EXHIBIT 5A

Additions underscored
Deletions [bracketed]
Bracketed text in original rule in {braces}

Rules of the Exchange
Rule 1.

[Effect of Definitions

a. Unless the context requires otherwise, the terms defined in Rules 2 to 25 {¶2002—2025}, inclusive, shall, for all purposes of the Rules, have the meanings therein specified.]

"The Exchange"

The term "the Exchange," when used with reference to the administration of any rule, means the New York Stock Exchange LLC or the officer, employee, person, entity or committee to whom appropriate authority to administer such rule has been delegated by the Exchange.

Unless otherwise indicated in the rule, the terms Board, Board of Directors, Chairman, Chairman of the Board, Chief Executive Officer, or CEO refer to the Board, Board of Directors, Chairman, Chairman of the Board, Chief Executive Officer and CEO of the Exchange.

Rule 2.

"Member," "Membership," "Member Firm," etc.

(i) [The terms "member," "membership," "member firm," "allied member," "non-member", "member corporation" and "approved person" shall have the meaning specified in Section 3 of Article I of the Constitution{¶1003 }, and the terms "publicly held security," "voting stock" and "non-voting stock," when used with respect to a member corporation, shall also have the meanings specified in Section 3 of Article I of the Constitution {¶1003 }.]

(a) The term "member," when used to denote a natural person approved by the Exchange, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.

(b)(i) The term "member organization" means a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) approved by the Exchange and

authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof.

(ii) The term "member organization" also includes any registered broker or dealer, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate.

(iii) The term "member organization" includes "member firm" and "member corporation."

(c) The term "allied member" means a natural person who is a general partner of a member organization or other employee of a member organization who controls, or is a principal executive officer of, such member organization and who has been approved by the Exchange as an allied member.

(d) The term "approved person" means a person, other than a member or allied member, or employee of a member organization who controls a member organization or is engaged in a securities or kindred business that is controlled by, or under common control with a member or member organization who has been approved by the Exchange as an approved person.
(e) The term "person" shall mean a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

(f) The term "control" means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person shall be presumed to control another person if such person, directly or indirectly,

(i) has the right to vote 25 percent or more of the voting securities,

(ii) is entitled to receive 25 percent or more of the net profits, or

(iii) is a director, general partner or principal executive officer (or person occupying a similar status or performing similar functions) of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive officer of another person shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange.

[The term "person" shall mean a natural person, corporation, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.]

(g) The term "engaged in a securities or kindred business" shall mean transacting business generally as a broker or dealer in securities, including but not limited to, servicing customer accounts or introducing them to another person.

(h) The term "State" shall mean any state of the United States, the District of Columbia, Puerto Rico, [the Canal Zone,] the Virgin Islands, or any other possession of the United States.

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Rule 2A.

Jurisdiction

(a) The Exchange, may, with approval of the Exchange Board of Directors and the NYSE Regulation Board of Directors, adopt, amend or repeal such rules as it may deem necessary or proper, including rules with respect to (i) the making and settling of Exchange Contracts, (ii) the access of members and member organizations and their employees to and the conduct of members, member organizations and their employees upon the floor of the Exchange and their use of Exchange facilities, (iii) insolvency of member organizations, (iv) the formation of member organizations, the continuance thereof and the interests of members, allied members and other persons therein, (v) the partners, officers, directors, stockholders and employees of member organizations, (vi) the offices of members, allied members and member organizations, (vii) the business conduct of members, allied members and member organizations, (viii) the business connections of members, allied members and member organizations, and their association with or domination by or over corporations or other persons engaged in the securities business, (ix) capital requirements for member organizations, (x) the procedure for arbitration and dispute resolution, (xi) trading licenses and the transfers thereof, (xii) types, terms, conditions and issuance of securities by member organizations and trading in such securities, (xiii) the conduct and procedure for disciplinary hearings and reviews there from, (xiv) the location and use on the floor of the Exchange of such facilities as may be approved by the Exchange to permit members to send orders from the floor to other markets and receive orders on the floor from other markets for the purchase or sale of securities traded on the Exchange, (xv) options and other derivative trading, (xvi) matters related to non-member broker-dealers that choose to be regulated by the Exchange, and (xvii) any other matter relevant to the conduct of the business of a securities exchange and self-regulatory organization.

