

Additions are underlined; deletions are [bracketed]

**CERTIFICATE OF INCORPORATION  
OF  
CHICAGO STOCK EXCHANGE, INC. [INCORPORATED]**

**Name**

FIRST: The name of this corporation (the "Corporation") is CHICAGO STOCK EXCHANGE, INC. [INCORPORATED.]

**Address of Registered Office**

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

**Purpose [Nature of the Business]**

THIRD: [The nature of the business or purposes, to be conducted or promoted by the Corporation is:]

[To provide, and carry on the functions of, an "exchange" within the meaning of that term in the Securities Exchange Act of 1934, as amended, including, without limiting the foregoing, the furnishing of exchange rooms and other facilities for the transaction of business as brokers and dealers by its members; the maintenance of high standards of commercial honor and integrity among its members; the promotion and inculcation of just and equitable principles of trade and business; the adjustment of controversies and misunderstandings between members arising out of transactions upon such exchange; and the fostering of the development of the securities industry and general business; and]

The purpose or purposes of the Corporation is t[T]o engage in any [other] lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

**Authorized Stock [Non-Stock Corporation]**

FOURTH: [The Corporation shall be a non-stock corporation without authority to issue capital stock. No dividend shall be paid by the Corporation, provided that the Corporation shall have authority to distribute its assets to its members, on a pro rata basis, in the event of a complete or partial liquidation of the Corporation.] The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock having a par value of \$.01 per share. CHX Holdings, Inc. will be the sole owner of this stock.

## **[Membership]**

[FIFTH: The corporation shall have members; and the conditions of obtaining and maintaining membership, to the extent not stated in this Certificate of Incorporation, as amended from time to time, shall be as stated in the by-laws of the Corporation, as amended from time to time (the "By-Laws"). In addition to stating the conditions of membership of the Corporation as aforesaid, the By-Laws may contain provisions not inconsistent with this Certificate of Incorporation, as amended from time to time, governing any or all other matters relating to the membership of the Corporation, including (without limitation of the foregoing) the number and classifications of members, the procedure for obtaining membership, the rights, privileges and obligations of membership, the regulation of conduct of members, the conditions to and the procedure for transfers of memberships, the grounds and procedure for expulsion from membership and for other termination of membership, and the procedure for and conditions to the exercise of voting power by members.]

[The By-Laws may prescribe standards to determine good standing of members and if standards are so prescribed only members in good standing shall have a right to vote on matters presented to the members for their vote thereon.]

[Any office with the Corporation which is to be filled by election by the membership shall be filled, in each case in which the attempted election by the membership results in a tie vote, by action by the Board of Governors which shall be taken as promptly as is practicable after such tie vote.]

## **[Incorporators]**

[SIXTH: The names and mailing addresses of the incorporators of the Corporation are George R. Becker (105 West Adams Street, Chicago, Illinois 60690); Michael E. Tobin (120 South La Salle Street, Chicago, Illinois 60603); John G. Weithers (120 South La Salle Street, Chicago, Illinois 60603); and Milton H. Cohen (231 South La Salle Street, Chicago, Illinois 60604). The incorporators shall manage the affairs of the Corporation and do whatever is necessary and proper to perfect the organization of the Corporation, including the adoption of the initial By-Laws of the Corporation and the election of those initial members of the Board of Governors and of committees of the Corporation and those initial officers of the Corporation whose successors in each case, according to the By-Laws, are to be elected by the voting members of the corporation.]

## **Board of Directors [Governors]**

FIFTH [SEVENTH]:

(a) *Authority.* The governing body of the Corporation shall be its Board of Directors[Governors]. The business and affairs of the Corporation shall be managed by the Board of Directors[Governors], except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Corporation established pursuant to the bylaws or the rules of the Corporation[By-Laws

as hereinafter provided]. In addition to any committees of the Board of Directors[Governors] which may be established as permitted by law, the bylaws or rules [By-Laws] of the Corporation may provide for the establishment of one or more committees (the members of which shall be selected as provided in the bylaws[By-Laws] and need not be members of the Board of Directors[Governors or members of the Corporation]), each of which shall have the authority, powers and duties, in the management of the business and affairs of the Corporation, as the bylaws or rules[By-Laws] shall provide.

