX, as long as [such Person] MX is [still] a Member, such [executive committee] Executive Committee to be formed by resolution passed by the Board. The act of a majority of the members of such committee shall be the act of the committee. Said committee may meet at stated times or on notice to all by any of their own number, and, subject to Section 4.2([f]e) below, shall have and may exercise all powers of the Board in the management of the business affairs of [the Company] BOX. Vacancies in the membership of the committee shall be filled by the Board in accordance with this Section 4.2(c) at a regular meeting or at a special meeting of the Board called for that purpose.

(d) ~~[[deleted]]~~(e) **Other Committees.** The Board may also designate one or more committees in addition to the [executive committee] Executive Committee, by resolution or resolutions passed by a majority of the whole Board; such committee or

committees shall consist of one or more Member designated Directors of BOX, except as otherwise provided herein, and, subject to Section 4.2([f]e) below, to the extent provided in the resolution or resolutions designating them, shall have and may exercise specific powers of the Board in the management of the business and other affairs of BOX to the extent permitted by this Agreement. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. The Regulatory Director is not permitted to serve as a Director on any committees of the Board, except for any authorized regulatory committee(s). Notwithstanding the foregoing, the Regulatory Director shall (1) have the right to attend all meetings of the Board and committees thereof; (2) receive equivalent notice of meetings as other BOX Directors; and (3) receive a copy of the meeting materials provided to other BOX Directors, including agendas, action items and minutes for all meetings.

([f]e) **Powers Denied to Committees.** Committees of the Board shall not, in any event, have any power or authority to transact any Major Action or an action specifically covered by Section [4.4(c) or 4.4(d).] 4.4.

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

4.3 (a) **Meetings.** The Board will meet as often as the members thereof deem necessary, but not less frequently than every three (3) months. Meetings may be conducted in person or by telephone or in any other manner agreed to by the Board. Any of the Members or the Regulatory Authority may call a meeting of the Board upon fourteen (14)[-] calendar days prior written notice. In any case where the convening of a meeting of Directors is a matter of urgency, notice of such meeting may be given not less than forty-eight (48) hours before such meeting is to be held. No notice of a meeting shall be necessary when all members of the Board are present. In the event that the Board consists of less than eight (8) Directors, the attendance of at least four (4) Directors shall constitute a quorum for purposes of any meeting of the Board. In the event that the Board consists of eight (8) or more Directors, the attendance of at least a majority of all the Directors shall constitute a quorum for purposes of any meeting of the Board. Except as may otherwise be provided by this Agreement, each of the Directors will be entitled to vote on any action to be taken by the Board, except that the [Senior Executive] CEO (if a Director) shall not be entitled to vote on matters relating to his or her powers, compensation or performance. There shall be a total of 100 votes (the "**Total Votes**") available to be voted on any action to be taken by the Board. Each Director, except as limited by the provisions of Section 8.4(h), shall be entitled to vote that percentage of the Total Votes equal to the quotient obtained by dividing (i) the quotient of (A) the number of Units held by the Member that designated such Director (if applicable, rounded down

to the nearest whole Unit) divided by (B) the aggregate number of Units held by all Members that designated Directors by (ii) the number of Directors designated by such Member. All quorum and voting requirements shall be adjusted accordingly for the suspension of any Member made pursuant to Sections 5.9, 8.4(g) or 8.4(h). Any Director shall be entitled to vote the votes allocated to another Director after having received such Director's proxy in writing. Unless otherwise provided by this Agreement, any action to be taken by the Board shall be considered effective only if approved by at least a majority of the votes entitled to be voted on such action. Meetings of the Board may be attended by other representatives of the Members, the Regulatory Authority and other persons related to BOX as agreed to from time to time by the Board and as otherwise specified in this Agreement. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if written consents, setting forth the action so taken, are executed by the members of the Board or committee, as the case may be, representing the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all members of the Board or committee, as the case may be, permitted to vote were present and voted. The Board will set up procedures relating to the recording of minutes of its meetings.

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

4.4. **Special Voting Requirements.**

(a) Notwithstanding the provisions of Section 4.3 regarding voting requirements and subject to the other provisions of this Agreement, no action with respect to any Major Action (as defined in paragraph (b) below), shall be effective unless : (i) at all times when IB[, BSE] and [the Bourse] MX are the only Members of BOX, approved by unanimous consent of the Board, or (ii) at all times when IB[, BSE] and [the Bourse] MX are *not* the only Members of BOX, approved by Directors holding a majority of the Total Votes, including the affirmative vote of all of the votes of Directors designated by each of IB[, BSE] and [the Bourse] MX, in each case acting at a meeting. In addition, unless approved by the Board as provided above, none of the Members on behalf of BOX shall enter into or permit BOX to enter into any Major Action. No other Member votes are required for a Major Action. For the avoidance of doubt, however, no action may be taken to alter the rights specifically granted to the Class B Units or individual Members or the Regulatory Authority or adversely affect such holders or Members or the Regulatory Authority without complying with Section 19.1.

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

- (i) merger or consolidation of BOX with any other entity or the sale by BOX of any material portion of its assets;
- (ii) entry by BOX into any line of business other than the business described in Article 3;

- (iii) conversion of BOX from a Delaware limited liability company into any other type of entity;
 - (iv) except as expressly contemplated by this Agreement and the Related Agreements, entering into any agreement, commitment, or transaction with [the Bourse] MX or any of its Affiliates, BSE or any of its Affiliates, or IB or any of its Affiliates or any other Member or any of its Affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to BOX than BOX would obtain in a comparable transaction or agreement with a third party;
 - (v) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding-up of BOX;
 - (vi) except as otherwise provided in the Technical and Operational Services Agreement, operating the BOX Market utilizing any other software system other than the System;
 - (vii) except as otherwise provided in the Regulatory Services Agreement, operating the BOX Market utilizing any other [Regulatory Services Provider] regulatory services provider other than [BSE or an Affiliate of BSE] the Regulatory Authority;
 - (viii) entering into any partnership, joint venture or other similar joint business undertaking;
 - (ix) making any fundamental change in the market structure of BOX from that contemplated by the Members as of the date hereof;
 - (x) subject to Article 8, the acquisition of any Units by any Person that results in such Person, alone or together with any Affiliate of such Person, newly holding an aggregate Percentage Interest equal to or greater than twenty percent (20%);
 - (xi) *Business Confidential*;
 - (xii) altering the provisions for Board membership for IB[, BSE] or [the Bourse] MX, specified in Section 4.1([b]a)(i); or
 - (xiii) purchasing Units pursuant to Section 8.2.
- (c)[[deleted]](d)] *Business Confidential*

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

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

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

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

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

(a) the identity of the members of the Board or any committee thereof, any officer or agent of BOX or any Member hereof;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or in any other manner germane to the affairs of BOX;

(c) the Persons who are authorized to execute and deliver any agreement, instrument or document of or on behalf of BOX; or

(d) any act or failure to act by BOX or any other matter whatsoever involving BOX or any Member.