(b) The Exchange may approve applications for the listing of securities and the admission of securities, including securities on a “when issued” or “when distributed” basis, to dealings on the Exchange, and may suspend dealings in such securities and may remove the same from listing.

(c) The Exchange shall have general supervision over members, allied members and member organizations, employees of member organizations and over approved persons in connection with their conduct of the business of member organizations. The Exchange shall have general supervision over other broker-dealers that choose to be regulated by the Exchange. The Exchange may examine into the business conduct and financial condition of members, allied members, member organizations, employees of member

organizations, approved persons and other broker-dealers that choose to be regulated by the Exchange. It shall have supervision over partnership and corporate arrangements and over all offices of such members and member organizations, whether foreign or domestic, and over all persons employed by such members organizations, and other broker-dealers that choose to be regulated by the Exchange and may adopt such rules with respect to the employment, compensation and duties of such employees as it may deem appropriate. It shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. It shall have the power to approve or disapprove any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication. It may disapprove any member acting as a specialist or odd-lot dealer.

(d) The Exchange shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, allied members, approved persons, and registered and non-registered employees of member organizations and over other broker-dealers that choose to be regulated by the Exchange for the violation of the Securities Exchange Act of 1934 (the Act), the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Exchange shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

(e) The Exchange shall have jurisdiction after notice and a hearing to discipline members, member organizations, allied members, approved persons in connection with their conduct of the business of a member organization, and registered or non-registered employees of member organizations and other broker-dealers that choose to be regulated by the Exchange. The Exchange may impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction.

(f) The Exchange shall have jurisdiction over any and all other functions of its members, member organizations, allied members, approved persons in connection with the conduct of the business of member organizations, and registered or non-registered employees of members or member organizations and other broker-dealers that choose to be regulated by the Exchange in order for the Exchange to comply with its statutory obligation as a Self Regulatory Organization.

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Rule 2B.

No Affiliation between Exchange and any Member Organization

Without prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of

the Exchange, or an affiliate of any affiliate of the Exchange. The term affiliate shall have the meaning specified in Rule 12b-2 under the Act. Nothing in this rule shall prohibit a member organization from acquiring or holding an equity interest in NYSE Group, Inc. that is permitted by the ownership limitations contained in the certificate of incorporation of NYSE Group, Inc.

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Rule 11.

[“The Exchange”

The term "the Exchange," when used with reference to the administration of any rule, means either the Board of Directors or the officer, employee or committee to whom appropriate authority to administer such rule has been delegated by the Board pursuant to the provisions of Section 14 of Article IV of the Constitution {¶1164}.]

Effect of Definitions

b. Unless the context requires otherwise, the terms defined in Exchange Rules shall, for all purposes of the Exchange Rules, have the meanings therein specified.

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Rule 16.

Liability of Exchange Relating to Operation of ITS and Pre - Opening Application

As used in this Rule the term "System Transaction" shall mean any purchase or sale of a security which results from the acceptance of a commitment or obligation to trade received on the Floor through ITS or the Pre-Opening Application or from the acceptance in another market of a commitment or obligation to trade sent from the Floor through ITS or the Pre-Opening Application. Each System Transaction shall be reported on the clearing tape generated by the system at the end of each trading day and such tape shall also identify one or more clearing members who will clear and settle each System Transaction. The member on the Floor who instructed the ITS cle[a]rk-(referred to in paragraph (B) hereof) to issue or accept the commitment or obligation to trade which resulted in the System Transaction reported on the clearing tape (the "instructing member") shall also be identified in Exchange records.

