

Exhibit 5A – Second Amended and Restated Trust Agreement

Underlining indicates additions

[Brackets] indicate deletions

SECOND AMENDED AND RESTATED TRUST AGREEMENT

DATED AS OF

[FEBRUARY 4, 2010] [•], 2012

AMONG

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.,

U.S. EXCHANGE HOLDINGS, INC.,

WILMINGTON TRUST COMPANY, AS DELAWARE TRUSTEE,

SHARON BROWN-HRUSKA, AS TRUSTEE,

ROBERT SCHWARTZ, AS TRUSTEE

AND

HEINZ ZIMMERMANN, AS TRUSTEE

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SECOND AMENDED AND RESTATED TRUST AGREEMENT

This **SECOND AMENDED AND RESTATED TRUST AGREEMENT** is dated as of [February 4, 2010] [], 2012 (this “**Agreement**”) among International Securities Exchange Holdings, Inc., a Delaware corporation (“**ISE Holdings**”), U.S. Exchange Holdings, Inc., a Delaware Corporation (the “**Trust Beneficiary**”), Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees.

RECITALS

WHEREAS, on December 19, 2007, the Trust Beneficiary, a wholly-owned subsidiary of Eurex Frankfurt AG (“**Eurex Frankfurt**”), became the sole stockholder of ISE Holdings pursuant to that certain Agreement and Plan of Merger dated as of April 30, 2007, among Eurex Frankfurt, Ivan Acquisition Co. and ISE Holdings;

WHEREAS, ISE Holdings, the Trust Beneficiary, the Delaware Trustee, and the Board of Trustees (as such term is defined below) have previously entered into the Trust Agreement dated as of December 19, 2007 (the “**Trust Agreement**”), for the purpose of forming a statutory trust (the “**Trust**”) under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801 *et seq.* (the “**Delaware Act**”);

WHEREAS, the Trust Beneficiary, as of the date of the Trust Agreement owned, and as of the date hereof continues to own, 100% of the Voting Shares (as such term is defined below);

WHEREAS, the Trust Beneficiary, by execution of the Trust Agreement on December 19, 2007, granted the Trust an option to call Voting Shares as provided in Section 4.2 below (the “**Call Option**”);

WHEREAS, on December 19, 2007, the parties hereto established the independent Trust and granted to it, subject to the terms and conditions of the Trust Agreement, the powers set forth therein in the event that such action was needed to effectively mitigate the effects of a breach of an Ownership Limit or a Voting Limit or to address a Material Compliance Event (as such terms are defined below);

WHEREAS, the Trust and the Board of Trustees (as such term is defined below) shall perform their duties and exercise their rights and powers independently in accordance with their duties and obligations set forth in this Agreement;

WHEREAS, ISE Holdings is a party to that certain Transaction Agreement dated as of August 22, 2008, by and among, among others, ISE Stock Exchange, LLC, a Delaware limited liability company and direct subsidiary of ISE Holdings, Direct Edge Holdings LLC, a Delaware limited liability company (“**Direct Edge**”), and Maple Merger Sub, LLC, a Delaware limited

liability company and direct wholly owned subsidiary of Direct Edge (“**Merger Sub**”), pursuant to which ISE Stock Exchange, LLC merged with and into Merger Sub with Merger Sub surviving the merger, and ISE Holdings became a member of Direct Edge and Direct Edge became the sole member of Merger Sub (the “**Transaction**”);

WHEREAS, in connection with the Transaction, Direct Edge’s indirect subsidiaries, EDGA Exchange, Inc., a Delaware corporation wholly owned by Direct Edge (“**EDGA Exchange**”), and EDGX Exchange, Inc., a Delaware corporation wholly owned by Direct Edge (“**EDGX Exchange**,” and together with EDGA Exchange, the “**Direct Edge Exchanges**”), have each filed with the SEC (as such term is defined below) a Form 1 to register each Direct Edge Exchange as a national securities exchanges;

WHEREAS, in connection with the Transaction, ISE Holdings amended and restated its Certificate of Incorporation (as such term is defined below) and Bylaws to provide that for so long as ISE Holdings directly or indirectly controls one or more national securities exchange, ISE Holdings shall be subject to the Ownership Limit and Voting Limit; [and]

WHEREAS, the parties hereto [desire to] amended the terms of and restated the Trust Agreement to reflect ISE Holdings’ indirect ownership of the Direct Edge Exchanges and any hereinafter acquired ownership of a Controlled National Securities Exchange;

WHEREAS, in order to permit the transactions contemplated by that certain Share Purchase Agreement, dated as of June 7, 2011, between Deutsche Börse AG and SIX Group AG (formerly SWX Group AG) and SIX Swiss Exchange AG (formerly SWX Swiss Exchange AG), under which ISE Holdings will become an indirect subsidiary of Eurex Global Derivatives AG, a stock corporation organized under the laws of Switzerland;

WHEREAS, in connection with the transactions contemplated by the Share Purchase Agreement, dated as of June 7, 2011, ISE Holdings amended and restated its Bylaws to waive the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of ISE Holdings by Eurex Global Derivatives AG; and

WHEREAS, the parties hereto desire to amend the terms of and restate the Trust Agreement to reflect Eurex Global Derivatives AG’s indirect ownership of the Controlled National Securities Exchanges;

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS; CONSTRUCTION

Section 1.1 Definitions.

“**Affiliate**” or “**Affiliated**” has the meaning given to that term in Rule 405 of the Securities Act, or any successor rule thereunder.

“**Affected Affiliate**” means any one or more of Eurex Frankfurt AG, Eurex Zürich AG, Deutsche Börse AG, Eurex Global Derivatives AG, [SIX Swiss Exchange AG (as successor-in-interest to SWX Swiss Exchange AG, SIX Group AG (as successor-in-interest to SWX Group AG,)] and any Affiliate of the Trust Beneficiary that, at any time, controls a Controlled National Securities Exchange, directly or indirectly.

“**Agreement**” has the meaning set forth in the preamble hereto.

“**Board of Trustees**” has the meaning set forth in Section 3.2(a).

“**Call Option**” means the option granted by the Trust Beneficiary to the Trust to call the Voting Shares as set forth in Section 4.2.

“**Cause**” means, in relation to any Trustee, any of the following: (a) a breach of the duties of the Trustee set forth herein or under the Delaware Act; (b) any misconduct, fraud, misappropriation or embezzlement by the Trustee; or (c) the incapacity to perform the duties set forth herein or under the Delaware Act as a result of insanity, disability or incompetency (determined by a court of competent jurisdiction or a competent Governmental Entity).

“**Certificate of Incorporation**” means the Amended and Restated Certificate of Incorporation of ISE Holdings.

“**Confidential Information**” has the meaning set forth in Section 6.1.

“**Controlled National Securities Exchange**” means a national securities exchange controlled, directly or indirectly, by ISE Holdings, including but not limited to, the ISE Exchange, EDGA Exchange, EDGX Exchange, or facility thereof.

“**Covered Claim**” has the meaning set forth in Section 8.4(a).

“**Cure Period**” has the meaning set forth in Section 4.2(c).

“**Delaware Act**” has the meaning set forth in the preamble hereto.

“**Delaware Courts**” has the meaning set forth in Section 8.4(a).

“**Delaware Trustee**” has the meaning set forth in Section 3.3(a).

“**Deposited Shares**” has the meaning set forth in Section 4.2(g).

“**Direct Edge**” has the meaning set forth in the recitals hereto.

“**Direct Edge Exchanges**” has the meaning set forth in the recitals hereto.

“**Eligibility Requirements**” has the meaning set forth in Section 3.2(a).

“**Excess Shares**” has the meaning set forth in Article FOURTH, Section III, subparagraph (c) of the Certificate of Incorporation of ISE Holdings.

“**Exchange**” has the meaning set forth in Section 3(a)(1) of the Exchange Act.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Executive Officer**” has the meaning set forth in Rule 3b-7 under the Exchange Act.

“**Federal Courts**” has the meaning set forth in Section 8.4(a).

“**Government Entity**” means any national or local government, governmental or regulatory authority, agency, commission, body or other governmental or regulatory entity.

“**Immediate Family Member**” means a Person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such Person’s home.

“**Indemnified Person**” has the meaning set forth in Section 7.3

“**Initial Trustees**” has the meaning set forth in Section 3.4(a).

“**ISE Exchange**” means International Securities Exchange, LLC, a Delaware limited liability company.

“**ISE Holdings**” has the meaning set forth in the preamble hereto.

“**ISE Holdings Board**” has the meaning set forth in Section 3.2(b).

“**Material Compliance Event**” means, with respect to an Affected Affiliate, any state of facts, development, event, circumstance, condition, occurrence or effect that results in the failure of any of the Affected Affiliates to adhere to their respective commitments under the Resolutions in any material respect.

“**Merger Sub**” has the meaning set forth in the recitals hereto.

“**Ownership Limit**” has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i) of the Certificate of Incorporation of ISE Holdings.

“**Ownership Percentage**” has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i)(E) of the Certificate of Incorporation of ISE Holdings.

“**Person**” means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, government or any agency or political subdivision thereof, or any other entity of any kind or nature.

“**Resolutions**” means, with respect to any Affected Affiliate, the resolutions and consents adopted, or to be adopted, by such Affected Affiliate in connection with such Affected Affiliate’s ownership interest or voting interest in a Controlled National Securities Exchange.

“**Sale**” has the meaning set forth in Section 4.3(a).

“**SEC**” means the U.S. Securities and Exchange Commission.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Subsidiary**” means, with respect to any Person, any entity, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such Person or by one or more of the Subsidiaries of such Person.

“**Successor Delaware Trustee**” has the meaning set forth in Section 3.3(f).

“**Transaction**” has the meaning set forth in the recitals hereto.

“**Trust**” has the meaning set forth in the preamble hereto.

“**Trust Beneficiary**” has the meaning set forth in the preamble hereto.

“**Trust Property**” means all estate, right, title and interest acquired by the Trust pursuant to this Agreement (including any Trust Shares), whether held directly or indirectly (including through any corporation or other Subsidiary), as the same may be added to or changed from time to time following the acquisition thereof.

“**Trust Purposes**” has the meaning set forth in Section 2.3.

“**Trust Shares**” means either Excess Shares or Deposited Shares, or both, as the case may be.

“**Trustee**” means each member of the Board of Trustees (excluding, for the avoidance of doubt, the Delaware Trustee).

“**Voting Control Percentage**” has the meaning set forth in Article FOURTH, Section III, subparagraph (b)(iii) of the Certificate of Incorporation of ISE Holdings.

“**Voting Limit**” has the meaning set forth in Article FOURTH, Section III, subparagraph (b) of the Certificate of Incorporation of ISE Holdings.

“**Voting Shares**” has the meaning set forth in Article FOURTH, Section III, subparagraph (a)(i) of the Certificate of Incorporation of ISE Holdings.

Section 1.2 Construction.

(a) For the purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders; (b) references herein to “Articles”, “Sections”, “subsections” and other subdivisions, and to Exhibits, Schedules, Annexes and other attachments, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits, Schedules, Annexes and other attachments to, this Agreement; (c) a reference to a subsection or other subdivision without further reference to a Section is a reference to such subsection or subdivision as contained in the same Section in which the reference appears; (d) the words “herein”, “hereof”, “hereunder”, “hereby” and other words of similar import refer to this Agreement as a whole and not to any particular provision; (e) the words “include”, “includes” and “including” are deemed to be followed by the phrase “without limitation”; and (f) all accounting terms used and not expressly defined herein have the respective meanings given to them under U.S. generally accepted accounting principles.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

**ARTICLE II
THE TRUST**

Section 2.1 Name. The name of the Trust shall be the International Securities Exchange Trust (the “**ISE Trust**”).

Section 2.2 Offices. The address of the principal offices of the Trust on the date of execution of this Agreement is ISE Trust, c/o International Securities Exchange Holdings, Inc., 60 Broad Street, New York, NY 10004.

Section 2.3 Purposes.

- (a) The purposes of the Trust (the “**Trust Purposes**”) are to:
- (i) accept, hold and dispose of Trust Shares on the terms and subject to the conditions set forth herein,
 - (ii) determine whether a Material Compliance Event has occurred or is continuing;
 - (iii) determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; and

(iv) transfer Deposited Shares from the Trust to the Trust Beneficiary as provided in Section 4.2(h) below.