Article 5

Powers, Duties, and Restrictions of BOX and the Members

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

5.2. **Powers of Members.** Except as otherwise specifically provided by this Agreement or required by the Act or by the [U.S. Securities and Exchange Commission] SEC pursuant to the [Securities] Exchange Act [of 1934, as amended], no Member shall have the power to act for or on behalf of, or to bind, BOX, and unless otherwise determined by the Board, all Members shall constitute one class or group of members of BOX for all purposes of the Act.

5.3. **Member Conduct.** Each Member agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the [U.S. Securities and Exchange Commission] SEC and the [BSE] Regulatory Authority, pursuant to their regulatory authority and the provisions of this Agreement; and to engage in conduct that fosters and does not interfere with BOX's ability to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

5.5. **Resignation.** Except as contemplated by Article 8, no Member shall resign from BOX unless and until such Member's required Initial Capital Contribution has been satisfied or specifically assumed by another Person and such Person has become a Member in accordance with this Agreement.

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

5.7. **Claims Against or By Members.** Except as set forth in the Related Agreements or required by the [U.S. Securities and Exchange Commission] SEC pursuant to the [Securities] Exchange Act [of 1934, as amended], any and all matters relating to claims: (i) by BOX against a Member or a former Member or any Affiliate of a Member or a former Member (collectively the "**Member Entities**"); or (ii) by a Member Entity against BOX shall be controlled by the Directors designated by the Member or Members that are not affiliated with such Member Entity. No Director shall be entitled to vote on (A) whether to initiate a claim by BOX against the Member that appointed such Director or an Affiliate of such Member, (B) any matter concerning a claim initiated by BOX against the Member that appointed such Director or a Member Entity affiliated with such Member, or (C) any matter concerning a claim initiated against BOX by the Member that appointed such Director or a Member Entity affiliated with such Member. Any action to be taken by the Board with respect to any such claim shall be considered effective only if approved by at least a majority of the Directors that are not affiliated with such Member Entity.

5.8. **Purchased Services.** Except as set forth in the Related Agreements, all products and services to be obtained by BOX will be evaluated by BOX's management with a view to best practices and all such products and services will be obtained from Members, their Affiliates or third-parties based upon arms-length negotiations, including obtaining quotes for such products or services from third-parties, as appropriate. Notwithstanding the forgoing, Members and their Affiliates will be given preference over third-parties if such Members or Affiliates are willing and able to provide services and terms at least as favorable to BOX as those offered by the third parties.

5.9. **Suspension of Voting Privileges and Termination of Membership.** After appropriate notice and opportunity for hearing, the Board, by a vote of Directors representing 2/3 of the Total Votes, including the affirmative vote of the [BSE] Regulatory Director and excluding the vote of such Member subject to sanction, may suspend or terminate a Member's voting privileges or membership in BOX, under the Act

or this Agreement: (i) in the event such Member is subject to a “statutory disqualification,” as defined in Section 3(a)(39) of the [Securities] Exchange Act [of 1934, as amended]; or (ii) in the event such Member has violated any provision of this Agreement, or any federal or state securities law; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

Article 6

Initial Operating Budget

The Members have agreed on an initial budget (the "**Initial Operating Budget**") for the estimated costs and expenses anticipated to be incurred from initial startup activities, document and rule preparation, acquisition of rights to software, preparation of modifications to same, equipment acquisition, other steps relating to preparation for the commencement of operations through the point at which profitability will be achieved. **Exhibit 2** hereto sets forth (i) the Initial Operating Budget and (ii) the aggregate anticipated capital contributions of the Members (in kind and in cash) which the Members do hereby agree to make.

Article 7

Members; Financing BOX

- 7.1. *Business Confidential*
- (a) *Business Confidential.*
- (b) *Business Confidential.*
- (c) *Business Confidential.*
- (d) *Business Confidential.*
- (e) *Business Confidential.*
- (f) *Business Confidential.*
- (g) *Business Confidential.*
- (h) *Business Confidential.*
- 7.2. *Business Confidential.*
- 7.3. *Business Confidential.*
- 7.4. *Business Confidential.*

7.5. *Business Confidential.*

7.6. **Liability of the Members and Directors.** Except as otherwise provided by the Act, the debts, obligations and liabilities of BOX, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of BOX and not that of any Member or Director or the Regulatory Authority.

Article 8

Transferability of Units

8.1. Restrictions on Transfer

(a) Except for (i) transfers among Members; (ii) transfers by IB permitted under Section 8.6 hereof; or (iii) transfers to Affiliates of a Member, including officers of a Member or such Member's Affiliates, no Person shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, dispose of, sell, alienate, assign, exchange, participate, subparticipate, encumber, or otherwise transfer in any manner (each, a “**Transfer**”) all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement unless prior to such Transfer the transferee is approved by the Board. To be eligible for such Board approval, the proposed transferee must (i) be of high professional and financial standing, (ii) be able to carry out its duties as a Member hereunder, if admitted as such, and (iii) be under no regulatory or governmental bar or disqualification. Notwithstanding the foregoing, registration as a broker-dealer or self-regulatory organization is not required to be eligible for such Board approval.