(b) Number of Directors. [The number of members of the Board of Governors shall be as fixed in the By-Laws. All elected members of the Board shall be chosen by the Members of the Corporation (as Members are defined in the By-Laws). The Board of Governors shall also include, as ex-officio members, having full voting powers, the Vice Chairman of the Board, the Chief Executive Officer of the Corporation, and the President, if any, of the Corporation. The Vice Chairman shall be elected by the Members, the Chairman, who may also act as Chief Executive Officer, shall be appointed by the Board of Governors, and the President, if not serving as Chief Executive Officer, shall be appointed by the Chief Executive Officer, all as provided in the By-Laws. The By-Laws may provide that the members of the Board of Governors elected by the Members, other than the Vice-Chairman, shall be divided into three classes with the term of office of each class to expire at successive annual meetings of the voting Members of the Corporation (or thereafter, if successors are to be elected, when their successors are elected and qualified).] The Board of Directors of the Corporation shall consist of not less than ten (10) nor more than sixteen (16) directors, the exact number to be fixed by the Board of Directors from time to time pursuant to a resolution adopted by the Board of Directors.

(c) Composition. The Board of Directors shall consist of one (1) director who is the Chief Executive Officer of the Corporation, directors who qualify as “Public Directors” and directors who qualify as “Participant Directors.” The number of directors who must qualify as Public Directors shall be equal to one-half the number of directors comprising the entire Board of Directors (rounded up to the next whole number), and the directors who neither are the Chief Executive Officer of the Corporation nor qualify as Public Directors shall be Participant Directors. The terms “Public Director” and “Participant Director” shall have the meanings given those terms in the bylaws.

(d) Terms. The Board of Directors shall be divided into three classes, designated Class 1, Class 2 and Class 3, which shall be as nearly equal in number and make-up (e.g. Public Director and Participant Director) as the total number of directors then constituting the entire Board permits. The directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, directors in Class 1 shall be initially appointed to hold office until the 2005 annual meeting of stockholders of the Corporation; directors in Class 2 shall be initially appointed to hold office until the 2006 annual meeting of stockholders of the Corporation; and directors in Class 3 shall be initially appointed to hold office until the 2007 annual meeting of stockholders of the Corporation. Thereafter, the term of

office for each class of directors elected at each annual meeting shall be three years from the date of their election. All directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of early resignation, removal or disqualification.

(e) *Election and Qualification of Directors.* At each annual meeting of stockholders at which a quorum is present, the persons receiving a plurality of the votes cast, for the type of director associated with the seat on the board being filled, shall be directors. No director need be a stockholder.

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

(g) *Vacancies.* Any vacancy on the Board of Directors resulting from the death, retirement, resignation, disqualification or removal of a director, as well as any newly created directorship resulting from an increase in the number of directors which occurs between annual meetings of the stockholders at which directors are elected, shall be filled only with a person nominated by the Chairman and Vice Chairman of the Corporation and elected by a majority of the directors then in office, though less than a quorum or by a sole remaining director, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Any person chosen to fill a vacancy or newly-created directorship must qualify as the type of director (Public Director or Participant Director) associated with the seat on the board being filled. A director chosen to fill a vacancy or newly-created directorship by the directors then in office shall hold office until the end of the next annual meeting of stockholders, at which time a director shall be elected by vote of the stockholders to fill any remaining portion of the term of the class to which such director belongs. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

### **Duration**

SIXTH: The duration of the Corporation shall be perpetual.