(b) In carrying out the Trust Purposes: (i) in performing their obligations with respect to voting any Trust Shares as described in Article IV, the duty of the Trust and the Trustees shall be to act in the public interests of the markets operated by each Controlled National Securities Exchange; (ii) in performing their obligations relating to distributions paid to the Trust with respect to Trust Shares and Sales, the duty of the Trust and the Trustees shall be as set forth in the proviso set forth in the first sentence of Section 4.3(a); and (iii) in all other circumstances, the duty of the Trust and the Trustees shall be to act in the best interests of ISE Holdings. In the event of any conflict between the duties of the Trust and the Trustees referred to in clauses (i), (ii), and (iii) of the immediately preceding sentence, the duties referred to in such clause (i) shall prevail. Notwithstanding anything to the contrary, neither the Trustees nor the Delaware Trustee shall, on behalf of the Trust, enter into or engage in any profit-making trade or business, and neither the Trustees nor the Delaware Trustee shall have any power to take, and none of them shall take, any actions hereunder other than such as are reasonably necessary and incidental to the achievement of the Trust Purposes.

Section 2.4 Beneficial Owner. The beneficial owner (as that term is used in the Delaware Act) of the Trust shall be ISE Holdings and the beneficial owner of any Trust Property shall be ISE Holdings; *provided, however*, that to the extent that any Trust Shares are transferred to the Trust pursuant to Article IV, such shares shall be held for the benefit of the Trust Beneficiary.

Section 2.5 Certificate of Trust. The certificate of trust was filed in the Office of the Secretary of State of Delaware in accordance with the applicable provisions of the Delaware Act on December 19, 2007.

Section 2.6 Duration.

(a) The term of the Trust shall be perpetual; *provided, however*, that the Trust shall be dissolved and its affairs wound up in the event that ISE Holdings no longer controls, directly or indirectly, a Controlled National Securities Exchange.

(b) In the event that the Trust is dissolved pursuant to Section (a), the Trustees shall wind up the affairs of the Trust in accordance with Section 3808 of the Delaware Act.

(c) Upon completion of the winding up of the Trust, the Trustees shall file a certificate of cancellation with the Secretary of State of Delaware terminating the Trust, which certificate of cancellation may be signed by any Trustee, and this Agreement shall terminate and be of no further force and effect; *provided, however*, that the provisions of Section 6.1 and Section 6.2 shall survive any such termination for a period of ten years.

ARTICLE III TRUSTEES

Section 3.1 Authority. Except as specifically provided in this Agreement, the Trustees shall have exclusive and complete authority to carry out the Trust Purposes, and shall

have no duties or powers except as set forth in this Agreement and applicable law. The Delaware Trustee shall have no duties or powers except as set forth in Section 3.3. Any action taken by the Board of Trustees in accordance with the terms of this Agreement shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust shall be entitled to rely conclusively on the power and authority of the Trustees as set forth in this Agreement.

Section 3.2 Number and Certain Qualifications of Trustees.

(a) Except to the extent that there shall be one or more vacancies on the Board of Trustees, there shall be at all times three Trustees, who, together, shall constitute the “**Board of Trustees**”, and who shall satisfy the eligibility requirements set forth in the following sentence (the “**Eligibility Requirements**”). A Person may serve as a Trustee only if such Person:

(i) is not subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act;

(ii) is of high repute and has experience and expertise in, or knowledge of, the securities industry, regulation and/or corporate governance;

(iii) is independent of ISE Holdings, the Trust Beneficiary, and any Affiliate of ISE Holdings or the Trust Beneficiary, *provided*, that:

(A) a Person shall be independent for purposes of this paragraph (iii) only if the Person does not have any material relationships with ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary; and

(B) a Person is not independent for purposes of this paragraph (iii):

(1) if the Person is an officer, director (or equivalent), or employee of a broker or dealer or has served in any such capacity at any time within the prior three years;

(2) if the Person has an Immediate Family Member who is, or within the last three years was, an Executive Officer (or equivalent) of a broker or dealer;

(3) if the Person has, within the last three years, received from any broker or dealer more than \$100,000 per year in direct compensation, or received from brokers or dealers in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Person’s annual gross income for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service);

(4) if the Person is affiliated, directly or indirectly, with a broker or dealer;

(5) if the Person, or an Immediate Family Member of the Person, is, or within the last three years was, a member (or equivalent) of a U.S. or non-U.S. Exchange that is owned or operated by ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, or is affiliated, directly or indirectly, with such a member (or equivalent).

(6) if the Person, or an Immediate Family Member of the Person, is a director (or equivalent) of, has a consulting or employment relationship with, or has provided professional services to ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary or has served in such capacity, had any such relationship, or provided any such services to ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary within the prior three years;

(7) if the Person, or an Immediate Family Member of the Person, receives more than \$100,000 per year in direct compensation from ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), until three years after he or she ceases to receive more than \$100,000 per year in such compensation;

(8) if the Person, or an Immediate Family Member of the Person, is affiliated with, employed in a professional capacity by, or a partner of a present or former internal or external auditor of ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, until three years after the end of the affiliation or the employment or auditing relationship;

(9) if the Person, or an Immediate Family Member of the Person, is employed as an Executive Officer (or equivalent) of a company where any of the present Executive Officers (or equivalent) of ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary serve on that company's compensation committee, until three years after the end of such service or the employment relationship.

(10) if the Person, or an Immediate Family Member of the Person, is an Executive Officer (or equivalent) or an employee of a company that makes payments to, or receives payments from, ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary, for property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues, until three years after falling below such threshold; or

(11) if the Person is an Executive Officer (or equivalent) of an issuer of securities listed on a U.S. or non-U.S. Exchange that is owned or operated

by ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary; and

(iv) is independent to such a degree that the Trustee can be entrusted to resist undue pressures.

(b) The board of directors of ISE Holdings (the “**ISE Holdings Board**”) shall determine whether a Person satisfies the Eligibility Requirements. Each Person to be nominated or appointed by the ISE Holdings Board to serve as a Trustee must not be unacceptable to the Staff of the SEC. In determining whether a Person is independent under the Eligibility Requirements, the ISE Holdings Board shall consider:

(i) a Person’s relationships and interests not only from the standpoint of the Person, but also from the standpoint of other Persons with which such Person is Affiliated or associated; and

(ii) the special responsibilities of a Trustee in light of the fact that Trust Shares would represent ownership in an entity that controls an entity that is a U.S. self-regulatory organization and a U.S. national securities exchange subject to the supervision of the SEC.

(c) The ISE Holdings Board shall make an independence determination with respect to each Trustee upon the Trustee’s nomination or appointment to serve as a Trustee and thereafter at such times as the ISE Holdings Board considers advisable in light of the Trustee’s circumstances, but in any event not less frequently than annually. Any Trustee whom the ISE Holdings Board determines not to be independent under the Eligibility Requirements shall be deemed to have tendered his or her resignation for consideration by the ISE Holdings Board.

Section 3.3 **Delaware Trustee.**

(a) If required by the Delaware Act, one trustee (the “**Delaware Trustee**”) shall be: (i) a natural person who is a resident of the State of Delaware; or (ii) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, including Section 3807 of the Delaware Act.

(b) The Delaware Trustee shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more authorized officers.

(c) The initial Delaware Trustee shall be Wilmington Trust Company, whose offices are located at Rodney Square North, 1100 N. Market Street, Wilmington, Delaware 19890, Attn: Corporate Trust Administration.

(d) Notwithstanding any other provision of this Agreement, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of any of the Trustees described in this Agreement and the Delaware Trustee shall be a trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Act.

(e) No resignation or removal of the Delaware Trustee and no appointment of a Successor Delaware Trustee pursuant to this Agreement shall become effective until the acceptance of appointment by the Successor Delaware Trustee in accordance with the applicable requirements of this Article.

(f) Subject to Section 3.3(e), the Delaware Trustee may resign at any time by giving written notice thereof to the Board of Trustees and to the ISE Holdings Board. Such resignation shall be effective upon the appointment of a successor Delaware Trustee (the “**Successor Delaware Trustee**”) by the ISE Holdings Board, which appointment shall require that the Successor Delaware Trustee execute an instrument of acceptance required by this Section 3.3. If the instrument of acceptance by the Successor Delaware Trustee required by this Section 3.3 shall not have been delivered to the resigning Delaware Trustee within 60 days after the giving of such notice of resignation, the resigning Delaware Trustee may petition, at the expense of the Trust, any court of competent jurisdiction for the appointment of a Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint the Successor Delaware Trustee.

(g) The Delaware Trustee and each Successor Delaware Trustee may be removed with or without Cause by the ISE Holdings Board by delivery of notification of removal to the Delaware Trustee and to the Board of Trustees. A Delaware Trustee who is a natural person may also be removed by the ISE Holdings Board if such Delaware Trustee becomes incompetent or incapacitated, and shall be deemed removed if such Delaware Trustee dies. In the event of the removal of the Delaware Trustee or any Successor Delaware Trustee or in the event that the Person at any time serving as a Delaware Trustee shall cease to serve in such capacity for any other reason, the ISE Holdings Board shall appoint a Successor Delaware Trustee, which appointment shall require that the Successor Delaware Trustee execute an instrument of acceptance required by this Section 3.3.

(h) In the case of the appointment hereunder of a Successor Delaware Trustee, the retiring Delaware Trustee (except in the case of the death, incompetence or incapacity of a Delaware Trustee who is a natural person) and each Successor Delaware Trustee shall execute and deliver an amendment hereto wherein each Successor Delaware Trustee shall accept such appointment and which shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each Successor Delaware Trustee all the rights, powers, and duties of the retiring Delaware Trustee with respect to the Trust; it being understood that nothing herein or in such amendment shall designate such Delaware Trustee as a Trustee and upon the execution and delivery of such amendment the resignation or removal of the retiring Delaware Trustee shall become effective to the extent provided therein and each such successor Delaware Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, and duties of the retiring Delaware Trustee; but, on request of the Trust or any Successor Delaware Trustee, such retiring Delaware Trustee shall duly assign, transfer and deliver to such Successor Delaware Trustee all property of the Trust, all proceeds thereof and money held by such retiring Delaware Trustee hereunder with respect to the Trust. Upon the appointment of a Successor Delaware Trustee, a Trustee shall file an amendment to the certificate of trust with the Delaware Secretary of State reflecting the name and address of such Successor Delaware Trustee in the State of Delaware.

(i) Any Person into which the Delaware Trustee may be merged or converted, or any Person resulting from any merger, conversion or consolidation to which the Delaware Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto (other than the filing of an amendment to the certificate of trust if required by the Delaware Act); *provided*, that such Person shall be otherwise qualified and eligible under this Article.

(j) The initial Delaware Trustee represents and warrants to the Trust and each of the other parties at the date of this Agreement, and each Successor Delaware Trustee represents and warrants to the Trust at the time of such Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee, that:

(i) the Delaware Trustee, if other than a natural person, is duly organized, validly existing and in good standing under the laws of the State of Delaware, with power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Agreement;

(ii) the Delaware Trustee has been authorized to perform its obligations under this Agreement. This Agreement constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law); and

(iii) the Delaware Trustee is a natural person who is a resident of the State of Delaware or, if not a natural person, an entity that has its principal place of business in the State of Delaware and, in either case, a Person that satisfies for the Trust the requirements of Section 3807 of the Delaware Act.

Section 3.4 **Appointment of Trustees; Term; Successor Trustees.**

(a) ISE Holdings hereby appoints Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann as the initial Trustees (the "**Initial Trustees**"). By countersigning this Agreement, the Initial Trustees confirm their acceptance of their appointment in accordance with the terms hereof.

(b) Each Trustee represents and warrants to the other parties hereto that this Agreement constitutes a legal, valid and binding obligation of such Trustee, enforceable against him or her in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(c) Subject to Section 3.2(a), all Trustees (other than the Initial Trustees) shall be appointed by the ISE Holdings Board.

(d) The Trustees shall serve for three-year terms. There shall be no limitation to the number of terms that can be served by any Trustee.

(e) Any Trustee may be removed at any time by the ISE Holdings Board for Cause by a written notice delivered to the Board of Trustees; *provided, however*, that ISE Holdings shall provide prior written notice of such removal to the Director of the Division of Trading and Markets of the SEC. In the event that such removal would result in no Trustees being in office, then such removal shall be effective only upon the appointment by the ISE Holdings Board of a successor Trustee, who shall have the authority to act as a Trustee of the Trust as of such appointment and during the pendency of any regulatory approval of such appointment.