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

(c) All costs incurred by BOX in connection with the admission to BOX of a substituted Member pursuant to this Article 8 shall be borne by the transferor Member (and if not timely paid, by the substituted Member), including, without limitation, costs of any necessary amendment hereof, filing fees, if any, and reasonable attorneys' fees.

(d) *Business Confidential.*

8.2. *Business Confidential.*

(a) *Business Confidential.*

(b) *Business Confidential.*

(c) *Business Confidential.*

8.3 *Business Confidential*

(a) *Business Confidential.*

(b) *Business Confidential.*

(c) *Business Confidential.*

(d) *Business Confidential.*

(e) *Business Confidential.*

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

(a) In no event shall a Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement take place if such Transfer: (i) in the opinion of tax counsel to BOX, could cause a termination of BOX within the meaning of Section 708 of the Code or, (ii) in the opinion of the Board, based on advice of tax counsel, could cause a termination of BOX's status as a partnership or cause BOX to be treated as a publicly traded partnership for federal income tax purposes, (iii) is prohibited by any state, federal or provincial securities laws, or (iv) is prohibited by this Agreement.

(b) In no event shall all or any part of a Member's Units be Transferred to a minor or incompetent.

(c) The Board may, in addition to any other requirement that the Board may impose, require as a condition of any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units that the transferor furnish to BOX an opinion of counsel satisfactory (both as to such opinion and as to such counsel)

to counsel to BOX that such Transfer, whether direct or indirect, voluntary or involuntary, by operation or law or otherwise, complies with applicable federal and state securities laws.

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

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

(f) Beginning after SEC approval of BOX, in addition to the notice requirement in subsection (e), the parties agree that the following Transfers are subject to the rule filing process pursuant to Section 19 of the [Securities] Exchange Act[of 1934, as amended: (i)]; any Transfer that results in the acquisition and holding by any Person, alone or together with any Affiliate of such Person, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (*i.e.*, 25%, 30%, etc.) [; or (ii) any Transfer that results in a reduction of the BSE's aggregate Percentage Interest to below the 20% threshold.].

(g) For purposes of this subsection (g): (i) a "controlling interest" shall be defined as the ownership by any Person, alone or together with any Affiliate of such Person, of a 25% or greater interest in a Member; and (ii) [an "Acquirer] a "Controlling Person" shall be defined as a Person who, alone or together with any Affiliate of such Person, [acquires] holds a controlling interest in a Member. [An Acquirer] A Controlling Person shall be required to execute, and the relevant Member shall take such action as is necessary to ensure that [an Acquirer] a Controlling Person executes, an amendment to this Agreement upon establishing a controlling interest in any Member who, alone or together with any Affiliate of such Member, holds a Percentage Interest in BOX equal to or greater than 20%. In such amendment the [Acquirer] Controlling Person shall agree, and the relevant Member shall take such action as is necessary to ensure that the [Acquirer] Controlling Person agrees, to become a new party to this Agreement and shall agree, and the relevant Member shall take such action as is necessary to ensure that the [Acquirer] Controlling Person agrees, to abide by all the provisions of this Agreement. Beginning after SEC approval of this Agreement, any amendment to this Agreement executed pursuant to this subsection (g) is subject to the rule filing process pursuant to Section 19 of the [Securities] Exchange Act [of 1934.]. The rights and privileges, including all voting rights, of the Member in whom a controlling interest is [acquired] held under this Agreement and the Act shall be suspended until such time as the amendment executed pursuant to this subsection (g) has become effective pursuant to Section 19 of the [Securities] Exchange Act [of 1934] or the [Acquirer] Controlling Person no longer holds a controlling interest in the Member.

(h) In the event that a Member, or any Affiliate of such Member, is approved by the [BSE] Regulatory Authority as [an] a BOX Options Participant [on the BOX Market] pursuant to the [rules of the BSE] Regulatory Authority Rules, and such Member owns more than 20% of the Units, alone or together with any Affiliate of such Member[,] (Units owned in excess of 20% being referred to as "Excess Units"), the Member and its designated Directors shall have no voting rights whatsoever with respect to any action relating to BOX nor shall the Member or its designated Directors, if any, be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Units held by such Member; provided, however, that whether or not such Member or its designated Directors, if any, otherwise participates in a meeting in person or by proxy, such Member's Excess Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Units held by the other Members are voted (including any abstentions from voting).

IB shall have a temporary exemption, not to extend past January 1, 2014, from the voting limitation on Excess Units contained in the paragraph above, but only with respect to any vote regarding any merger, consolidation or dissolution of BOX or any sale of all or substantially all of the assets of BOX.

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

8.6. *Business Confidential*

(a) [[Deleted]]

[(b)] (i) *Business Confidential.*

(ii) *Business Confidential.*

(iii) *Business Confidential.*

(iv) *Business Confidential.*

(v) *Business Confidential.*

[(c)](b) (i) *Business Confidential*

(ii) *Business Confidential*

(iii) *Business Confidential.*

(iv) *Business Confidential.*

8.7. **New Membership Interests.** Upon the issuance of any new Units in BOX or the valid Transfer of all or any portion of a Member's Units, the Board shall amend this Agreement and **Schedule A** hereto so as to specify the class of any new Members or Units, the rights of such class and its or their Capital Contributions and make such further adjustments to **Schedule A** as may be necessary to reflect the admission of new Members or new class of Units.

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

Article 9

Distributions

9.1. **Current Distributions.** Except as otherwise provided in Section 11.2, if at any time and from time to time the Board determines that BOX has cash that is not required for the operations of BOX, the payment of liabilities or expenses of BOX, or the setting aside of reserves to meet the anticipated cash needs of BOX ("**Distributable Cash**"), then BOX shall make cash distributions to its Members in the following manner and priority:

(a) **First**, within ten (10) days after the end of each fiscal quarter, BOX shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (or, in the event that Distributable Cash is less than the total of all such Tax Amounts, BOX shall distribute the Distributable Cash in proportion to such Tax Amounts). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such member under Section 9.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then BOX shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the Members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, BOX shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this subsection for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 9.1(b) or Section 11.2. Subsequent distributions made to the Member pursuant to Sections 9.1(b) and 11.2 shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed shall be equal, as nearly as possible,

to the aggregate amount that would have been distributable to such Member pursuant to Section 9.1(b) and Section 11.2 if this Agreement contained no provision for Tax Distributions. Distributions made pursuant to this subsection (a) to a Class B Member shall be treated as made with respect to its Class B Units (and thus shall reduce such Member's Class B Sub-Account) to the extent that such Member's Class B Sub-Account balance (determined as of the date of distribution) exceeds the Purchase Price of such Member's Class B Units.