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(c) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Directors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one member or allied member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are either members or allied members of the Exchange, and provided further that no member of the arbitration panel may be a person with a direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist or panelists, as the case may be, then in that event such

additional panelist(s) shall be appointed by an Executive Floor Governor [BoE Floor Representative] who has no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel.

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(C) Whenever a clearing agency to which a System Transaction has been reported excludes such System Transaction from the clearance procedures conducted by such agency, either because such agency ceases to act (either with respect to transactions generally or as to a particular transaction) for a member or member organizations, or because of the insolvency of such member or member organization, the Exchange may, but shall not be obligated to, assume and honor any one or more or all of such excluded System Transaction for the account of and on behalf of the member or member organization for which the clearing agency ceased to act or which is insolvent and the Exchange may take such action in the market to close out or offset its position as it may deem appropriate. In any such case, the Exchange shall have a claim against such member or member organization in the amount of the loss incurred by the Exchange as a result of such assumption of such excluded System Transaction(s). The Exchange may assert such claim against such member or member organization in any appropriate forum [and, without limiting the generality of the foregoing, in connection with the transfer of any membership by such member, or by any member who is a general partner of or a holder of voting stock of such member organization, such claim shall be entitled to priority in payment as a sum due the Exchange under the provisions of Section 3 of Article XI of the Constitution].

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Rule 17.

Use of Exchange Facilities

The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.

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Rule 20.

Delegation, Authority and Access

(a)(1) New York Stock Exchange LLC (the "Exchange LLC"), a registered national securities exchange, is the parent company of the wholly-owned subsidiaries NYSE Market, Inc.("NYSE Market") and NYSE Regulation, Inc. ("NYSE Regulation").

(2) The Exchange delegates to NYSE Market and NYSE Regulation the authority to act on behalf of the Exchange LLC as set forth in a Delegation Agreement adopted by the Exchange's Board of Directors and approved by the Commission pursuant to its authority under the Securities Exchange Act of 1934 (the "Exchange Act").

(3) Notwithstanding any delegation of authority to the NYSE Market and NYSE Regulation pursuant to this Rule, the books, records and premises of the NYSE Market and NYSE Regulation are the books, records and premises of the Exchange LLC, subject to oversight pursuant to the Exchange Act, and all officers, directors, employees and agents of NYSE Market and NYSE Regulation are the officers, directors, employees and agents of the Exchange for purposes of the Exchange Act.

(b) NYSE Market shall establish a Market Performance Committee and NYSE Regulation shall establish a Regulatory Advisory Committee, each to include persons associated with member organizations. The committees shall include representatives of both those member organizations doing business on the Floor of the Exchange and those who do not do business on the Floor. Individuals may serve on one or both rule advisory committees as appropriate. The Market Performance Committee shall act in an advisory capacity regarding trading rules and other matters within its Charter. The Regulatory Advisory Committee shall act in an advisory capacity regarding disciplinary matters and regulatory rules other than trading rules.

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Rule 22.

Disqualification Because of Personal Interest

(a) No member of the NYSE Group Inc. (“NYSE Group”), the Exchange LLC, NYSE Market, and NYSE Regulation boards of directors [or of the Board of Executives] or of any committee authorized by the NYSE Group, the Exchange, NYSE Market, and NYSE Regulation b[B]oards of d[D]irectors shall participate (except to the extent of testifying at the request of such b[B]oards or of such committee) in the investigation or consideration of any matter relating to any member, allied member, approved person, or member organization with knowledge that such member, allied member, approved person, or member organization is indebted to such director or committee member, or to their member organization or any participant therein, or that they, their member organization or any participant therein is indebted to such member, allied member, approved person, or member organization, excluding, however, any indebtedness arising in the ordinary course of business out of transactions on any exchange, out of transactions in the over-the-counter markets, or out of the lending and borrowing of securities.

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Rule 28.