(f) Any Trustee may resign as such by executing an instrument in writing to that effect and delivering that instrument to the ISE Holdings Board, with a copy to the Trust. In the event of a resignation, such Trustee shall promptly: (i) execute and deliver such documents, instruments or other writings as may be reasonably requested by the ISE Holdings Board, to effect the termination of such Trustee's capacity under this Agreement; (ii) deliver, to the remaining Trustees, all assets, documents, instruments, records and other writings related to the Trust as may be in the possession of such Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of such Trustee's obligations and functions by his or her successor Trustee.

(g) Upon the resignation, retirement, removal or incompetency (determined by a court of competent jurisdiction or a competent Government Entity) or death of a Trustee, the ISE Holdings Board shall have the power to appoint a successor Trustee for the remaining portion of such Trustee's current term in office subject to and in accordance with Section 3.2 and this Section 3.4. Such appointment shall specify the date on which such appointment shall be effective. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the ISE Holdings Board and the Trust an instrument accepting such appointment and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers and duties of a Trustee.

(h) The resignation, retirement, removal, incompetency (determined by a court of competent jurisdiction or a competent Government Entity) or death of a Trustee shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in Trustee shall occur, until such vacancy shall be filled by the appointment of a Trustee in accordance with Section (g), the Trustee or Trustees remaining in office shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Agreement.

Section 3.5 Actions by the Trustees; Meetings of the Board of Trustees.

(a) Any action of the Trustees shall require the approval of a majority of the Trustees then in office acting at a meeting where there is present or represented a quorum. A quorum shall exist where there is present or represented a majority of the Trustees then in office and in no event less than two Trustees; *provided, however*, that, if there shall be only one Trustee then in office, a quorum shall exist where there is present or represented the sole Trustee then in office. Any action of the Board of Trustees shall be evidenced by a written consent, approval or

instruction, executed by the required number of Trustees to approve such action. The Trustees may adopt their own rules and procedure subject to the terms of this Agreement, but may not delegate the authority to act on behalf of the Trust or the Trustees to any Person (except to another Trustee to vote on behalf of the first Trustee pursuant to the instructions of such first Trustee at a meeting of the Board of Trustees).

(b) Meetings of the Board of Trustees may be held from time to time upon the call of any member of the Board of Trustees. Notice of any in-person meetings of the Board of Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or e-mail, with a hard copy by overnight mail) not less than five business days before such meeting. Notice of any telephonic meetings of the Board of Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or e-mail, with a hard copy by overnight mail) not less than 48 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. Trustees shall be entitled to participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in a meeting in this manner shall constitute presence in person at such meeting. The presence (whether in person or by telephone) of a member of the Board of Trustees at a meeting shall constitute a waiver of notice of such meeting except where such member of the Board of Trustees attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Any member of the Board of Trustees may also waive such notice of in-person or telephonic meetings in writing by hand delivering or otherwise delivering (including by facsimile or e-mail, with a hard copy by overnight mail) such written waiver to all other members of the Board of Trustees.

Section 3.6 **Duties of the Trustees.**

(a) In discharging their duties, the Trustees and the Delaware Trustee shall:

(i) consult reasonably and cooperate in good faith with ISE Holdings, the Trust Beneficiary, each Controlled National Securities Exchange, as applicable, and the SEC, including in connection with any exercise of the remedies described in ARTICLE IV; and

(ii) (A) in performing their obligations with respect to voting any Trust Shares as described in Article IV, act in the public interests of the markets operated by each Controlled National Securities Exchange; (B) in performing their obligations relating to distributions paid to the Trust with respect to Trust Shares and Sales, the duty of the Trust and the Trustees shall be as set forth in the proviso set forth in the first sentence of Section 4.3(a) of this Agreement; and (C) in all other circumstances, act in the best interests of ISE Holdings. In the event of any conflict between the duties of the Trust and the Trustees referred to in clauses (A), (B), and (C) of the immediately preceding sentence, the duties referred to in such clause (A) shall prevail.

(b) The Trustees and the Delaware Trustee need perform only those duties as are specifically set forth in this Agreement and as are contemplated by any other agreement to which the Trustees, the Delaware Trustee or the Trust are a party that was entered into in

accordance with the terms of this Agreement, and no others and no implied covenants or obligations shall be read into this Agreement against or for the benefit of the Trustees.

(c) The duties and responsibilities of the Trustees and of the Delaware Trustee shall be as provided by this Agreement and the Delaware Act.

(d) The Trustees and the Delaware Trustee may consult with counsel acceptable to ISE Holdings.

(e) In the absence of a Trustee's or Delaware Trustee's gross negligence, misconduct or bad faith on its part, such Trustee or Delaware Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon notices, certificates or opinions that by any provision of this Agreement are permitted or required to be furnished to such Trustee or Delaware Trustee; *provided*, that such notices, certificates or opinions conform to the requirements of this Agreement. A Trustee or Delaware Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person. Such Trustee or Delaware Trustee need not investigate any fact or matter stated in the document.

Section 3.7 **Compensation of Trustees.** Trustees may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the ISE Holdings Board may from time to time determine. The Delaware Trustee shall receive as compensation such fees as agreed in a separate fee agreement.

ARTICLE IV REMEDIES

Section 4.1 Exercise of Remedies – Ownership Limits and Voting Limits.

(a) For so long as ISE Holdings shall control, directly or indirectly, a Controlled National Securities Exchange, in the event that:

Limit; or

(i) any Person's Ownership Percentage exceeds an Ownership

and

(ii) any Person's Voting Control Percentage exceeds a Voting Limit;

(b) in any such case, such Person's Ownership Percentage or Voting Control Percentage in excess of any of the Ownership Limits or Voting Limits, as applicable, is not waived by the ISE Holdings Board and approved by the SEC in accordance with the Certificate of Incorporation of ISE Holdings; then

(c) the Excess Shares shall be automatically transferred to the Trust pursuant to Article FOURTH, Section III, subparagraph (c) of the Certificate of Incorporation of ISE Holdings; and

(d) the Trust shall accept the contribution of the Excess Shares to the Trust, for the benefit of the Trust Beneficiary.

(e) Nothing in this Agreement shall prohibit the SEC from bringing such matters to the attention of the Trustees as the SEC deems relevant or from providing advice to the Trustees at any time before or after the occurrence of a Person's Ownership Percentage or Voting Control Percentage exceeding any of the Ownership Limits or Voting Limits, as applicable.

(f) The Trust Beneficiary shall have the right to reacquire Excess Shares contributed to the Trust pursuant to this Section 4.1 if and when (a) a Person's Ownership Percentage and Voting Control Percentage no longer exceeds any Ownership Limit or Voting Limit, as applicable, or (b) a Person's Ownership Percentage or Voting Control Percentage in excess of any of the Ownership Limits or Voting Limits, as applicable, is waived by the ISE Holdings Board and approved by the SEC in accordance with the Certificate of Incorporation of ISE Holdings. Neither the Trust Beneficiary nor ISE Holdings shall be obligated to make any payment to the Trust or any other Person as a result of reacquisition of Excess Shares pursuant to this Section 4.1(f).

Section 4.2 **Exercise of Remedies – Material Compliance Event.**

(a) If a Material Compliance Event shall have occurred and continues to be in effect, then, subject to Section 4.2(b), (c), and (d) below, and, if required, approval by the SEC, the Trust shall exercise the Call Option as set forth in Section 4.2(g) below.

(b) Upon becoming aware of facts, developments, events, circumstances, conditions, occurrences or effects that could reasonably be expected to result in the occurrence of a Material Compliance Event, the Board of Trustees shall promptly meet together (either in person or electronically) to commence a review of such facts, developments, events, circumstances, conditions, occurrences or effects and shall, within five (5) business days of such meeting, make a determination of whether or not a Material Compliance Event has occurred.

(c) Promptly after making a determination pursuant to Section 4.2(b) above that a Material Compliance Event has occurred, and prior to any exercise of the Call Option, the Board of Trustees shall provide written notice to the Affected Affiliate or Affiliates of the occurrence of the Material Compliance Event, which notice shall provide for sixty (60) calendar days in which to address the Material Compliance Event (such period of time, the "**Cure Period**"), and shall provide a copy of such notice to the SEC.

(d) During the Cure Period, the Board of Trustees shall:

(i) consult with the Boards of Directors (or equivalent) of each Controlled National Securities Exchange, as applicable, ISE Holdings, and the Affected Affiliates, and with the SEC, to consider alternatives to the exercise of the Call Option, whether as suggested by any of the foregoing or otherwise, to address any Material Compliance Event; and

(ii) after such consultation, if the Board of Trustees determines that the Material Compliance Event has not been addressed, provide written notice to the Boards of Directors (or equivalent) of each Controlled National Securities Exchange, as applicable, ISE Holdings, and the Affected Affiliates that the Board of Trustees has determined in its reasonable opinion that the exercise of the Call Option is necessary to address the effects of the Material Compliance Event.

(e) Nothing in this Agreement shall prohibit the SEC from bringing such matters to the attention of the Trustees as the SEC deems relevant or from providing advice to the Trustees at any time before or after the occurrence of a Material Compliance Event.

(f) Nothing in this Agreement shall (i) limit the ability of the Trustees to provide confidential non-binding advice to a Controlled National Securities Exchange, ISE Holdings, or any of their Affiliates at any time before the exercise of the Call Option or (ii) prevent a Controlled National Securities Exchange, ISE Holdings, or any of their Affiliates, in their sole discretion, from implementing any remedy at any time before the exercise of the Call Option.

(g) **Exercise of the Call Option.** Promptly following the end of the Cure Period, the Trust shall exercise the Call Option, as follows:

(i) the Trust shall deliver a written notice to ISE Holdings and the Trust Beneficiary specifying that the Trust has determined to exercise the Call Option in accordance with the terms of this Agreement; and

(ii) the Trust Beneficiary and ISE Holdings, as applicable, promptly shall take such actions as are necessary to transfer to the Trust, or cause the transfer to the Trust of a majority of the Voting Shares then outstanding (the securities transferred or issued to the Trust pursuant to this Section 4.2(g), the “**Deposited Shares**”).

(h) The Trustees shall transfer the Deposited Shares from the Trust to the Trust Beneficiary in the event that:

(i) no Material Compliance Event is continuing; or

(ii) notwithstanding the continuation of a Material Compliance Event, the Trustees determine that the retention of the Deposited Shares by the Trust could not reasonably be expected to address any continuing Material Compliance Event, *provided, however*, that any such determination shall not be effective unless it is filed with, or filed with and approved by, the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

Section 4.3 **Operation of the Trust Property.**

(a) Subject to Section 2.3(a) and Section 3.6(a)(ii), the Trustees shall act in a manner designed to enhance and preserve the Trust Property in the best interests of ISE Holdings; *provided, however*, that, notwithstanding anything to the contrary contained herein, the Trustees shall promptly (i) distribute to the Trust Beneficiary all dividends and other

distributions paid to the Trust with respect to the Trust Shares, (ii) distribute to the Trust Beneficiary all assets received by the Trust in respect of the Trust Shares, as a result of any liquidation, dissolution or winding up of, or any distribution of the assets of, ISE Holdings, and (iii) upon receipt of written instructions from the Trust Beneficiary to sell the Trust Shares, use their commercially reasonable efforts to sell such Trust Shares to a Person or Persons whose Ownership Percentage or Voting Control Percentage will not violate any of the Ownership Limits or Voting Limits, as applicable, and who is or are not an Affected Affiliate or Affiliates with respect to which a Material Compliance Event has occurred and is continuing, in one or more market transactions, public offerings or otherwise, in each case at a time or times and in a manner so as to maximize the return on the sale of such Trust Shares (any such sale, a “Sale”). Upon any Sale, the interest of the Trust Beneficiary in the Trust Shares so sold shall terminate and the Trustees shall distribute to the Trust Beneficiary the net proceeds received by the Trust from such Sale. The Trustees shall have the right to vote any Trust Shares held by the Trust. The Trustees are empowered with respect to the Trust Property to exercise from time to time in their discretion and without prior judicial authority all powers granted to them in this Agreement, including all acts necessary to exercise such powers. Persons dealing with the Trust shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trust. All powers and discretions given to the Trustees by this Agreement shall be subject to the provisions of the Delaware Act and of this Agreement, and each exercise thereof in good faith shall be conclusive on all Persons, including Persons unascertained or not born.