### **Bylaws**

SEVENTH[EIGHTH]: [The By-Laws of the Corporation shall consist of its Constitution and its Rules. After adoption of the initial By-Laws by the incorporators of the

Corporation, the power to make, alter or repeal the Constitution shall be vested in the voting members of the Corporation, and shall be exercisable by such vote of those members, subject to such conditions (if any) of prior approval by the Board of Governors, as the Constitution may provide, while the power to make, alter or repeal the Rules shall be vested in both the Board of Governors and the Executive Committee thereof, and shall be exercisable by such vote of the members of that Board or Committee as the Rules may provide. Any and all matters relating to the Corporation, including (without limitations of the foregoing) its membership, its internal organization, its internal affairs, its management and its business and other external affairs, may be covered by the Constitution, in a manner not inconsistent with this Certificate of Incorporation, as amended from time to time, or may be assigned expressly or implicitly (by absence of a provision in the Constitution) to the Rules. The Rules may cover all matters relating to the Corporation as aforesaid, to the extent assigned to the Rules expressly or implicitly by the Constitution, in a manner not inconsistent with this Certificate of Incorporation and the Constitution, each as amended from time to time.] The Board of Directors shall have the power to adopt, amend or repeal the bylaws and rules of the Corporation. The bylaws may also be amended or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Corporation.

#### **[Power to Sell, Lease or Exchange Property]**

[NINTH: The Corporation may sell, lease or exchange all, or substantially all, of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such considerations as the Board of Governors deems expedient and for the best interests of the Corporation, when and as authorized by a resolution adopted by a majority of the members entitled to vote, thereon at a meeting duly called upon at least 20 days' notice which shall state that such a resolution will be considered at the meeting. Notwithstanding member authorization or consent to any such proposed sale, lease or exchange, the Board of Governors may abandon the same without further action by the members. The authorization of, or consent to, the mortgage or pledge of the Corporation's property and assets (or any part thereof) by the members of the Corporation shall not be necessary.]

#### **[Dissolution]**

[TENTH: In the event the Corporation shall be dissolved, any assets of the Corporation remaining after all other obligations of the Corporation shall have been paid, or otherwise adequately provided for, shall be sold and the net proceeds therefrom shall be distributed in the manner set forth in the By-Laws to those owning memberships in the Corporation at the time of the vote to dissolve the Corporation, irrespective of whether such owners were entitled to vote on such dissolution.]

#### **Indemnification and Liability of Directors**

EIGHTH[ELEVENTH]:

(a) Indemnification. The Corporation may provide indemnification for members of its Board of Directors[Governors] and of committees of the Board of

Directors[Governors] and of other committees of the Corporation, its officers, agents and employees, and those serving another corporation, partnership, joint venture, trust or other enterprise at the request of the Corporation, within the limits permitted by Delaware law to safeguard such persons from expense and liability for actions they take in any such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the Corporation and its stockholders[members], and, with respect to any criminal action or proceeding, if such person had no reasonable cause to believe that such person's conduct was unlawful.

(b) Limitation of Liability. To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date this certificate of incorporation is adopted [hereof] or as it may later[hereafter] be amended, permits the limitation or elimination of the liability of directors[Governors], no director[Governor] of the Corporation[Exchange] shall be liable to the Corporation[Exchange] or its stockholders[members] for monetary damages for breach of fiduciary duty as a director[Governor], except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any director[Governor] of the Corporation[Exchange] for or with respect to any acts or omissions of such director[Governor] occurring prior to such amendment or repeal.

#### **Action without Meeting**

NINTH: Action may be taken by the stockholders of the Corporation, without a meeting, by written consent as and to the extent provided at the time by the General Corporation Law of Delaware, provided that the matter to be acted upon by such written consent previously has been approved by the Board of Directors of the Corporation and directed by such Board to be submitted to the stockholders for their action by written consent.

#### **Compromise or Other Arrangement**

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

all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

### **Amendment of Certificate of Incorporation**

ELEVENTH[TWELFTH]: The Corporation reserves the right to amend this c[C]ertificate of i[I]ncorporation, and to [thereby] change or repeal any provision [herein contained from time to time]of the certificate of incorporation, [in the manner prescribed at the time by statute,] and all rights conferred upon stockholders[members herein] by such certificate of incorporation are granted subject to this reservation; provided, however, that any amendment [hereto] to this certificate of incorporation must be approved by a majority[two-thirds] of the members of the Board of Directors[Governors] who are present at the meeting [of such Board] at which the[such] amendment is proposed and by a majority of the stockholders[members] of the Corporation present in person or by proxy at the meeting of stockholders[members] at which the[such] amendment is submitted.