(b) **Second**, when, as and if declared by the Board, BOX shall make cash distributions to each of the Class A Members and Class B Members pro rata in accordance with the relative fair market value of each Class A Unit and Class B Unit held by each Class A Member and Class B Member, respectively, which shall be determined by assuming that the Class B Unit was converted into a Class A Unit immediately prior to such distribution pursuant to Section 2.5(d), *provided, however*, that no distribution shall be made to a Class B Member pursuant to this subsection (b) to the extent it would reduce such Member's Class B Sub-Account below zero.

9.2. **Limitation.** BOX, and the Board on behalf of BOX, shall not make a distribution to any Member on account of its interest in BOX if, and to the extent, such distribution would violate the Act or other applicable law.

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

Article 10

Allocations of Profits and Losses

10.1. **Allocations of Profits; General.** Except as provided in Sections 10.2 through 10.8 below, all profits, losses (each determined in accordance with Section 10.7) and credits of BOX (for both accounting and tax purposes) for each fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) [In] in the following manner:

(a) Profits shall be allocated:

(i) **first**, if any losses have been allocated to the Class B Sub-Accounts in respect of any prior period, to the Class B Sub-Accounts in an amount necessary to reverse, on a cumulative basis, the effect of such prior Net Loss allocations;

(ii) **second**, to the Class B Sub-Accounts of Class B Members until the cumulative amount allocated pursuant to this Section 10.1(a)(ii) with respect to the Class B Sub-Accounts equals the unpaid amount of the Class B Dividend accruing with respect to such Class B Units owned by such Class B Member as of the date of allocation; and

(iii) **third**, to the Class A Sub-Accounts.

(b) Losses shall be allocated:

(i) **first**, to the Class A Sub-Accounts to the extent of any positive balances therein;

(ii) **second**, to the Class B Sub-Accounts to the extent of any positive balances therein; and

(iii) **third**, to the Class A Sub-Accounts.

(c) Any allocations pursuant to Section 10.1 (a) and Section 10.1 (b) shall be made pro rata among the Class A Members and Class B Members, respectively, based on such Member's Percentage Interest.

(d) The allocations provided in this Article 10 are intended to comply with the Treasury Regulations under Section 704(b) of the Code and shall be interpreted and applied in a manner consistent therewith.

10.2. **Limitation.** Notwithstanding anything otherwise provided in Section 10.1, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations §1.704-1(b)(2)(ii)(d)(4), (5), or (6) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of BOX (any such excess, an "**Unpermitted Deficit**"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members in a manner that complies with Treasury Regulations under Section 704(b). In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, BOX shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit.

10.3. **Qualified Income Offset.** In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain of BOX shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or

distributions as promptly as possible. The preceding sentence is intended to comply with the “qualified income offset” requirement in Treasury Regulations §1.704-1(b)(2)(ii)(d), and shall be interpreted consistently therewith.

10.4. Nonrecourse Debt and Chargebacks. If at the end of any fiscal year of BOX, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 10.2, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt secured by any of the assets of BOX, such Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Minimum Gain with respect to all of BOX's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate BOX debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in BOX's aggregate Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations §1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

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

10.6. Calculation of Profits and Losses. For all purposes of this Agreement, BOX's profits and losses shall be determined by taking into account all of BOX's items of income and gain (including items not subject to federal income tax) and all items of loss, expense, and deduction, in each case determined under federal income tax principles.

10.7. Section 704(c) and Capital Account Revaluation Allocations. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to BOX by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Percentage Interest and shall not affect its Capital Account. In addition to the foregoing, if BOX assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (*e.g.*, because of a revaluation of the Members' Capital Accounts under Treasury Regulations §1.704-1(b)(2)(iv)(f)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 10.7.

10.8. Offset of Regulatory Allocations. The allocations required by Sections 10.2 through 10.5 and Section 10.7 are intended to comply with certain requirements of the Treasury Regulations. The Board may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

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

Article 11

Dissolution and Winding Up

- 11.1. (a) BOX shall be dissolved and its affairs shall be wound up upon:
- (i) the election to dissolve BOX made by the Board pursuant to Section 4.4(b)(v); or
 - (ii) the entry of a decree of judicial dissolution under § 18-802 of the Act; or

- (iii) the resignation, expulsion, Bankruptcy or dissolution of the last remaining Member, or the occurrence of any other event which terminates the continued membership of the last remaining Member in BOX, unless the business of BOX is continued without dissolution in accordance with the Act; or
- (iv) the occurrence of any other event that causes the dissolution of a limited liability company under the Act unless BOX is continued without dissolution in accordance with the Act.

The legal representatives, if any, of any Member shall succeed as assignee to such Member's interest in BOX upon the Bankruptcy, or dissolution of such Member, but shall be admitted as a substitute Member, subject to Sections 8.1(a) and (b), only with the written consent of the Board (such consent to be in the Board's sole discretion); unless and until such consent is given, any Percentage Interest in BOX held by such legal representatives of a Member shall not be included in calculating the Percentage Interests of the Members required to take any action under this Agreement.

(b) Upon dissolution of BOX, the business of BOX shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of BOX, in which case a liquidating trustee may be appointed for BOX by vote of a majority of the Directors (the Members or such liquidating trustee is referred to herein as the "**Liquidator**"). In winding up BOX's affairs, every effort shall then be made to dispose of the assets of BOX in an orderly manner, having regard to the liquidity, divisibility and marketability of BOX's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of BOX, subject to Section 11.2, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; *provided*, that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by BOX any fee for services rendered in connection with the liquidation of BOX, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by BOX for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by BOX with respect to any action brought against it in connection therewith by applying, *mutatis mutandis*, the provisions of Article 14.