(b) Except as otherwise expressly provided in this Agreement, the Trustees shall not be required (i) to file any account or report of the Trustees’ administration of the Trust hereby created in any court unless demand therefor in writing has been made by any Person entitled by law to make such demand, (ii) to furnish any surety or other security or any official bond for the proper performance of the Trustees’ duties hereunder, or (iii) to procure authorization by any court in the exercise of any power conferred upon the Trustees by this Agreement.

Section 4.4 **Further Assurances.** Upon exercise by the Trust of its powers in accordance with this Agreement, ISE Holdings shall, and shall cause its Subsidiaries to, cooperate and take any and all action, promptly upon the request of the Trust, to implement such exercise.

ARTICLE V

CONSIDERATIONS OF THE BOARD; OTHER DUTIES OF THE TRUST

Section 5.1 Regulatory Considerations.

(a) In discharging his or her responsibilities as a Trustee, Delaware Trustee or officer or employee of the Trust, each Trustee, Delaware Trustee and officer and employee of the Trust, as the case may be, must, to the fullest extent permitted by applicable law, take into consideration the effect that the Trust’s actions would have on the ability of:

(i) each Controlled National Securities Exchange, to discharge their respective responsibilities under the Exchange Act; and

(ii) ISE Holdings, each Controlled National Securities Exchange, and the Trust (A) to engage in conduct that fosters and does not interfere with the ability of ISE Holdings, each Controlled National Securities Exchange, as applicable, and the Trust to prevent fraudulent and manipulative acts and practices in the securities markets; (B) to promote just and equitable principles of trade in the securities markets; (C) to foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (D) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (E) in general, to protect investors and the public interest.

(b) The Trust, the Trustees, the Delaware Trustee and officers and employees of the Trust shall give due regard to the preservation of the independence of the self-regulatory function of each Controlled National Securities Exchange, and to each of their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors or managers of each Controlled National Securities Exchange, relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of each Controlled National Securities Exchange, to carry out each of their respective responsibilities under the Exchange Act.

Section 5.2 Compliance with Laws.

(a) In discharging his or her responsibilities as Trustee, Delaware Trustee or officer or employee of the Trust, each such Trustee, Delaware Trustee or officer or employee of the Trust, as the case may be, shall (i) comply with the U.S. federal securities laws and the rules and regulations thereunder, (ii) cooperate with the SEC and (iii) cooperate with each Controlled National Securities Exchange, as applicable, pursuant to, and to the extent of, their respective regulatory authority.

(b) Nothing in this Article V shall create any duty owed by any Trustee, Delaware Trustee, officer or employee of the Trust to any Person to consider, or afford any particular weight to, any of the foregoing matters or to limit his or her consideration to the foregoing matters. Except as set forth in Section 7.1, no Person shall have any rights against the Trust, the Trustees, the Delaware Trustee or any officer or employee of the Trust under Section 5.1 or this Section 5.2.

Section 5.3 Other Duties of the Trust.

(a) The Trust shall comply with the U.S. federal securities laws and the rules and regulations thereunder and shall: (i) cooperate with (A) the SEC and (B) each Controlled National Securities Exchange, as applicable, pursuant to and to the extent of their respective regulatory authority; and (ii) shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, each Controlled National Securities Exchange, pursuant to their respective regulatory authority. Except as set forth in Section 7.1, no Person shall have any rights against the Trust, the Trustees, the Delaware Trustee or any officer or employee of the Trust under this Section 5.3.

(b) The Trust shall take reasonable steps necessary to cause the Trustees, the Delaware Trustee and the officers and employees of the Trust, prior to accepting a position as a Trustee, Delaware Trustee, officer or employee of the Trust, as applicable, to consent in writing to the applicability to them of Section 5.1, Section 5.2(a) and Section 5.4 and ARTICLE VI, as applicable, with respect to their activities related to each Controlled National Securities Exchange, as applicable.

Section 5.4 Submission to Jurisdiction of U.S. Courts and the SEC. The Trust, the Trustees, the Delaware Trustee and the officers and employees of the Trust whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws and the rules and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of each Controlled National Securities Exchange, as applicable, (and shall be deemed to agree that the Trust may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and the Trust and each such Trustee, Delaware Trustee, officer or employee, by virtue of his or her acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum, that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

ARTICLE VI CONFIDENTIAL INFORMATION

Section 6.1 Limits on Disclosure.

(a) To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of the Trust pertaining to the respective self-regulatory function of each Controlled National Securities Exchange (including, without limitation, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the respective books and records of the Controlled National Securities Exchange (the “**Confidential Information**”) shall: (i) not be made available to any Persons (other than as provided in Section 6.2 and Section 6.3) other than to those officers, directors, employees and agents of ISE Holdings and the Trust that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Trust, the Trustees, the Delaware Trustee and the officers and employees of the Trust; and (iii) not be used for any commercial purposes.

(b) The Trust’s books and records related to each Controlled National Securities Exchange, shall be maintained within the United States. For so long as the Trust directly or indirectly controls a Controlled National Securities Exchange, the books, records, premises, directors (including the Trustees and the Delaware Trustee), officers and employees of the Trust shall be deemed to be the books, records, premises, directors, officers and employees of the Controlled National Securities Exchange, as applicable, for purposes of and subject to oversight pursuant to the Exchange Act.

Section 6.2 **Certain Disclosure Permitted.** Notwithstanding Section 6.1, nothing in this Agreement shall be interpreted so as to limit or impede:

- (a) the rights of the SEC or each Controlled National Securities Exchange, as applicable, to have access to and examine the Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or
- (b) the ability of any directors, officers, employees or agents of ISE Holdings or any Trustees, Delaware Trustee, officers, employees or agents of the Trust to disclose the Confidential Information to the SEC or each Controlled National Securities Exchange, as applicable.

Section 6.3 **Inspection.** The Trust's books and records shall be subject at all times to inspection and copying by:

- (a) the SEC;
- (b) each Controlled National Securities Exchange; *provided*, that such books and records are related to the operation or administration of the Controlled National Securities Exchange; and
- (c) ISE Holdings and its officers, directors, employees and agents.

ARTICLE VII LIABILITY, INDEMNIFICATION AND EXCULPATION

Section 7.1 **Liability.**

- (a) Except as expressly set forth in this Agreement, the Trustees and the Delaware Trustee shall not be:
 - (i) personally liable for the payment of any amounts owed by the Trust, which payment shall be made solely from the assets of the Trust, if any; or
 - (ii) required to pay to the Trust or to any beneficial owner of the Trust any deficit upon dissolution of the Trust or otherwise.
- (b) Neither the Delaware Trustee nor any Trustee will have any liability to any Person unless it shall be established in a final and non-appealable judicial determination by clear and convincing evidence that any decision or action of the Delaware Trustee or such Trustee, as applicable, was undertaken by reason of willful misconduct or gross negligence, and, in any event, any liability will be limited to actual, proximate and quantifiable damages.
- (c) Neither ISE Holdings, each Controlled National Securities Exchange nor the Trust Beneficiary shall be liable in any capacity (whether as grantor, beneficial owner or otherwise) for any actions of the Trustees pursuant to this Agreement or for any debts, liabilities or other obligations of the Trust or the Trustees. Pursuant to Section 3803(a) of the Delaware Act, as applicable, ISE Holdings and each Controlled National Securities Exchange shall be

entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

Section 7.2 Exculpation. No Trustee, Delaware Trustee, officer or employee of the Trust shall be liable to the Trust, or any other Person who has an interest in the Trust, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Trustee, Delaware Trustee, officer or employee of the Trust in good faith on behalf of the Trust and in a manner reasonably believed to be within the scope of the authority conferred on such Trustee, Delaware Trustee, officer or employee by this Agreement, except that a Trustee, Delaware Trustee, officer or employee of the Trust shall be liable for any such loss, damage or claim incurred by reason of the willful misconduct or gross negligence of such Trustee, Delaware Trustee, officer or employee.

Section 7.3 Indemnification. To the fullest extent permitted by applicable law, a Trustee, Delaware Trustee, director, officer, agent or employee of the Trust (each an “**Indemnified Person**”) shall be entitled to indemnification from the Trust and ISE Holdings for any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Agreement or, in the case of the Delaware Trustee, solely by reason of the Delaware Trustee’s current or former status as such, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of willful misconduct or gross negligence with respect to such acts or omissions.

Section 7.4 Insurance. The Trust shall purchase and maintain insurance to cover its indemnification obligations set forth herein, as well as any other liabilities of the Trustees. The Trust shall provide notice to the Trustees 30 days prior to the expiration or termination of such insurance.

Section 7.5 Survival. This ARTICLE VII shall survive any termination of this Agreement and dissolution of the Trust.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Capital, Costs and Expenses. ISE Holdings shall fund an initial amount of capital of the Trust and shall pay as its own costs, or reimburse to the Trust or indemnify it against, any and all costs and expenses incurred by the Trust. The initial capital contribution to be made by ISE Holdings in accordance with the Delaware Act shall constitute the initial Trust Property.

Section 8.2 Amendments. Except as otherwise provided in this Agreement, and subject to the approval of the SEC as and to the extent required under the Exchange Act, this Agreement may only be amended by a written instrument signed by (a) ISE Holdings, (b) the Trust Beneficiary, (c) the Trust and (d) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee or the Trustees, the Delaware Trustee and the

Trustees, as applicable. Notwithstanding the forgoing, for so long as ISE Holdings or the Trust shall control, directly or indirectly, a Controlled National Securities Exchange, before any amendment or repeal of any provision of this Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of each Controlled National Securities Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. Any amendment adopted in accordance with the foregoing shall be binding upon the parties to this Agreement.

Section 8.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware; *provided, however*, that, to the fullest extent permitted by law, there shall not be applicable to the Trust, the Delaware Trustee, the Trustees or this Agreement any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts (except the Delaware Act) that relate to or regulate, in a manner inconsistent with the terms hereof, (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets or (g) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the Delaware Trustee or the Trustees as set forth or referenced in this Agreement. Section 3540 and, to the fullest extent permitted by applicable law, Section 3561, of Title 12 of the Delaware Code shall not apply to the Trust.

Section 8.4 Jurisdiction; Waiver of Jury Trial.

(a) The parties hereby (i) irrevocably submit to the exclusive (except as set forth in Section 5.4) jurisdiction of the courts of the State of Delaware (the “**Delaware Courts**”) and the Federal Courts of the United States of America located in the State of Delaware (the “**Federal Courts**”) in respect of any claim, dispute or controversy relating to or arising out of the negotiation, interpretation or enforcement of this Agreement or any of the documents referred to in this Agreement (except where any such document specifically provides otherwise) or the transactions contemplated hereby or thereby (any such claim being a “**Covered Claim**”); (ii) irrevocably agree to request that the Delaware or Federal Courts adjudicate any Covered Claim on an expedited basis and to cooperate with each other to assure that an expedited resolution of any such dispute is achieved; (iii) waive, and agree not to assert, as a defense in any action, suit or proceeding raising a Covered Claim that any of the parties hereto is not subject to the personal jurisdiction of the Delaware or Federal Courts or that such action, suit or proceeding may not be brought or is not maintainable in such Courts or that the venue thereof may be

inappropriate or inconvenient or that this Agreement or any such document may not be enforced in or by such Courts; and (iv) irrevocably agree to abide by the rules of procedure applied by the Delaware or Federal Court (as the case [the] may be), including, without limitation, procedures for expedited pre-trial discovery, and waive any objection to any such procedure on the ground that such procedure would not be permitted in the courts of some other jurisdiction or would be contrary to the laws of some other jurisdiction. The parties further agree that any Covered Claim has a significant connection with the State of Delaware and with the United States, and will not contend otherwise in any proceeding in any court of any other jurisdiction. Each party represents that it has agreed to the jurisdiction of the Delaware and Federal Courts in respect of Covered Claims after being fully and adequately advised by legal counsel of its own choice concerning the procedures and law applied in the Delaware and Federal Courts and has not relied on any representation by any other party or its Affiliates, representatives or advisors as to the content, scope, or effect of such procedures and law, and will not contend otherwise in any proceeding in any court of any jurisdiction.