[Fingerprint-Based Background Checks]

Fingerprint-Based Background Checks of Exchange Employees and Others

Fingerprint-Based Background Checks of Exchange Employees and Others
(a) In order to enhance the security of the respective facilities, systems, data, and/or records of the [New York Stock Exchange, Inc. ("]the Exchange[")] and its principal subsidiaries (collectively, "facilities and records"), the Exchange shall obtain fingerprints from, and conduct a fingerprint-based background check of, all prospective and current

employees, temporary personnel, independent contractors, and service providers of each of the Exchange and its principal subsidiaries. However, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due to that person's limited, supervised, or restricted access to facilities and records; or the nature or location of his or her work or services. The Exchange shall apply this rule in all circumstances where permitted by applicable law.

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Rule 37.

Visitors

Visitors shall not be admitted to the Floor of the Exchange except by permission of an Officer of the Exchange or an Officer of NYSE Market or NYSE Regulation, a Senior Floor Official, Executive Floor Official, a Floor Governor, or [a]an Executive Floor Governor [BoE Floor Representative between the hours of 10:00 a.m. and 3:30 p.m. Approval of an Exchange Officer or a BoE Floor Representative (or Senior Floor Official, Executive Floor Official, or Floor Governor in the absence of the BoE Floor Representatives) is required to bring visitors onto the Floor 30 minutes before or after the opening and 30 minutes prior to closing].

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Rule 38.

Communications

(ii) Communications or announcements shall not be posted on the bulletin board without the consent of the Chief Executive Officer of NYSE Market, or a person authorized by the Exchange to give such consent.

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Rule 46.

Floor Officials - Appointment

(a) [Each member of the Board of Executives who represents the groups referenced in clauses (ii) and (iii) of Article V, Section 2(b) of the Constitution shall be a BoE Floor Representative] Each Executive Floor Governor [and] shall be approved as a Floor Official and shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor.

(b) The Exchange Chairman, in consultation with the Executive Floor Governors [BoE Floor Representatives] and NYSE Regulation Board of Directors and with the approval of the Exchange Board, shall, at the annual meeting of the Exchange Board of Directors or at such other time as may be deemed necessary:

> (i) designate as Floor Officials such other members as he may determine, who shall perform such duties as are prescribed by the Rules of the Exchange [Board] to serve at the pleasure of the Exchange Board of Directors or until the next

annual [election] meeting of the Exchange Board of Directors [and their] at which time successors Floor Officials [successors] are appointed and take office.

(ii) designate twenty such other members as Floor Governors, who shall be empowered to perform any duty, make any decision or take any action assigned to or required [an] of an Executive Floor Governor [BoE Floor Representative] as are prescribed by the Rules of the [Board] Exchange or as may be designated by the Exchange Board.

For purposes of this rule, a Floor Governor, by virtue of his appointment as such, shall also be deemed to be a Floor Official, and, therefore empowered to perform such duties as are specifically prescribed by the Rules of the Exchange Board or as may be designated by the Exchange Board regarding Floor Officials.

(iii) designate such number [as he may determine] of Executive Floor Officials as he may determine from those Floor Governors who have completed their term of service as Floor [g]Governors [as Executive Floor Officials], who shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor as are prescribed by the Rules of the Exchange [Board] or as may be designated by the Exchange Board regarding Floor Governors.

(iv) designate such number [as he may determine] of Senior Floor Officials as he may determine from Floor Officials who are entering their fifth or sixth year of service [as such as Senior Floor Officials], who shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor as are prescribed by the Rules of the [Board] Exchange or as may be designated by the Exchange Board regarding Floor Governors.

(c) Each Floor Official, Floor Governor, Executive Floor Official, [and] Senior Floor Official and Executive Floor Governor so appointed pursuant to [this] Rules 46 and 46A as applicable shall serve at the pleasure of the Exchange Board of Directors or until the next annual [election] meeting of the Exchange and their successors are appointed and take office.