11.2. **Application and Distribution of Assets.**

- (a) [[deleted]] [(b)] *Business Confidential*.

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

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

11.4. **Termination of the LLC.**

Subject to Section 19.1 of this Agreement, the separate legal existence of BOX shall terminate when all assets of BOX, after payment of or due provision for all debts, liabilities and obligations of BOX, shall have been distributed to the Members in the manner provided for in this Article 11, and a Certificate of Cancellation shall have been filed in the manner required by Section 18-203 of the Act.

Article 12

Books, Records and Accounting

[12.1.] **12.1 Books of Account.** The Board shall cause to be entered in appropriate books, kept at BOX's principal place of business, all transactions of or relating to BOX. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other BOX records during normal business hours; *provided that* the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by BOX in making such books and records available for inspection. Notwithstanding the foregoing, the books and records of BOX shall be subject at all times to inspection and copying by the [BSE] Regulatory Authority and the SEC at no additional cost to the [BSE or the SEC. The] Regulatory Authority or the SEC. Inspection, copying and review of the books and records of BOX by the Regulatory Authority at the premises of BOX shall in all cases be conducted by BSE employees who are Permitted Recipients and/or directors or employees of BOXR. Access to any copied books and records removed from the premises of BOX or produced to the Regulatory Authority at its request shall be limited to persons who are Permitted Recipients, and/or BOXR directors or employees. The Regulatory Authority hereby agrees to inspect, copy and/or review the books and records of BOX, and to use any information obtained thereby, only for purposes of fulfilling its regulatory obligations and for no other purpose. For the avoidance of doubt, BOX shall not be entitled to refuse the inspection, review and/or copying of its books and records by the Regulatory Authority as provided in this Section but shall be entitled to damages in the event any inspection, copying or review of BOX books and records by the Regulatory Authority is, in whole or in part, used by the Regulatory Authority or any of its Affiliates for any purpose other than to fulfill the Regulatory Authority's regulatory obligations. Subject to the foregoing,

the books, records, premises, officers, directors, agents, and employees of BOX shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the [BSE and its Affiliates] Regulatory Authority, for the purpose of, and subject to, oversight pursuant to the [Securities] Exchange Act [of 1934, as amended]. The Board shall not have the right to keep confidential from the Members any information that the Board would otherwise be permitted to keep confidential pursuant to §18-305(c) of the Act.

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

12.3. **Fiscal Year.** The fiscal year of BOX shall be the calendar year (the "**Fiscal Year**").

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

12.5. **Tax Elections.** The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 10 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish BOX with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

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

any action brought against it in connection with the settlement of any such proceeding by applying, *mutatis mutandis*, the provisions of Article 14.

Article 13

Arbitration

13.1. [(a)] All disputes, claims, or controversies between Members or between BOX and any Member(s) arising under or in any way relating to this Agreement shall be [(x)a] settled by arbitration before a panel of three neutral arbitrators (the "**Neutral Arbitrators**") appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, each having experience with and knowledge of the general field related to the dispute, claim or controversy (with at least one being an attorney), and [(y)b] administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules as in effect at the time a request for arbitration is made. For the purposes of this Section 13.1, the following persons shall be deemed not to be a Neutral Arbitrator: (i) a director, officer, employee, agent, partner or shareholder of any party to the dispute or of BOX; (ii) a consultant to BOX or of any party to the dispute; (iii) a person with a direct or indirect financial interest in any contract with any party to the dispute; (iv) a director, officer or key employee of a company at a time when such company was party to a contract with any party to the dispute; or (v) a relative of any person referred to in clauses (i), (ii), (iii) or (iv) above. Arbitration may be commenced at any time by any party to the dispute by giving written notice to the other party or parties to the dispute that such dispute has been referred to arbitration under this Section 13.1. Any determination or award rendered by the Neutral Arbitrators shall be conclusive and binding upon the parties to such dispute and judgment on the award rendered by the Neutral Arbitrators may be entered and enforced in any court having jurisdiction thereof; *provided, however*, that any such determination or award shall be accompanied by a reasoned award of the Neutral Arbitrators giving the reasons for the determination or award. The parties hereby consent to the non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts or to any federal court located within the Commonwealth of Massachusetts for any action [(i)x] to compel arbitration, [(ii)y] to enforce the award of the Neutral Arbitrators or [(iii)z] prior to the appointment and confirmation of the Neutral Arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law. Any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to the parties. In making any determination or award, the Neutral Arbitrators shall be authorized to award interest on any amount awarded. This provision for arbitration shall be specifically enforceable by the parties to the disputes and the determination or award of the Neutral Arbitrators in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Each of the parties to the dispute shall pay its own expenses of arbitration and the expenses of the Neutral Arbitrators shall be equally shared; *provided, however*, that if in the opinion of the Neutral Arbitrators any claim was frivolous or in bad faith, the Neutral Arbitrators may assess, as part of the determination or award, all or any part of the arbitration expenses of the other party or parties (including

reasonable attorneys' fees) and of the Neutral Arbitrators against any party so acting in bad faith or raising such frivolous claim.

[(b)]13.2 The place of arbitration shall be Boston, Massachusetts and the language of the arbitral proceedings shall be English.