(b) Each party hereby irrevocably agrees that it will not oppose, on any ground, the recognition, enforcement or exequatur in any other court of any judgment (including a judgment requiring specific performance) rendered by a Delaware or Federal Court in respect of a Covered Claim.

(c) EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.4.

Section 8.5 Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, whether written or oral, with respect to the subject matter hereof.

Section 8.6 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 8.7 Third Parties. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor or employee of ISE Holdings, a Controlled National

Securities Exchange, the Trust, the Delaware Trustee or the Trustees, or any stockholder or customer of ISE Holdings, a Controlled National Securities Exchange, or the Delaware Trustee. Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person. No Person not a party hereto shall have any right to compel performance by ISE Holdings, a Controlled National Securities Exchange, the Trust, the Trustees or the Delaware Trustee of its obligations hereunder.

Section 8.8 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if (a) delivered personally against written receipt, (b) sent by facsimile transmission, (c) mailed by registered or certified mail, postage prepaid, return receipt requested, or (d) mailed by reputable international overnight courier, fee prepaid, to the parties hereto at the following addresses or facsimile numbers:

Notices to the Trust shall be addressed to:

International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

with a copy to:

Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

Notices to the Delaware Trustee shall be addressed to:

Wilmington Trust Company
1100 N. Market Street
Wilmington, Delaware 19890
Attention: Corporate Trust Administration
Facsimile: (302) 636-4149

with a copy to:

Richards, Layton & Finger, P.A.
920 King Street
Wilmington, Delaware 19801
Attention: Tara J. Hoffner
Facsimile: (302) 498-7708

Notices to the Trustees shall be addressed to:

Dr. Sharon Brown-Hruska
NERA
1255 23rd ST. NW, Suite 600
Washington, DC 20037
Facsimile: (202) 466-1764

Dr. Robert Schwartz
Baruch College
One Bernard Baruch Way, B10-225
New York, New York, 10010
Facsimile: (646) 312-3530

Prof. Dr. Heinz Zimmermann
Wirtschaftswissenschaftliches Zentrum WWZ der Universität Basel
Abteilung Finanzmarkttheorie - Finance
Holbeinstrasse 12
CH-4051 Basel
Switzerland
Facsimile: +41 (0)61 267 08 98

with a copy to:
International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

Notices to ISE Holdings shall be addressed to:

International Securities Exchange Holdings, Inc.
60 Broad Street
New York, New York 10004
Attention: Secretary
Facsimile: (212) 509-3955

with a copy to:

Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

Notices to the Trust Beneficiary shall be addressed to:

U.S. Exchange Holdings, Inc.
233 South Wacker Drive
Chicago, Illinois 60606-6398
Attention.: General Counsel
Facsimile No.: +49 (0)69 211 13801

with a copy to:
Morgan Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Attn: Robert Robison
Facsimile: 212-309-6001

In addition, copies of all notices hereunder shall be sent to:

Deutsche Börse AG
Neue Börsenstrasse 1
60487 Frankfurt
Attn: General Counsel
Facsimile: +49 (0)69-211-13801

and

Eurex Global Derivatives AG
Löwenstrasse 3
8001 Zürich
Switzerland
Attn. Mr Andreass Preuss
Facsimile: +41 (0)43-430-7299

[SIX Swiss Exchange AG
Selnastrasse 30
CH-8032 Zurich
Attn: Head of Legal and Compliance
Facsimile: +41 (0)58-854-2444]

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section, upon delivery, (x) if delivered by facsimile transmission as provided in this Section, upon confirmed receipt, (y) if delivered by mail as provided in this Section, upon the earlier of the fifth Business Day following mailing and receipt, and (z) if delivered by overnight courier as provided in this Section, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other

Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party hereto may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

Section 8.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such provision or its severance herefrom and (d) in lieu of such provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as may be possible.

Section 8.10 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided, however*, that none of the parties hereto will directly or indirectly assign (except any assignment that occurs by operation of law or in connection with a merger, tender offer, exchange offer or sale of all or substantially all of the assets of a party) its rights or delegate its obligations under this Agreement without the express prior written consent of (a) ISE Holdings, and (b) the Trust, subject to the approval of the SEC as and to the extent required under the Exchange Act.

Section 8.11 Certain Tax Matters. It is the intention of the parties that, for United States federal income tax purposes, (a) the Trust be treated as one or more grantor trusts, and (b) any Trust Property held by the Trust be treated as owned by ISE Holdings.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

HOLDINGS, INC.

INTERNATIONAL SECURITIES EXCHANGE

By: _____
Name:
Title:

U.S. EXCHANGE HOLDINGS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY,
as Delaware Trustee

By: _____
Name:
Title:

Sharon Brown-Hruska, as Trustee and not in
her individual capacity

Robert Schwartz, as Trustee and not in his
individual capacity

Heinz Zimmermann, as Trustee and not in his
individual capacity

Exhibit 5B – Form of Eurex Global Derivatives AG Corporate Resolutions

All text is new

FORM OF EUREX GLOBAL DERIVATIVES AG CORPORATE RESOLUTION

WHEREAS, on December 19, 2007, International Securities Exchange Holdings, Inc. (“**ISE Holdings**”) became a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a wholly-owned subsidiary of Eurex Frankfurt AG;

WHEREAS, on June 7, 2011, Deutsche Börse AG and SIX Group AG (formerly SWX Group AG) and SIX Swiss Exchange AG (formerly SWX Swiss Exchange AG) entered into a Share Purchase Agreement, under which SIX Group AG and SIX Swiss Exchange AG agreed to transfer its 50% ownership interest in Eurex Zürich AG (“Eurex Zürich”) to Eurex Global Derivatives AG (the “**Corporation**”), which will be a wholly-owned subsidiary of Deutsche Börse AG, and as such ISE Holdings will become an indirect subsidiary of the Corporation (the “**Transaction**”);

WHEREAS, ISE Holdings is the sole member of International Securities Exchange, LLC (“**ISE, LLC**”), which is registered with the U.S. Securities and Exchange Commission (“**SEC**”) as a national securities exchange;

WHEREAS, ISE Holdings is subject to Ownership Limits and Voting Limits, as such terms are defined in Article FOURTH, Section III of the Amended and Restated Certificate of Incorporation of ISE Holdings (the “**ISE Holdings Ownership and Voting Limits**”);

WHEREAS, ISE Holdings is a 31.54% owner in Direct Edge Holdings LLC, a Delaware limited liability company (“**DE Holdings**”); which indirectly owns EDGA Exchange, Inc. and EDGX Exchange, Inc. (each a “**DE Exchange**” and together the “**DE Exchanges**”), which are each registered with the SEC as a national securities exchange;

WHEREAS, DE Holdings is subject to Ownership Limits and Voting Limits, as such terms are defined in Section 12.1 of the Fifth Amended and Restated Limited Liability Company Agreement of DE Holdings (the “**DE Holdings Ownership and Voting Limits**”);

WHEREAS, the completion of the Transaction is subject to approval by the SEC of a proposed rule change filed by ISE, LLC (the “**Rule Filing**”) under Section 19 of the U.S. Securities Exchange Act of 1934 (“**Exchange Act**”);

WHEREAS, the Corporation is required to make certain resolutions in connection with the Transaction that will become part of the Rule Filing and will be subject to SEC approval under Section 19 of the Exchange Act; and

WHEREAS, the Corporation and the members of this Board of Directors hereby acknowledge that said resolutions are made specifically in connection with the Transaction and the ongoing activities of ISE, LLC and the DE Exchanges and are not

intended to limit any duty or obligation of any Person (as defined in paragraph (4) below), under law or otherwise;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

(1) The Corporation shall, in connection with its involvement in the activities of ISE, LLC or the DE Exchanges, comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with (a) ISE, LLC and each DE Exchange pursuant to, and to the extent of, ISE, LLC and each DE Exchange's regulatory authority and (b) the SEC. Where necessitated by Swiss law, the Corporation shall provide information related to the activities of ISE, LLC or the DE Exchanges, including books and records of the Corporation related to the activities of ISE, LLC or the DE Exchanges, to the SEC promptly, through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority FINMA ("**FINMA**"), which will provide such information to the SEC. Oral exchanges between the Corporation and the SEC related to the activities of ISE, LLC or the DE Exchanges shall include, at all times, the participation of Eurex Zürich and the FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law. These procedures collectively shall be referred to as the "**FINMA procedure.**" It is noted that the transmission of information between the Corporation and Eurex Zürich is dealt with in a separate agreement and consent between the Corporation and Eurex Zürich ("**Agreement and Consent**").

(2) The Corporation shall, to the extent that it is involved in the activities of ISE, LLC or the DE Exchanges, be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC or the DE Exchanges (and shall be deemed to agree that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE, LLC; and (ii) DE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the DE Exchanges), and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

(3) For so long as the Corporation shall directly or indirectly control ISE, LLC or the DE Exchanges: (a) the books, records, officers, directors (or equivalent) and employees of the Corporation shall be deemed to be the books, records, officers, directors and employees of ISE, LLC or such DE Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of ISE, LLC or the DE Exchanges; and (b) the Corporation's books and records related to the activities of ISE, LLC or the DE Exchanges shall at all times be made available for inspection and copying by the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.

(4) The Corporation shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limits and Voting Limits and to cause DE Holdings to be in compliance with the DE Holdings Ownership Limits and Voting Limits. For so long as the Corporation shall directly or indirectly control ISE, LLC or the DE Exchanges, if any Person, at any time, either alone or together with its related persons, owns (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, all as would be determined under Section 20 of the Swiss Federal Act on Stock Exchanges and Securities Trading and Section 9 of the FINMA's Ordinance on Stock Exchanges and Securities Trading, each as may be amended from time to time, whether directly or indirectly, 20%, 33 1/3%, 45%, 50%, or 66 2/3 or more of the then-outstanding shares of stock in the Corporation entitled to vote on any matter, the Corporation shall, as soon as practicable, give written notice of such ownership to the board of directors of ISE, LLC and the DE Exchanges and to ISE Trust, a statutory trust formed under the laws of the State of Delaware of the United States of America, as provided in that certain Second Amended and Restated Trust Agreement, dated as of [], 2012, among U.S. Exchange Holdings, Inc., ISE Holdings, Inc., Wilmington Trust Company, as Delaware Trustee, Sharon Brown-Hruska, as Trustee, Robert Schwartz, as Trustee and Heinz Zimmermann, as Trustee, which notice shall state: (a) such Person's full legal name; (b) such Person's title or status and the date on which such title or status was acquired; (c) such Person's approximate ownership interest in the Corporation; and (d) whether such Person has the power, directly or indirectly, to direct the management or policies of the Corporation, whether through ownership of securities, by contract or otherwise. As used in these resolutions, the term "**Person**" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

(5) The Corporation shall, to the extent it is involved in the activities of ISE, LLC or the DE Exchanges, give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and the DE Exchanges and to their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC or the DE Exchanges relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC or the DE Exchanges to carry out their respective responsibilities under the Exchange Act.

(6) To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of the Corporation pertaining to the self-regulatory function of ISE, LLC or the DE Exchanges (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC or the DE Exchanges shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by the Corporation and the officers, directors (or equivalent), employees, and agents of the Corporation; and (c) not be used for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC, ISE, LLC or the DE Exchanges to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of the Corporation to disclose such

confidential information to the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.