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Rule 46A

Executive Floor Governors

(a) The Board of Directors of the Exchange, in consultation with the Board of Directors of NYSE Regulation, shall appoint such number of Executive Floor Governors as it deems appropriate, each of whom shall serve for a term of one year, or until the next annual organizational meeting of the Exchange Board, whichever first occurs.

(b) Executive Floor Governors shall consist of (i) at least two registered specialists, each of whom spends a substantial part of his or her time on the Floor of the Exchange; and (ii) at least two Floor brokers, each of whom spends a majority of his or her time on the Floor of the Exchange executing transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization. Executive Floor Governors assist in the administration of the rules regarding trading on the Exchange and any facility thereof.

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Rule 51.

Hours for Business

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c. Except as may be otherwise determined by the Exchange Board of Directors, the Chief Executive Officer of the Exchange shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. In considering such action, the Chief Executive Officer of the Exchange shall consult with such available Executive Floor Governors [BOE Floor Representatives] as he deems appropriate under the circumstances. The Chief Executive Officer of the Exchange shall notify the Exchange Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

d. • • • ***Supplementary Material:*** ------------------

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e. The Exchange Board has also determined that, when any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday and when any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the succeeding Monday, unless unusual business conditions exist, such as the ending of a monthly or the yearly accounting period.

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Rule 54.

Dealings on Floor - Persons

Only members shall be permitted to make or accept bids and offers, consummate transactions or otherwise transact business on the Floor in any security admitted to dealings on the Exchange. [, except that the provisions of this Rule shall not apply in the case of a person authorized to transact business on the Floor pursuant to Section 7 of Article II of the Constitution.]

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Rule 75.

Disputes as to Bids and Offers

Disputes arising on bids or offers, if not settled by agreement between the members interested, shall be settled by a Floor Official. In rendering a decision as to disputes regarding the amount traded, the Floor Official shall give primary weight to statements by any member who was not a party to the transaction and shall also take into account the size of orders held by parties to the disputed transaction, and such other facts as he deems relevant. If both parties to a dispute agree, and the dispute involves either a monetary difference of $10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, whose decision shall be binding on the parties. As an alternative to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, members may also proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange's [Constitution and] Rules.

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Rule 98.

Restrictions on Approved Person Associated with a Specialist's Member Organization

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Guidelines for Approved Persons Associated with a Specialist's Member Organization

(a) An "approved person" is a person (other than a member, allied member, or employee of a member organization) who controls a [member or] member organization, or is engaged in a securities or kindred business and is controlled by or under common control with a [member or] member organization (the term "approved person" is defined in Rule 2 [Article I, Section 3(g) of the Exchange Constitution]. The term "engaged in a securities or kindred business" is defined in Rule 2.). The term "control" is defined in Rule 2 to mean the power to direct, or cause the direction of, the management or policies of a person, whether through ownership of securities, by contract or otherwise. Under the definition, a person is presumed to control another person if such person, directly or indirectly, has the right to vote 25% or more of the voting securities, or is entitled to receive 25% or more of the net profits, or is a director, general partner or principal executive officer (or a person occupying a similar status or performing similar functions), of the other person. In these Guidelines, a member organization having one or more employees, partners or officers who are members registered with the Exchange as specialists is referred to as a "specialist member organization" and the approved person of a specialist member organization is sometimes referred to as being "associated" with the member organization.

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Rule 103.

Registration of Specialists

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Supplementary Material:

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.11 Temporary Reallocation of Securities[tocks].— The Chief Regulatory Officer or his or her designee and two non-specialist Executive Floor Governors [BoE Floor Representatives] or if only one or no non-specialist Executive Floor Governor[BoE Floor Representatives] is present on the Floor, the most senior non-specialist Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority shall have the power to reallocate temporarily any security on an emergency basis to another location on the Floor whenever in their opinion such reallocation would be in the public interest.