Article 14

Exculpation and Indemnification

14.1. **Members Generally.** Except as set forth in the second sentence of this Section 14.1, no Member nor any of [its shareholders,] a Member's directors, [employees, Advisors or other agents, nor any Directors, officers, agents, Advisors or employees of BOX] officers, employees, agents, Advisors or equity holders, nor the Regulatory Authority nor any directors, officers, employees, agents, Advisors or equity holders of BOX or the Regulatory Authority (collectively, the "**Indemnitees**"), shall have any liability to BOX, to any [other Member] party to this Agreement, or to any third party for any loss suffered by BOX, such other [Member] party to this Agreement or such third party that arises out of any action or inaction of such [Member] party to this Agreement (or any other Indemnitee), (a) with respect to its activities under this Agreement or the Related Agreements, unless otherwise specified in the Technical and Operational Services Agreement or the Regulatory Services Agreement or (b) otherwise in its capacity as a [Member] party to this Agreement, if such [Member] party or such other Indemnitee, in good faith, determined that such course of conduct was in the best interests of BOX and such course of conduct did not constitute gross negligence or willful misconduct of such [Member] party (or other Indemnitees) or a material breach by such [Member] party of this Agreement. To the fullest extent permitted by law, each [Member] party to this Agreement (and such other Indemnitees) shall be indemnified by BOX against any losses, judgments, liabilities, expenses (including, without limitation, reasonable attorneys' fees and court costs) and amounts paid in settlement of any claims sustained by it in connection with BOX, provided that the same were not the result of gross negligence or willful misconduct of such [Member] party (or such other Indemnitee) or a breach by such [Member] party of this Agreement or any Related Agreement. Any Person claiming reimbursement of expenses under this Article 14 shall be paid amounts to which he or it would be entitled hereunder as such expenses are incurred upon presentation of appropriate documentation to BOX, subject to providing a written undertaking to repay any such amounts to which such Person ultimately turns out not to be entitled under the standards herein set forth. The indemnification and advancement of expenses provided by this Article shall continue as to an Indemnitee who has ceased to be a [Member] party to this Agreement (or otherwise an Indemnitee), and shall inure to the benefit of the heirs, executors, administrators, and successors of such [Member] party (and the other Indemnitees). Any indemnification pursuant to this Section 14.1 shall be solely out of the assets of BOX and shall not be a personal obligation of any [Member] party to this Agreement.

14.2. **Duties of Indemnitee.** To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to BOX

or to the [Members] parties to this Agreement, the [Members] parties and any other Indemnitee acting in connection with BOX's business or affairs shall not be liable to BOX or to any [Member] party to this Agreement for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnitee otherwise existing at law or in equity, are agreed by the [Members] parties to this Agreement to replace such other duties and liabilities of such Indemnitee.

14.3. **BOX [Market] Options Participant Indemnity**. The rules and regulations of BOX shall contain procedures whereby BOX shall require all BOX [Market] Options Participants to execute an agreement before becoming [Participants in the] a BOX [Market] Options Participant concerning such Person's participation in the BOX Market, which agreement shall include, among other things, the agreement of such Person to waive liability of BOX, its Members, the Regulatory Authority and their respective Affiliates with respect to such Person's participation in the BOX Market.

Article 15

Maintenance of Separate Business

BOX shall at all times: (a) to the extent that any of BOX's offices are located in the offices of an Affiliate, pay fair market rent for its office space located therein; (b) maintain BOX's books, financial statements, accounting records and other limited liability company documents and records separate from those of any Affiliate or any other Person; (c) not commingle BOX's assets with those of any Affiliate or any other Person; (d) maintain BOX's books of account, bank accounts and payroll separate from those of any Affiliate; (e) act solely in its name and through its own authorized agents, and in all respects hold itself out as a legal entity separate and distinct from any other Person; (f) make investments directly or by brokers engaged and paid by BOX or its agents (provided that if any agent is an Affiliate of BOX it shall be compensated at a fair market rate for its services); (g) manage BOX's liabilities separately from those of any Affiliate and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except that an Affiliate may pay the organizational expenses of BOX; and (h) pay from BOX's assets all obligations and indebtedness of any kind incurred by BOX. [Notwithstanding the foregoing, the books, records, premises, officers, directors, agents and employees of BOX shall be deemed to be those of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Securities Exchange Act of 1934, as amended. In addition, the books and records of BOX shall be subject at all times to inspection and copying by the BSE and its Affiliates and the SEC without charge to such Persons.] BOX shall abide by all Act formalities, including the maintenance of current records of BOX affairs, and BOX shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of BOX. BOX shall (i) pay all its

liabilities, (ii) not assume the liabilities of any Affiliate unless approved by unanimous consent of the Board and (iii) not guarantee the liabilities of any Affiliate unless approved by unanimous consent of the Board. The Board shall make decisions with respect to the business and daily operations of BOX independent of and not dictated by any Affiliate.

Article 16

Confidentiality and Related Matters

16.1. **Disclosure and Publicity.** The parties hereto agree that the initial public disclosures concerning the transactions contemplated by this Agreement and the Related Agreements shall require prior approval of all Members.

16.2. **Confidentiality Obligations of Members and Regulatory Authority.**

(a) Each Member and the Regulatory Authority agrees that it will use BOX Confidential Information only in connection with [the] its respective Member or Regulatory Authority activities contemplated by this Agreement and the Related Agreements and pursuant to the Exchange Act and the rules and regulations thereunder, and it will not disclose any BOX Confidential Information to any Person except as expressly permitted by this Agreement and the Related Agreements[.] or pursuant to the Exchange Act and the rules and regulations thereunder. For the avoidance of doubt, no Member or Regulatory Authority shall share BOX Confidential Information with Nasdaq or its Affiliates, other than BSE and BOXR, or as permitted in the Regulatory Services Agreement.

(b) The Members and the Regulatory Authority (including, for the avoidance of doubt, BSE and BOXR) may disclose BOX Confidential Information only:

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

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

(iii) to the extent required by applicable statute, rule or regulation promulgated under the [Securities] Exchange Act [of 1934, as amended], the U.S. federal securities laws and rules thereunder; or in response to a valid request from the [U.S. Securities and Exchange Commission] SEC, pursuant to the [Securities and] Exchange Act [of 1934] and the rules thereunder [or the BSE (or Boston Options Exchange Regulation through delegated authority)], or the Regulatory Authority;