(7) Each member of this Board of Directors hereby agrees, and the Corporation shall take reasonable steps necessary to cause each person who becomes a member of this Board of Directors after the date of these resolutions to agree, in writing:

(a) that, in discharging his or her responsibilities as a member of this Board of Directors, such member shall, in connection with such member's involvement in the activities of ISE, LLC or the DE Exchanges: (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate (A) with ISE, LLC and each DE Exchange pursuant to, and to the extent of, ISE, LLC and each DE Exchange's regulatory authority and (B) the SEC. Where necessitated by Swiss law, such member shall provide information related to the activities of ISE, LLC or the DE Exchanges pursuant to the FINMA procedure;

(b) to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC or the DE Exchanges, to the extent such member is involved in the activities of ISE, LLC or the DE Exchanges, and that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE, LLC, and (ii) DE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the DE Exchanges, and such member waives, and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that such member is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency;

(c) that such member is deemed to be a director of ISE, LLC or such DE Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such member is involved in the activities of ISE, LLC or the DE Exchanges;

(d) to give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and the DE Exchanges and to their respective obligations to investors and the general public, and not to take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC or the DE Exchanges relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC or the DE Exchanges to carry out their respective responsibilities under the Exchange Act;

(e) that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of such member pertaining to the self-regulatory function of ISE, LLC or the DE Exchanges (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC or the DE Exchanges shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know

the contents thereof; (b) be retained in confidence by such member; and (c) not be used by such member for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC, ISE, LLC or the DE Exchanges to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of such member to disclose such confidential information to the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure; and

(f) that, in discharging his or her responsibilities as a member of this Board of Directors, to the extent such member is involved in the activities of ISE, LLC or the DE Exchanges and to the fullest extent permitted by applicable law, such member will take into consideration the effect that the Corporation's actions would have on the ability of:

(i) ISE, LLC and the DE Exchanges to carry out their respective responsibilities under the Exchange Act; and

(ii) ISE, LLC, the DE Exchanges, and the Corporation: (A) to engage in conduct that fosters and does not interfere with the ability of ISE, LLC, the DE Exchanges, or the Corporation to prevent fraudulent and manipulative acts and practices in the securities markets; (B) to promote just and equitable principles of trade in the securities markets; (C) to foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (D) to remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (E) in general, to protect investors and the public interest.

(8) The Corporation shall take reasonable steps necessary to cause each of its officers and employees who are involved in the activities of ISE, LLC or the DE Exchanges to agree, in writing:

(a) that, in discharging such officer's or employee's responsibilities as an officer or employee of the Corporation, in connection with such officer's or employee's involvement in the activities of ISE, LLC or the DE Exchanges, such officer or employee will: (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) cooperate (A) with the SEC, and (B) with ISE, LLC and each DE Exchange pursuant to, and to the extent of, ISE, LLC and each DE Exchange's regulatory authority. Where necessitated by Swiss law, such officer or employee shall provide information related to the activities of ISE, LLC or the DE Exchanges pursuant to the FINMA procedure;

(b) to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC or the DE Exchanges to the extent that such officer or employee is involved in the activities of ISE, LLC or the DE Exchanges, and that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE, LLC, and (ii) DE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the DE Exchanges, and that such officer or

employee waives, and agrees not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that such officer or employee is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency;

(c) that such officer or employee is deemed to be an officer or employee of ISE, LLC or such DE Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such officer or employee is involved in the activities of ISE, LLC or the DE Exchanges;

(d) to give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and the DE Exchanges and to their respective obligations to investors and the general public, and not to take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC or the DE Exchanges relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC or the DE Exchanges to carry out their respective responsibilities under the Exchange Act; and

(e) that, to the fullest extent permitted by applicable law, all confidential information that shall come into the possession of such officer or employee pertaining to the self-regulatory function of ISE, LLC or the DE Exchanges (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC or the DE Exchanges shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by such officer or employee; and (c) not be used by such officer or employee for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC, ISE, LLC or the DE Exchanges to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of such officer or employee to disclose such confidential information to the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.

(9) The Corporation shall take reasonable steps to cause each of its agents that is involved in the activities of ISE, LLC or the DE Exchanges and could come into the possession of any confidential information pertaining to the self-regulatory function of ISE, LLC or the DE Exchanges (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC or the DE Exchanges to agree that, to the fullest extent permitted by applicable law, all such confidential information shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of the Corporation that have a reasonable need to know the contents thereof; (b) be retained in confidence by such agent; and (c) not be used by such agent for any commercial purposes, *provided, however*, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC, ISE, LLC or the DE Exchanges to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of

such agent to disclose such confidential information to the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.

(10) The Corporation shall take reasonable steps necessary to cause its agents that are involved in the activities of ISE, LLC or the DE Exchanges to cooperate: (a) with the SEC; and (b), where applicable, ISE, LLC and such DE Exchange pursuant to their respective regulatory authority subject, where necessitated by Swiss law, to the FINMA procedure.

(11) Notwithstanding any provision of the foregoing resolutions, before: (a) any amendment to or repeal of any provision of this or any of the foregoing resolutions or Agreement and Consent; or (b) any action by the Corporation that would have the effect of amending or repealing any provision of this or any of the foregoing resolutions or the Agreement and Consent shall be effective, the same shall be submitted to the board of directors of ISE, LLC and the DE Exchanges, as applicable, and if the same must be filed with, or filed with and approved by, the SEC before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

The undersigned, being the members of this Board, hereby declare to have adopted the foregoing resolutions and agree to be bound by the obligations and consents provided therein

[Date/place, signature of each board member]

Exhibit 5C – Form of Agreement and Consent by and between Eurex Global Derivatives AG and Eurex Zürich AG

All text is new

AGREEMENT AND CONSENT

This agreement and consent (this “Agreement”) is entered into as of [2012], by and between Eurex Global Derivatives AG (“EGD”) and Eurex Zürich AG (“Eurex Zürich”).

WHEREAS, on June 7, 2011, Deutsche Börse AG and SIX Group AG (formerly SWX Group AG) and SIX Swiss Exchange AG (formerly SWX Swiss Exchange AG) entered into a Share Purchase Agreement, under which SIX Group AG and SIX Swiss Exchange AG agreed to transfer its 50% ownership interest in Eurex Zürich to EGD, which will be a wholly-owned subsidiary of Deutsche Börse AG, and as such International Securities Exchange Holdings, Inc. (“ISE Holdings”) will become an indirect subsidiary of EGD (the “Transaction”);

WHEREAS, in connection with the Transaction, International Securities Exchange, LLC (“ISE, LLC”), EDGA Exchange, Inc. and EDGX Exchange, Inc. (each a “DE Exchange” and together the “DE Exchanges”) have filed proposed rule changes (the “Proposed Rule Changes”) with the SEC pursuant to Section 19(b)(1) of the U.S. Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder; and

WHEREAS, EGD and Eurex Zürich have proposed to enter into this Agreement to address certain matters set forth in the Proposed Rule Changes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereby acknowledge and agree as follows:

Section 1. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the resolution adopted by the board of directors of EGD in connection with the Transaction (the “Resolution,” see Exhibit 1).

Section 2. EGD hereby agrees and undertakes as follows:

- (a) EGD shall, in connection with its involvement in the activities of ISE, LLC or the DE Exchanges, comply with the U.S. federal securities laws and the rules and regulations thereunder and shall cooperate with (a) ISE, LLC and each DE Exchange pursuant to, and to the extent of, ISE, LLC and each DE Exchange’s regulatory authority and (b) the SEC. Where necessitated by Swiss law, EGD shall provide information related to the activities of ISE, LLC or the DE Exchanges, including books and records of EGD related to the activities of ISE, LLC or the DE Exchanges, to the SEC promptly, through Eurex Zürich, which will, in turn, provide such information to the Swiss Financial Market Supervisory Authority FINMA (“FINMA”), which will provide such information to the SEC. Oral exchanges between EGD and the SEC related to the activities of ISE, LLC or the DE Exchanges shall always include the participation of Eurex Zürich and the FINMA, through its oversight of Eurex Zürich as a regulated legal entity, where necessitated by Swiss law. These procedures collectively shall be referred to as the “FINMA procedure.”

- (b) EGD shall, to the extent that it is involved in the activities of ISE, LLC or the DE Exchanges, be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the SEC for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of ISE, LLC or the DE Exchanges (and shall be deemed to agree that (i) ISE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to ISE, LLC; and (ii) DE Holdings may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding with respect to the DE Exchanges), and shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it is not personally subject to the jurisdiction of the SEC, that such suit, action or proceeding is an inconvenient forum or that the venue of such suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.
- (c) For so long as EGD shall directly or indirectly control ISE, LLC or the DE Exchanges: (a) the books, records, officers, directors (or equivalent) and employees of EGD shall be deemed to be the books, records, officers, directors and employees of ISE, LLC or such DE Exchange for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of ISE, LLC or the DE Exchanges; and (b) EGD's books and records related to the activities of ISE, LLC or the DE Exchanges shall at all times be made available for inspection and copying by the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.
- (d) EGD shall take reasonable steps necessary to cause ISE Holdings to be in compliance with the ISE Holdings Ownership Limits and the Voting Limits and to cause DE Holdings to be in compliance with the DE Holdings Ownership Limits and the Voting Limits. For so long as EGD shall directly or indirectly control ISE, LLC or the DE Exchanges, if any Person, at any time, either alone or together with its related persons, owns (whether by acquisition or by a change in the number of shares outstanding), of record or beneficially, all as would be determined under Section 20 of the Swiss Federal Act on Stock Exchanges and Securities Trading and Section 9 of the FINMA's Ordinance on Stock Exchanges and Securities Trading, each as may be amended from time to time, whether directly or indirectly, 20%, 33 1/3%, 45%, 50%, or 66 2/3% or more of the then-outstanding shares of stock in EGD entitled to vote on any matter, EGD shall, as soon as practicable, give written notice of such ownership to the board of directors of ISE, LLC and the DE Exchanges and to ISE Trust, a statutory trust formed under the laws of the State of Delaware of the United States of America, as provided in that certain Second Amended and Restated Trust Agreement, dated as of [], 2012, among U.S. Exchange Holdings, Inc., ISE Holdings, Inc., Wilmington Trust Company, as Delaware Trustee, Sharon Brown-Hruska, as Trustee, Robert Schwartz, as Trustee and Heinz Zimmermann, as Trustee, which

notice shall state: (a) such Person's full legal name; (b) such Person's title or status and the date on which such title or status was acquired; (c) such Person's approximate ownership interest in EGD; and (d) whether such Person has the power, directly or indirectly, to direct the management or policies of EGD, whether through ownership of securities, by contract or otherwise. As used in these resolutions, the term "Person" shall mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

- (e) EGD shall, to the extent it is involved in the activities of ISE, LLC or the DE Exchanges, give due regard to the preservation of the independence of the self-regulatory function of ISE, LLC and the DE Exchanges and to their respective obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of ISE, LLC or the DE Exchanges relating to their respective regulatory responsibilities (including enforcement and disciplinary matters) or that would interfere with the ability of ISE, LLC or the DE Exchanges to carry out their respective responsibilities under the Exchange Act.
- (f) To the fullest extent permitted by applicable law, all confidential information that shall come into the possession of EGD pertaining to the self-regulatory function of ISE, LLC or the DE Exchanges (including but not limited to confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of ISE, LLC or the DE Exchanges shall: (a) not be made available to any Persons other than to those officers, directors (or equivalent), employees and agents of EGD that have a reasonable need to know the contents thereof; (b) be retained in confidence by EGD and the officers, directors (or equivalent), employees, and agents of EGD; and (c) not be used for any commercial purposes, provided, however, that nothing in these resolutions shall be interpreted so as to limit or impede: (i) the rights of the SEC, ISE, LLC or the DE Exchanges to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or (ii) the ability of any officers, directors, employees, or agents of EGD to disclose such confidential information to the SEC, ISE, LLC or the DE Exchanges subject, where necessitated by Swiss law, to the FINMA procedure.
- (g) EGD undertakes to provide to Eurex Zürich, upon request from Eurex Zürich and if available to EGD, information related to the activities of ISE, LLC or the DE Exchanges, including books and records of EGD related to the activities of ISE, LLC or the DE Exchanges.
- (h) EGD shall take reasonable steps necessary to cause its officers, directors and employees to agree and consent in writing to the applicability to him or her of the requirements in the Resolution with respect to their activities related to ISE, LLC or the DE Exchanges, as applicable.

- (i) EGD shall take reasonable steps necessary to cause its agents that are involved in the activities of ISE, LLC or the DE Exchanges to cooperate: (a) with the SEC; and (b), where applicable, ISE, LLC and such DE Exchange pursuant to their respective regulatory authority subject, where necessitated by Swiss law, to the FINMA procedure.

Section 3. This Agreement may only be amended in writing with the mutual consent of each of the parties hereto.

Section 4. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by any of the parties hereto without the prior written consent of the other party hereto. If any provision of this Agreement is held to be invalid or unenforceable, then so far as it is invalid or unenforceable it has no effect and is deemed not to be included in this Agreement. This shall not invalidate any of the remaining provisions of this Agreement.

Section 5. This Agreement is not intended to, and does not confer upon any person or entity, other than the parties who are signatories hereto, any rights or remedies hereunder.

Section 6. This Agreement shall be governed by and construed in accordance with the laws of Switzerland.