The member to whom a security has been temporarily reallocated under the provisions of this Rule will be registered as the regular specialist therein until the Chief Regulatory Officer or his or her designee and two non-specialist Executive Floor Governors [BoE Floor Representatives] determine that the security may be returned to the original specialist organization or has been reallocated pursuant to Exchange rules.

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Rule 103A.

Specialist Stock Reallocation and Member Education and Performance

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(g) Right to Review.-A decision by the Committee that one or more stocks should be reallocated shall be final, subject to the specialist unit's right to have such decision reviewed by the Exchange's Board of Directors [pursuant to the provisions of Article IV, Section 14 of the Exchange's Constitution].

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Rule 103B.

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III. ALLOCATION PANEL

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Selection

Panel members are nominated by the membership. A selection committee, appointed by the Executive Floor Governors [BoE Floor Representatives], reviews the nominations and recommends panel appointments to the Executive Floor Governors [BoE Floor Representatives], who finalize recommendations for presentation to the QOMC. The selection committee operates in accordance with such guidelines as are established and made known to the membership from time to time. The selection committee and, in turn, the Executive Floor Governors [BoE Floor Representatives] seek to develop a representative panel that maximizes professional expertise and broad exposure on the Floor by including members from various types of firms and from diverse locations on the Floor. To the maximum extent possible, the Floor members on the panel are expected to be a core group of experienced, senior professionals, such as former Allocation Committee chairmen, Senior Floor Officials, Executive Floor Officials, and current and former Floor Governors.

In the case of allied members and representatives of institutional investor organizations, the allied member organization and the institutional investor organization are appointed to the panel. The individual representative is then selected by the organization. [A]An Executive Floor Governor [BoE Floor Representative] gives guidance to the organization in selecting an appropriate representative.

Eligibility

Professional expertise and experience are essential to the excellence of the allocation system. Therefore, a Floor member must have a minimum of 5 years experience as a member on the Floor in order to be eligible for appointment to the Allocation Panel. In the case of allied members and representatives of institutional investor organizations, the organization shall select a representative with at least 5 years of trading experience in listed equities and a senior position on the trading desk, and each may designate one alternate who meets the Panel qualifications, subject to approval by the Executive Floor Governors [BoE Floor Representatives].

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IV. ALLOCATION CRITERIA

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V. POLICY NOTES

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Allocation Freeze Policy

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Following the Allocation Prohibition, a second six month period will begin during which a specialist unit may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the Allocation Prohibition. The determination as to whether a unit may apply for new listings will be made by [Exchange] the staff of NYSE Regulation, in consultation with the Executive Floor Governors [BoE Floor Representatives]. The factors the [Exchange] staff will consider will vary depending on the unit's particular situation, but may include one or more steps such as:

- supplying additional manpower/experience;
- changes in professional staff;
- attaining appropriate dealer participation;
- enhancing back-office staff; and
- implementing more stringent supervision/new procedures.

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IX. PROVISIONS FOR ALLOCATION OF SECURITIES ISSUED BY NYSE GROUP OR ITS AFFILIATES

With respect to any security issued by NYSE Group and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with NYSE Group, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity ("NYSE Group Affiliate"):

(a) Where the issuer chooses to select its specialist (as opposed to having its specialist selected by the Allocation Committee), the issuer shall have the right to determine the number and identity of the specialist firms that will be included in the group from which it shall choose a specialist, provided such group consists of at least four specialist firms.

(b) The issuer shall review the same material with respect to each specialist firm applicant as would have been reviewed by the Allocation Committee in allocating other securities.

(c) All other provisions of this rule shall continue to apply.

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Rule 123A.

Miscellaneous Requirements

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.45 Members' off-floor orders. -- Two persons consisting of [two] Executive Floor Governors [BoE Floor Representatives], or in the absence of any of them, two Floor Governors, Senior Floor Officials, or Executive Floor Officials in the order of seniority, have the authority to limit or ban the execution of off-Floor orders for accounts in which members or member organizations have an interest.

(See also Rule [112A.10 {¶2112A.10} and] Rule 410(b) {¶2410(b)}.)