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

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

16.3. Member Information Confidentiality Obligation. Each Member and the Regulatory Authority shall hold, and shall cause its respective Affiliates and their directors, officers, employees, agents, consultants and Advisors to hold, in strict confidence, unless disclosure to an applicable regulatory authority is necessary or appropriate or unless compelled to disclose by judicial or administrative process or, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, reports, instruments, computer data and other data and information (collectively, "**Member Information**") concerning the other Members or the Regulatory Authority (or, if required under a contract with a third party, such third party) furnished to it by [such other Member or its] the Member, the Regulatory Authority or a Member's or Regulatory Authority's respective representatives pursuant to this Agreement or any other Related Agreement, except to the extent that such Member Information can be shown to have been: (a) previously known by such Member or Regulatory Authority on a non-confidential basis; (b) available to such Member or Regulatory Authority on a non-confidential basis from a source other than the disclosing Member; (c) in the public domain through no fault of such [Members] Member or Regulatory Authority; or (d) later lawfully acquired from other sources by the Member or Regulatory Authority to which it was furnished, and none of the Members or Regulatory Authority shall release or disclose such Member Information to any other person, except its auditors, attorneys, financial advisors, bankers, other consultants and Advisors and, to the extent permitted above, to regulatory authorities. In the event that a Member or Regulatory Authority becomes compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, such party shall provide the Member [who] or Regulatory Authority that provided such Member Information (the "**Disclosing Member**") with prompt prior written notice of such requirement so that the Disclosing Member may seek a protective order or other appropriate remedy and/or waive the terms of any applicable confidentiality arrangements. In the event that such protective order, other remedy or waiver is not obtained, only that portion of the Member Information which is legally required to be disclosed shall be so disclosed.

16.4. Ongoing Confidentiality Program.

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

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

16.5 [SEC's Right to Access] Regulatory Right to Access. Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC or the Regulatory Authority to access and examine BOX Confidential Information, or to limit or impede the ability of a Member, officer, director, agent or employee of Member to disclose BOX Confidential Information to the SEC or the Regulatory Authority.

16.6. Disclosure of Confidential Information. All confidential information, including BOX Confidential Information, pertaining to regulatory matters of BOX and the BOX Market (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of BOX shall: (i) not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of BOX that have a reasonable need to know the contents thereof; (ii) be retained in confidence by BOX and the officers, directors, employees and agents of BOX; and (iii) not be used for any commercial purposes. Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC, [BSE or BOXR, to access and examine BOX Confidential Information] pursuant to the [U.S.] federal securities laws and [the rules thereunder, or to limit or impede the ability of a Member, officer, director, agent or employee of Member to disclose BOX Confidential Information to the SEC, BSE] rules and regulations thereunder, and the Regulatory Authority to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of BOX to disclose such confidential information to the SEC or [BOXR.] the Regulatory Authority.

Article 17

[Non-Competition] Business Relationships

17.1. *Business Confidential*

[(c)]17.2. **Member Relationships.** Except as otherwise expressly restricted in this Agreement or Related Agreements, the Members expressly acknowledge and

agree that (i) each Member and its respective Affiliates are permitted to have, and may presently or in the future have, investments or other business relationships, activities, ventures, agreements or arrangements (collectively “**Relationships**”), with entities engaged in the operation of an electronic options market (including in areas in which BOX or any of its [Subsidiaries] subsidiaries may in the future [engage in the Business] operate) and in related businesses other than through BOX and its [Subsidiaries] subsidiaries (an “**Other Business**”), (ii) each Member and its respective Affiliates have or may develop a strategic relationship with businesses that are or may be competitive with BOX or its [Subsidiaries] subsidiaries, (iii) none of the Members or their respective Affiliates (including their respective designees serving on the [BOX] Board or attending as an observer pursuant to Section 4.1([i]e)) will be prohibited by virtue of their investments in BOX or any of its [Subsidiaries] subsidiaries or their service on the Board or participation in the management of any of BOX’s [Subsidiaries] subsidiaries from pursuing and engaging in any such Relationships and the corporate opportunity doctrine or similar analogy shall not apply to any such Relationships, (iv) none of the Members or their respective Affiliates, will be obligated to inform the BOX or the Board of any such Relationships, (v) the other Members will not acquire, be provided with an option or opportunity to acquire or be entitled to any interest or participation in any Other Business as a result of the participation therein of any other Member or its respective Affiliates, (vi) the Members expressly waive, to the fullest extent permitted by applicable law, any rights to assert any claim that such involvement breaches any duty (fiduciary, contractual or otherwise) owed to any Member or BOX, or any of their respective [Subsidiaries] subsidiaries, or to assert that such involvement constitutes a conflict of interest by such Persons with respect to BOX or the Members or any of their respective [Subsidiaries] subsidiaries and (vii) nothing contained herein shall limit, prohibit or restrict any designee serving on the Board or any committee thereof or any representative of any of its Affiliates from serving on the board of directors or other governing body or committee of any Other Business.

[17.2.]17.3. **Referrals.** Each of the Members shall, and shall cause each of their Affiliates to, refer all inquiries about the businesses conducted by BOX to BOX.

17.4. **Exclusivity.** BOX shall have the exclusive right to operate a facility for the trading of options contracts at BSE for so long as the BOX Market remains a facility of BSE, within the meaning of Section 3(a)(2) of the Exchange Act. Furthermore, during the term of the Regulatory Services Agreement to which BSE or any of its Affiliates is a party, BSE shall not provide options SRO services to any Competitor of BOX.

Article 18

Intellectual Property

Except as provided otherwise in the Related Agreements, each of the Members and BSE shall retain all rights, title, and interests to all of its intellectual property. [In addition to the Bourse License, the BSE License and the IB License, the] The Bourse and BSE have given BOX permission to use the names “Bourse de Montréal,” and “Boston

Stock Exchange” respectively, in connection with the business of BOX. IB has given BOX permission to use the name “Interactive Brokers Group” and derivatives thereof in connection with the business of BOX, without cost, unless IB objects in writing, at its sole discretion, to BOX’s use of such names in connection with any advertisement, marketing materials, website or other written or electronic or broadcast material, in which case BOX shall cease the particular use objected to. The parties shall enter into such other licenses involving the System and such other intellectual property of the Members as shall permit the use of such property by BOX in the manner intended by the Members.