Section 7. Notwithstanding any provision of the foregoing, before: (a) any amendment to or repeal of any provision of this or any of the foregoing; or (b) any action by EGD that would have the effect of amending or repealing any provision of this or any of the foregoing shall be effective, the same shall be submitted to the board of directors of ISE, LLC and the DE Exchanges, as applicable, and if the same must be filed with, or filed with and approved by, the SEC before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement and Consent has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

Eurex Global Derivatives AG

By:

Acknowledged and accepted:

Eurex Zürich AG

By: _____

Exhibit 1: the Resolution

Exhibit 5D – Second Amended and Restated Bylaws of International Securities Exchange Holdings, Inc.

Underlining indicates additions

[Brackets] indicate deletions

SECOND AMENDED AND RESTATED

BYLAWS

OF

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

(Adopted on December 19, 2007; Amended on December 23, 2008
and [•])

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SECOND AMENDED AND RESTATED

BYLAWS

OF

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

ARTICLE I

Office and Records; Jurisdiction

Section 1.1 **Delaware Office.** The principal office of the corporation (the “**Corporation**”) in the State of Delaware shall be located in the City of Dover, County of Kent, and the name and address of its registered agent is National Registered Agents, Inc., 9 East Lookerman Street, Suite 1B, Delaware 19901.

Section 1.2 **Other Offices.** The Corporation may have such other offices, either within or without the State of Delaware, as the board of directors of the Corporation (the “**Board of Directors**”) may designate or as the business of the Corporation may from time to time require.

Section 1.3 **Books and Records.** The books and records of the Corporation may be kept at the Corporation’s principal executive offices in New York, New York or at such other locations within or without the State of Delaware as may from time to time be designated by the Board of Directors, *provided*, that the books and records shall always be kept within the United States.

Section 1.4 **Consent to Jurisdiction.** The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the United States Securities and Exchange Commission (the “**Commission**”), and each national securities exchange controlled, directly or indirectly, by the Corporation (“**Controlled National Securities Exchange**”), including but not limited to, International Securities Exchange, LLC (“**ISE, LLC**”), for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of each Controlled National Securities Exchange, or facility thereof, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or each Controlled National Securities Exchange, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of Controlled National Securities Exchange, or facility thereof.

Section 1.5 **Officers and Directors.** For so long as the Corporation shall control, directly or indirectly, Controlled National Securities Exchange, or facility thereof, each officer, director and employee of the Corporation shall give due regard to the preservation of the independence of the self-regulatory function of each Controlled National Securities Exchange, and to such Controlled National Securities Exchange's obligations under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules thereunder including, without limitation, Section 6(b) of the Exchange Act and shall not take any actions which he or she knows or reasonably should have known would interfere with the effectuation of any decisions by the board of directors of Controlled National Securities Exchange relating to such Controlled National Securities Exchange's regulatory functions (including disciplinary matters) or which would adversely affect the ability of each Controlled National Securities Exchange, or facility thereof, to carry out its respective responsibilities under the Exchange Act.

Section 1.6 **Further Compliance.** The Corporation shall take reasonable steps necessary to cause its officers, directors and employees prior to accepting a position as an officer, director or employee, as applicable, of the Corporation to consent in writing to the applicability to them of Article TENTH, Article ELEVENTH, and Article TWELFTH of the Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") and Section 1.4 and Section 1.5 hereof, as applicable, with respect to their activities related to each Controlled National Securities Exchange, or facility thereof.

ARTICLE II

Stockholders

Section 2.1 **Annual Meeting.** The annual meeting of stockholders of the Corporation shall be held on such date and at such time as may be designated by the Board of Directors at the principal executive offices of the Corporation, or at such other place within or without the State of Delaware as may be fixed by the Board of Directors.

Section 2.2 **Special Meetings.** Subject to the rights of the holders of any series of preferred stock, par value \$.01 per share, of the Corporation (the "**Preferred Stock**"), or any other series or class of stock as set forth in the Certificate of Incorporation to elect additional directors under specified circumstances, a special meeting of the holders of stock of the Corporation entitled to vote on any business to be considered at any such meeting may be called only by the Chairman of the Board of the Corporation or a majority of the Board of Directors for any purpose or purposes, and shall be called by the Secretary of the Corporation at the request of the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors which the Corporation would at the time have if there were no vacancies (the "**Whole Board**"). The Board of Directors may designate the place of meeting for any special meeting of the stockholders, and if no such designation is made, the place of meeting shall be the principal executive offices of the Corporation.

Section 2.3 **Notice of Meetings.** Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived as provided in Section 8.1 of these Bylaws, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, and except

as to any stockholder duly waiving notice, the written notice of any meeting shall be given personally or by mail, not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation. Any previously scheduled meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given by press release prior to the time previously scheduled for such meeting of stockholders.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.4 **Quorum.** Except as otherwise provided by law or by the Certificate of Incorporation or by these Bylaws, at any meeting of stockholders the holders of a majority of the voting power of the shares of the capital stock (whether common stock or Preferred Stock) of the Corporation that have the right by their terms to vote in the election of members of the Board of Directors or on other matters which may require the approval of the holders of voting shares of the Corporation (other than matters affecting the rights, preferences or privileges of a particular class of capital stock) (the “**Voting Shares**”), either present in person or represented by proxy, shall constitute a quorum for the transaction of any business at such meeting, except that when specified business is to be voted on by a class or series voting as a class, the holders of a majority of the voting power of such class or series entitled to vote shall constitute a quorum for the transaction of such business. To the fullest extent permitted by applicable law, the chairman of the meeting or a majority of the voting power of the shares of Voting Shares so present or represented may adjourn the meeting from time to time, whether or not there is such a quorum (or in the case of specified business to be voted on as a class or series, the chairman or a majority of the shares of such class or series entitled to vote which are so present or represented may adjourn the meeting with respect to such specified business). No notice of the time and place of adjourned meetings need be given except as provided in the last paragraph of Section 2.3 of these Bylaws. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of a sufficient number of stockholders to result in less than a quorum.

Section 2.5 **Voting.** Except as otherwise set forth in the Certificate of Incorporation with respect to the right of any holder of any series of Preferred Stock or any other series or class of stock to elect additional directors under specified circumstances, whenever directors are to be elected at a meeting, they shall be elected by a plurality of the votes cast at the meeting by the holders of shares of stock entitled to vote. Whenever any corporate action, other than the election of directors, is to be taken by vote of stockholders at a meeting, such corporate action shall, except as otherwise required by law or by the Certificate of Incorporation or by these Bylaws, be authorized by the affirmative vote of the holders of a majority of the shares of stock present in person or represented by proxy and entitled to vote with respect to such corporate action. Except as otherwise provided by law, or by the Certificate of Incorporation, each holder of record of

stock of the Corporation entitled to vote on any matter at any meeting of stockholders shall be entitled to one vote for each share of such stock standing in the name of such holder on the stock ledger of the Corporation on the record date for the determination of the stockholders entitled to vote at the meeting.

Upon the demand of any stockholder entitled to vote, the vote for directors or the vote on any other matter at a meeting shall be by written ballot, but otherwise the method of voting and the manner in which votes are counted shall be discretionary with the presiding officer at the meeting.

Section 2.6 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after eleven (11) months from its date, unless the proxy provides for a longer period. Every proxy shall be signed by the stockholder or by his or her duly authorized attorney. Such proxy must be filed with the Secretary of the Corporation or his or her representative at or before the time of the meeting.

Section 2.7 Inspectors of Elections; Opening and Closing the Polls.

(a) The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act, or if all inspectors or alternates who have been appointed are unable to act, at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector to the best of his or her ability. The inspectors shall have the duties prescribed by the Delaware General Corporation Law (the “**DGCL**”).

(b) The chairman of the meeting shall fix and announce at the meeting the time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.8 List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network, *provided*, that information required to gain access to such list is provided with the notice of the meeting, or during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole

time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Nothing in this Section shall require the Corporation to include electronic mail addresses or other electronic contact information on such list.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.9 Stockholder Action by Written Consent. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action that may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its principal place of business, or an officer or agent of the Corporation having custody of the minutes of proceedings of the stockholders of the Corporation. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

ARTICLE III

Directors

Section 3.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number, Tenure and Qualifications. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock as set forth in the Certificate of Incorporation to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Whole Board, but shall consist of not more than fifteen (15) nor less than two (2) directors, and one (1) of such directors shall be such person who is currently holding the office of Chief Executive Officer of the Corporation. Except as may be provided in the Certificate of Incorporation, the directors shall be elected by the holders of the Voting Shares at the annual meeting or any special meeting called for such purpose. Each director so elected shall hold office until his or her successor shall be duly elected and qualified or until his or her earlier death, resignation or removal.

Section 3.3 Vacancies and Newly Created Directorship. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock as set forth in the Certificate of Incorporation to elect additional directors under specified circumstances, in the event that a director position becomes available, whether through vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, or newly created directorships resulting from any increase in the authorized number of directors, such positions may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which such director has been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Whole Board shall shorten the term of any incumbent director.

Section 3.4 Resignation. Any director may resign at any time upon written notice to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.5 Removal. To the fullest extent permitted by law, any director or the entire Board of Directors may be removed, with or without cause, by the affirmative vote of a majority of the voting power of the outstanding shares then entitled to vote at an election of directors; *provided, however*, that whenever the holders of any class or series of capital stock are entitled to elect or appoint one or more directors by the Certificate of Incorporation, the affirmative vote of the holders of a majority of the outstanding shares of that class or series (and not the vote of the outstanding shares as a whole) shall be necessary to remove a director elected or appointed by such class or series without cause.

Section 3.6 Meetings. Meetings of the Board of Directors, regular or special, may be held at any place within or without the State of Delaware. Members of the Board of Directors, or of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. An annual meeting of the Board of Directors shall be held as soon as practicable following each annual meeting of stockholders. The Board of Directors may fix times and places for such annual meeting and additional regular meetings of the Board of Directors and no further notice of such meetings need be given. A special meeting of the Board of Directors shall be held whenever called by the Chairman of the Board or by a majority of the Whole Board, at such time and place as shall be specified in the notice or waiver thereof. The person or persons authorized to call a special meeting of the Board of Directors may fix the place and time of the meetings. Notice of any special meeting shall be given to each director at his or her business or residence in writing, by electronic mail or by telegram or by telephone communication. If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five (5) days before such meeting. If by electronic mail, such notice shall be deemed adequately delivered when the electronic mail is sent at least twenty-four hours before the

meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least twenty-four hours before such meeting. If by facsimile transmission, such notice shall be transmitted at least twenty-four hours before such meeting. If by telephone, the notice shall be given at least twelve hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Section 10.1 of these Bylaws.

Section 3.7 Quorum and Voting. A whole number of directors equal to at least a majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if there be less than a quorum, a majority of the directors present may adjourn the meeting from time to time, and no further notice thereof need be given other than announcement at the meeting which shall be so adjourned. Except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 3.8 Written Consent of Directors in Lieu of a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or of such committee.

Section 3.9 Compensation. Directors may receive compensation for services to the Corporation in their capacities as directors or otherwise in such manner and in such amounts as may be fixed from time to time by the Board of Directors.

Section 3.10 Committees of the Board of Directors. (a) The Board of Directors may, by resolution, establish an Executive Committee and one or more other committees, each committee to consist of one or more directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee and the alternate or alternates, if any, designated for such member, the member or members of the committee present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(b) The Executive Committee, if established, and any such other committee to the extent provided in the resolution establishing such committee, shall have and may exercise all the power and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the Corporation. A committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or

all of the powers and authority of the committee. The Executive Committee shall, without limitation, have the power and authority to declare dividends, to authorize the issuance of stock and to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL (*provided*, that no vote of stockholders of the Corporation is required for the effectuation of such merger). Other committees shall have such names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee so formed shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 3.11 Chairman of the Board. The Chairman of the Board shall be elected, by the affirmative vote of at least a majority of the directors then in office. The Chairman of the Board shall serve as such for a term of one (1) year. The Chairman of the Board shall have the authority provided in these Bylaws. The Chairman of the Board shall preside at all meetings of stockholders and of the Board of Directors.