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Rule 123B.

Exchange Automated Order Routing Systems

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(e) [In accordance with Article II, Section 6 of the Exchange's Constitution, t] The Exchange shall not be liable for any loss sustained by a member or member organization resulting from the use of the System. Generally, a loss pertaining to an order that is entered through the System and which does not appear on the System's Merged Order and Report Log will be absorbed by the entering member organization. A loss pertaining to an order that is entered through the System, which was designated for a particular specialist's post and which does appear on the System's Merged Order and Report Log will generally be absorbed by the specialist.

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Rule 123D.

Openings and Halts [i]In Trading

(1) **Delayed Openings/Halts in Trading**

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All indications require the supervision and approval of a Floor Official. If it involves a bank or brokerage stock, the approval of [a]an Executive Floor Governor [BoE Floor Representative's approval] is required. If [a]an Executive Floor Governor [BoE Floor Representative] is unavailable, a Floor Governor's or Senior Floor Official's approval must be obtained. In addition to the mandatory criteria, specialists should use their judgment as to when it is appropriate to seek Floor Official approval for disseminating a price indication.

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- Tape indications before the opening should be disseminated at 9:15 a.m., if possible, but any tape indications disseminated prior to 9:30 a.m. require the approval of [a]an Executive Floor Governor [BoE Floor Representative] or Floor Governor, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day.

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As with other openings, tape indications are discretionary for IPO's with the approval of [a]an Executive Floor Governor [BoE Floor Representative] or Floor Governor except that it is mandatory if the opening price change as measured from the offering price meets the requirements for a mandatory indication.

If an indication is disseminated after the opening bell, it must be considered a delayed opening. In addition, any stock that is not opened with a trade or reasonable quotation within 30 minutes after the opening of business must be considered a delayed opening (except for IPO's) and requires Floor Official supervision, as well as an indication. That 30-minute time frame may only be extended by [a]an Executive Floor Governor [BoE Floor Representative] on a Floor-wide basis.

More than one indication should be disseminated if an opening will be outside the first indication or if the first indication had a wide spread, especially if the time frame for delayed openings has been extended by the Executive Floor Governor [BoE Floor Representative]. A reduction in time between indications can be used when multiple indications are disseminated. Generally, a minimum of 10 minutes must elapse between the first indication and a stock's opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open five minutes after the last indication provided that at least 10 minutes must have elapsed from the dissemination of the first indication.

* * * * *

An Executive Floor Governor [BoE Floor Representative] or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.

Floor Governors should keep apprised of developments when consulted, and should seek the assistance of Executive Floor Governors [BoE Floor Representatives], when appropriate, as soon as possible.

* * * * *

Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials. [A]An Executive Floor Governor [BoE Floor Representative], or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company's financial viability.

Sometimes the [Client Service Division] the Exchange is notified by a listed company in advance of publication concerning news which might have a substantial market impact. The designated Exchange staff [That Division will immediately notify the Floor Operations Division, which] will advise [a]an Executive Floor Governor [BoE Floor Representative] or Floor Governor, or in their absence a Floor Official.

If the Exchange staff [Client Service Division] makes a recommendation that trading should be halted in a stock pending a public announcement by the company and the Executive Floor Governor [BoE Floor Representative] or Floor Governor disagrees, he or she should seek the opinion of another Executive Floor Governor [BoE Floor Representative] or Floor Governor. If the Executive Floor Governors [BoE Floor Representatives] or Floor Governors are in agreement that trading should not be halted, trading should continue. If one of the two is in agreement with the recommendation to halt trading, then trading should be halted. While the time period may vary from case-to-case as a result of the particular circumstances involved, normally if the announcement is not made within approximately 30 minutes after the delay or halt is implemented, the Exchange may commence the opening or reopening of trading in the stock. Special care is taken to ensure that material non–public information is not disclosed, even inadvertently, as a result of someone overhearing details relating to trading halts or delayed opening situations.