Article 19

General

19.1. **Entire Agreement; Integration, Amendments.** This Agreement and the Related Agreements contain the sole and entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, including, without limitation, the Original Operating Agreement, the Amended and Restated Operating Agreement, the Second Amended and Restated Operating Agreement, the Third Amended and Restated Operating Agreement[and], the Fourth Amended and Restated Operating Agreement and the Fifth Amended and Restated Operating Agreement, relating to such subject matter. This Agreement may only be changed, amended or supplemented by an agreement in writing that is approved by Directors holding a majority of the Total Votes without the consent of any Member or other Person. Notwithstanding the provisions of Section 2.5(c), no amendment shall, however, alter the terms of the Class B Units or adversely affect the rights of any holder [of] thereof with respect to such [units] Class B Units without the written consent of all Class B Members. In addition, notwithstanding anything to the contrary herein, any terms specific to any Member or to the Regulatory Authority, such as, among other things, the right to designate directors, may not be altered or adversely affect such Member or the Regulatory Authority without [such Member’s] the prior written consent of such Member or the Regulatory Authority (as applicable), provided that, the foregoing shall not apply to any Transfer pursuant to Section 4.1([g]c). Each of the Members further acknowledges and agrees that, in entering into this Agreement, such Member has not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement or the exhibits and schedules hereto. BOX shall provide prompt notice to the Regulatory Authority and the Regulatory Director of any amendment, modification, waiver or supplement to this Agreement formally presented to the Board for approval. Any proposed amendment to this Agreement shall be submitted to the BOX Committee, pursuant to its delegated authority as provided in Section 4.1(f), for review and, if such amendment is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be. Notwithstanding anything in this Agreement to the contrary and consistent with Section 3.2(a)(ii) and (iii), BOX shall not be required to obtain the

approval of the Regulatory Authority for any amendment to this Agreement pursuant to which the BOX Market would cease to be a facility of BSE within the meaning of Section 3 of the Exchange Act, provided that such amendment shall be filed with, or filed with and approved by, the SEC, as the case may be, before such amendment may be effective. In the event BSE ceases to be the Regulatory Authority, BSE shall no longer be a party to this Agreement and thereafter the provisions of this Agreement shall not apply to BSE or BOXR except for the provisions referenced in Section 19.11 which shall survive.

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

19.3. **Notices.** Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (*e.g.*, Federal Express), or five (5) days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to Members or the Regulatory Authority shall be addressed to the last address of record on the books of BOX; all such notices to BOX shall be addressed to BOX at the address set forth in Section 2.1 or at such other address as BOX may have designated by notice given in accordance with the terms of this subsection.

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

19.5. **Governing Law, Etc.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules. Except for any matters governed by Article 19.6(b) herein, all disputes, claims, or controversies between Members or between BOX and any Member(s) arising under or in any way relating to this Agreement shall be settled pursuant to Article 13 hereof.

19.6. **Member Books, Records, and Jurisdiction.**

- (a) The Members acknowledge that to the extent they are related to BOX activities, the books, records, premises, officers, directors, agents, and employees of Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the [BSE] Regulatory Authority for the purpose of and subject to oversight pursuant to the [Securities] Exchange Act [of 1934, as amended.].

- (b) [The] BOX, the Members[,] and the officers, directors, agents, and employees of [Members] each irrevocably [submit] submits to the exclusive jurisdiction of the U.S. federal courts, [U.S. Securities and Exchange Commission] SEC, and the [Boston Stock Exchange] Regulatory Authority, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX[, provided that such matter is not related to trading on, or the regulation, of the BOX Market),]) and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the [U.S. Securities and Exchange Commission] SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.
- (c) With respect to [this Section] Article 16 and Sections 4.2(a), 12.1 and 19.6, BOX, the [BSE] Regulatory Authority and each Member shall take such action as is necessary to [insure that] ensure that BOX's officers, directors and employees, the Regulatory Authority's officers, directors and employees, and such Member's officers, directors and employees consent to the applicability of [this provision] these provisions with respect to BOX related activities. In addition, the Bourse and the Regulatory Authority shall take such action as is necessary to insure that with respect to their BOX related activities, the Bourse's officers, directors and employees consent to the communication of their "personal information", as defined under the Act Respecting the Protection of Personal Information in the Private Sector, R.S.Q.c.P-39.1 ("Private Sector Privacy Act"), by the Bourse to the SEC and the Regulatory Authority and agree to waive the protection of such "personal information" that is provided by the Private Sector Privacy Act.

19.7. Waiver of Certain Damages. EACH OF THE MEMBERS, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHTS THAT THEY MAY HAVE TO PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY RELATED AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS OR ACTIONS OF ANY OF THEM RELATING THERETO.

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

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

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

19.11. **Survival.** The provisions of Article 13, 14, 16, 17, 18 and 19 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon [the] such termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of [January _____, 2005.] _____, 2008.

[BOURSE DE MONTREAL]
MX US 2, INC., an authorized person

[By: _____]
[Name:]
[Title:]

By: _____
Name:
Title:

BOSTON STOCK EXCHANGE, INC., an
authorized person

By: _____
Name:
Title:

[INTERACTIVE BROKERS GROUP
LLC]IB EXCHANGE CORPORATION, an
authorized person

By: _____
Name:
Title:

BOURSE DE MONTREAL INC., an
authorized person

By: _____
Name:
Title:

All attachments and exhibits deemed *Business Confidential*, except below.

SCHEDULE A

[BOSTON OPTIONS EXCHANGE GROUP LLC]
[Number of Units, Percentage Interests, and Number of Directors]
[January 26, 2005]

UNIT HOLDERS

	OWNERSHIP			
	[Number of] Class A [Membership] Units	[Number of] Class B [Membership] Units	<u>Total Units</u>	Percent[age Interest]
SHAREHOLDERS				
[Bourse de Montreal Inc. Tour de la Bourse P.O. Box 61 800 Victoria Square Montreal, Quebec H4Z 1A9]	[3,325]	[370]		[30.72%]
[Boston Stock Exchange, Inc. 100 Franklin Street Boston, Massachusetts 02110]	[2,850]	[0]		[23.69%]
<u>MX US 2, Inc.</u>	<u>6,034</u>	<u>370</u>	<u>6,404</u>	<u>53.24%</u>
[Interactive Brokers Group LLC One Pickwick Plaza Greenwich, CT 06830] <u>IB Exchange Corporation</u>	2,125	265	<u>2,390</u>	19.87%