Section 3.12 Vice Chairman of the Board. The Vice Chairman of the Board shall be elected from among the directors by the affirmative vote of at least a majority of the directors then in office. The Vice Chairman of the Board shall serve as such for a term of one (1) year. In the case of the absence or inability of the Chairman of the Board to act, or a vacancy in the office of the Chairman of the Board, the Vice Chairman of the Board shall exercise the powers and discharge the duties of the Chairman of the Board, unless determined otherwise by the Board of Directors. The Vice Chairman of the Board shall have the authority provided in these Bylaws.

ARTICLE IV

Officers

Section 4.1 Officers. The Board of Directors shall elect a President, a Secretary and a Treasurer, and one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. All officers elected by the Board of Directors shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV, together with such other powers and duties as from time to time may be conferred by the Board of Directors or any committee thereof. Any number of such offices may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The Board of Directors may elect, and may delegate power to elect, such other officers, agents and employees as it may deem necessary or proper, who shall hold their offices or positions for such terms, have such authority and perform such duties as may from time to time be determined by or pursuant to authorization of the Board of Directors.

Section 4.2 Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the regular meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be accomplished at such meeting, such election shall be accomplished as soon thereafter as convenient. Subject to Section 4.3 of these Bylaws, each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death, removal or resignation.

Section 4.3 **Resignation and Removal.** Any officer may resign at any time upon written notice to the Corporation. Any elected officer may be removed by a majority of the members of the Whole Board, with or without cause, at any time. The Board of Directors may delegate such power of removal as to officers, agents and employees not elected by the Board of Directors. Such removal shall be without prejudice to a person's contract rights, if any, but the appointment of any person as an officer, agent or employee of the Corporation shall not itself create contract rights.

Section 4.4 **Compensation and Bond.** The compensation of the officers of the Corporation shall be fixed by the Board of Directors, but this power may be delegated to any officer in respect of other officers under his or her control. The Corporation may secure the fidelity of any or all of its officers, agents or employees by bond or otherwise.

Section 4.5 **President and Chief Executive Officer.**

(a) The Chief Executive Officer shall be appointed by the Board of Directors pursuant to Section 4.1 and shall be nominated for a directorship by virtue of his or her office. The Chief Executive Officer shall manage the affairs of the Corporation and shall be the representative of the Corporation in all public matters. The Chief Executive Officer may be removed by a majority of the members of the Whole Board, with or without cause, at any time. In the case of temporary absence or inability to act, the Chief Executive Officer may designate any other officer to assume all the functions and discharge all the duties of the Chief Executive Officer. Upon his or her failure to do so, or if the office of Chief Executive Officer is vacant, any officer so designated by the Board of Directors shall perform the functions and duties of the Chief Executive Officer.

(b) The President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.6 **Vice Presidents.** Each Vice President shall have such powers and perform such duties as the Board of Directors may from time to time prescribe.

Section 4.7 **Treasurer.** The Treasurer shall have charge of all funds and securities of the Corporation, shall endorse the same for deposit or collection when necessary and deposit the same to the credit of the Corporation in such banks or depositaries as the Board of Directors may authorize. He or she may endorse all commercial documents requiring endorsements for or on behalf of the Corporation and may sign all receipts and vouchers for payments made to the Corporation and may disburse funds as directed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Treasurer or as may be assigned to him or her by the Board of Directors.

Section 4.8 **Secretary.** The Secretary shall record all the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose and shall also record therein all action taken by written consent of directors in lieu of a meeting. He or she shall attend to the giving and serving of all notices of the Corporation. He or she shall have custody of the seal of the Corporation and shall attest the same by his or her signature whenever required. He or she shall have charge of the stock ledger and such other books and papers as the Board of Directors may direct, but he or she may

delegate responsibility for maintaining the stock ledger to any transfer agent appointed by the Board of Directors. He or she shall have all such further powers and duties as generally are incident to the position of Secretary or as may be assigned to him or her by the Chief Executive Officer or the Board of Directors.

Section 4.9 **Assistant Treasurers.** In the absence or inability to act of the Treasurer, any Assistant Treasurer may perform all the duties and exercise all the powers of the Treasurer. An Assistant Treasurer shall also perform such other duties as the Treasurer or the Board of Directors may assign to him or her.

Section 4.10 **Assistant Secretaries.** In the absence or inability to act of the Secretary, any Assistant Secretary may perform all the duties and exercise all the powers of the Secretary. An Assistant Secretary shall also perform such other duties as the Secretary or the Board of Directors may assign to him or her.

Section 4.11 **Delegation of Duties.** In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may confer for the time being the powers or duties, or any of them, of such officer upon any other officer or upon any director.

ARTICLE V

Indemnification And Insurance

Section 5.1 **Right to Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “**proceeding**”), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of any other corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to any employee benefit plan (hereinafter an “**indemnitee**”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including, without limitation, attorneys’ fees, judgments, fines, excise taxes or penalties under the Employee Retirement Income Security Act of 1974, as amended, and amounts paid or to be paid in settlement) reasonably incurred by such indemnitee in connection therewith; *provided, however*, that except as provided in Section 5.3 with respect to proceedings seeking to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 5.2 **Right to Advancement of Expenses.** The right to indemnification conferred in Section 5.1 shall include the right to be paid by the

Corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an "**advancement of expenses**"); *provided, however*, that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "**undertaking**"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "**final adjudication**") that such indemnitee is not entitled to be indemnified for such expenses under this Section 5.2 or otherwise.

Section 5.3 Right of Indemnitee to Bring Suit. If a claim under Section 5.1 or Section 5.2 is not paid in full by the Corporation within thirty (30) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right of an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the Corporation.

Section 5.4 Non-Exclusivity of Rights. The right to indemnification and the advancement of expenses conferred in this Article V shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, provision of these Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 5.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any

expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 5.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to the advancement of expenses, to any employee or agent of the Corporation to the fullest extent of the provisions of this Article V with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 5.7 Contract Rights. The rights to indemnification and to the advancement of expenses conferred in Section 5.1 and Section 5.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators.

ARTICLE VI

Stock

Section 6.1 Certificates. Certificates for stock of the Corporation shall be in such form as shall be approved by the Board of Directors and shall be signed in the name of the Corporation by the Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary. Such certificates may be sealed with the seal of the Corporation or a facsimile thereof. Any of or all the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. The Board of Directors may provide by resolution or resolutions that all or some of any class or series of stock of the Corporation shall be uncertificated shares. Within a reasonable time following the issuance or transfer of any uncertificated shares, the Corporation shall send to the registered owner thereof any written notice prescribed by the DGCL.

Section 6.2 Transfers of Stock. Transfers of stock shall be made only upon the books of the Corporation by the holder, in person or by a duly authorized attorney, and on the surrender of the certificate or certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require. The Board of Directors shall have the power to make all such rules and regulations, not inconsistent with the Certificate of Incorporation and these Bylaws and the DGCL, as the Board of Directors may deem appropriate concerning the issue, transfer and registration of certificates for stock of the Corporation. The Board of Directors may appoint one or more transfer agents or registrars of transfers, or both, and may require all stock certificates to bear the signature of either or both.

Section 6.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue a new stock certificate in the place of any certificate theretofore issued by it,

alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or his or her legal representative to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate. The Board of Directors may require such owner to satisfy other reasonable requirements as it deems appropriate under the circumstances.

Section 6.4 Stockholder Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

Only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend or other distribution, or to exercise such rights in respect of any such change, conversion or exchange of stock, or to participate in such action, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any record date so fixed.

ARTICLE VII

Seal

Section 7.1 Seal. The seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board of Directors, the name of the Corporation, the year of its incorporation and the words “**Corporate Seal**” and “**Delaware**”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

ARTICLE VIII

Waiver Of Notice

Section 8.1 Waiver of Notice. Whenever notice is required to be given to any stockholder or director of the Corporation under any provision of the DGCL or the

Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. In the case of a stockholder, such waiver of notice may be signed by such stockholder's attorney or proxy duly appointed in writing. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

ARTICLE IX

Checks, Notes, Drafts, Etc.

Section 9.1 **Checks, Notes, Drafts, Etc.** Checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money shall be signed by such officer or officers or person or persons as the Board of Directors or a duly authorized committee thereof may from time to time designate.

ARTICLE X

Amendments

Section 10.1 **Amendments.** These Bylaws may be amended, added to, rescinded or repealed at any meeting of the Board of Directors or meeting of the stockholders. With respect to each Controlled National Securities Exchange, or facility thereof, before any amendment to or repeal of any provision of the Bylaws of this Corporation shall be effective, the same shall be submitted to the board of directors of each Controlled National Securities Exchange, and if the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

ARTICLE XI

Waiver Of Limits

Section 11.1 **Waiver of Ownership Limits and Voting Limits to Permit Merger.**

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated November 16, 2004, as amended ("**2004 Certificate**"), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2004 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2004 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2004 Certificate, in each case solely in order to permit the merger and the other transactions contemplated by that certain Agreement and Plan of Merger, dated as of April 30, 2007, by and among

Eurex Frankfurt AG, a stock corporation organized under the laws of the Federal Republic of Germany (“**Eurex Frankfurt**”), Ivan Acquisition Co., a Delaware corporation and a wholly-owned indirect subsidiary of Eurex Frankfurt, and the Corporation, under which the Corporation (A) will become a wholly-owned subsidiary of U.S. Exchange Holdings, Inc., a Delaware corporation that is a wholly-owned subsidiary of Eurex Frankfurt, and (B) will become an indirect subsidiary of Eurex Frankfurt, Eurex Zürich AG (“**Eurex Zürich**”), a stock corporation organized under the laws of Switzerland, Deutsche Börse AG (“**Deutsche Börse**”), a stock corporation organized under the laws of the Federal Republic of Germany, SWX Swiss Exchange (“**SWX**”), a stock corporation organized under the laws of Switzerland, SWX Group, a stock corporation organized under the laws of Switzerland, and Verein SWX Swiss Exchange, an association organized under the laws of Switzerland. For the purpose of this Article XI, Deutsche Börse, Eurex Frankfurt, Eurex Zürich, SWX, SWX Group, Verein SWX Swiss Exchange, and U.S. Exchange Holdings, Inc. are collectively referred to as the “**Upstream Owners.**”

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by the Upstream Owners, the Board of Directors has determined, with respect to each Upstream Owner, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither the Upstream Owner nor any of its Related Persons are subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither the Upstream Owner nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.

Section 11.2 Waiver of Ownership Limits and Voting Limits to Permit Transaction.

(a) The Board of Directors hereby waives (i) pursuant to Article FOURTH, Section III(a)(i) of the certificate of incorporation of the Corporation dated December 23, 2008, as amended (“2008 Certificate”), the restrictions on ownership of capital stock of the Corporation described in Article FOURTH, Section III(a)(i) of the 2008 Certificate, and (ii) pursuant to Article FOURTH, Section III(b)(i) of the 2008 Certificate, the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FOURTH, Section III(b)(i) of the 2008 Certificate, in each case solely in order to permit the transactions contemplated by that certain Share Purchase Agreement, dated as of June 7, 2011, between Deutsche Börse and SIX Group AG (formerly SWX Group) and SIX Swiss Exchange AG (formerly SWX), under which the Corporation will become an indirect subsidiary of Eurex Global Derivatives AG (“EGD”), a stock corporation organized under the laws of Switzerland (the “Transaction”). At the time the Transaction is consummated, EGD will be referred to as an Upstream Owner, and SIX Group AG, SIX Swiss Exchange AG, and Verein SIX Swiss Exchange (formerly Verein SWX Swiss Exchange) will no longer be referred to as Upstream Owners.

(b) In so waiving the applicable Ownership Limits and Voting Limits to allow ownership and voting of the capital stock of the Corporation by EGD, the Board of Directors has determined, with respect to EGD, that: (i) such waiver will not impair the ability of the Corporation and each Controlled National Securities Exchange, or facility thereof, to carry out its respective functions and responsibilities under the Exchange Act and the rules promulgated thereunder; (ii) such waiver is otherwise in the best interests of the Corporation, its stockholders, and each Controlled National Securities Exchange, or facility thereof; (iii) such waiver will not impair the ability of the Commission to enforce the Exchange Act; (iv) neither EGD nor any of its Related Persons are subject to any applicable “statutory disqualification” (within the meaning of Section 3(a)(39) of the Exchange Act); and (v) neither EGD nor any of its Related Persons is a member (as such term is defined in Section 3(a)(3)(A) of the Exchange Act) of such Controlled National Securities Exchange.