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Rule 128B.

Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions

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.12 Mechanical, system and clerical errors.— Erroneous publications made on the tape due to mechanical or system troubles or to clerical errors may be corrected on the tape on the day of the transaction, or on the tape by at least ten minutes prior to the opening of business on the following business day, or in the "sales sheet" [*] within three business days of the date of the transaction under the direction of an authorized [New York Stock Exchange] NYSE Market employee.

* * * * *

Rule 281.

Contracts of Suspended Parties

When an announcement is made of the suspension of a member or member organization [pursuant to the provisions of Article XIII of the Constitution], members or member organizations having contracts with the suspended member or member organization for the purchase, sale or loan of securities shall, without unnecessary delay, proceed to close such contracts on the Exchange or in the best available market, except in so far as the rules of a Qualified Clearing Agency are applicable and provide the method of closing; provided, however, that upon any such suspension, the Board may, in its discretion, suspend the mandatory close-out provisions of this rule and may, in its discretion, reinstate such provisions at such time as it may determine.

Should such a contract not be closed when required to be closed by this Rule, the price of settlement [for the purpose of Section 3 of Article XI of the Constitution] shall be fixed by the fair market value at the time when such contract should have been closed under this Rule.

* * * * *

Rule 287.

Liability of Succeeding Parties

f. The closing of a contract pursuant to the Rules of the Exchange [Board of Directors] or pursuant to the rules of a Qualified Clearing Agency shall be for the account and liability of each succeeding party in interest in such contract, and, in case notice that such contract will be closed has been re-transmitted, as provided in Rule 285, such closing shall also automatically close all contracts with respect to which such re-transmitted notice shall have been delivered prior to the closing.

* * * * *

Rule 300.

Trading Licenses

(a) A trading license issued by the Exchange is required to effect transactions on the floor of the Exchange or through any facility thereof. An organization may acquire and hold a trading license only if and for so long as such organization is qualified and approved to be a member organization of the Exchange. A member organization holding a trading license may designate a natural person to effect transactions on its behalf on the floor of the Exchange, subject to such qualification and approvals as the Exchange may require. A trading license is not transferable and may not be, in whole or in part, transferred, assigned, sublicensed or leased; provided, however, that the holder of the trading license may, with the prior written consent of the Exchange, transfer a trading license to a qualified and approved member organization (i) which is an affiliate or (ii) which continues substantially the same business of such trading license holder without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation, reorganization or the like.

(b) Trading licenses for the following calendar year will be sold annually by means of an auction conducted in December. The Exchange will determine the minimum price that a bidder will be required to pay for each license (the "Minimum Bid Price"), which will be no greater than 80% of the last annual Auction Price (as defined below). Unpriced "at the market" bids will also be permitted. At the end of the auction, the Exchange will select as the purchase price for each trading license the highest bid price that will allow it to sell the number of trading licenses that will maximize auction revenue to the Exchange (the "Clearing Price"), provided that (i) the Clearing Price shall not be greater than the price that will result in the sale in the auction of at least 1000 trading licenses, (ii) the Exchange will not sell in the auction more than 1366 trading licenses, and if the bids at the Clearing Price bring the total to more than 1366 trading licenses, the Exchange will first allocate trading licenses at the Clearing Price to the unpriced "at the market" bids and higher priced bids, and then will allocate the remaining trading licenses (up to 1366) among the bids at the Clearing Price by lot, and (iii) the Exchange at its discretion may sell the number of trading licenses determined by the Clearing Price at a price less than the Clearing Price but not lower than the Minimum Bid Price. Notwithstanding the foregoing, if there are insufficient bids at the Minimum Bid Price (including unpriced at the market bids) to purchase at least 1000 trading licenses, the Exchange may, although it need not, sell the largest number of trading licenses as can be sold at a price equal to the Minimum Bid Price, even though such number of trading licenses is less than 1000. In the alternative, under such circumstances, the Exchange may conduct another auction or auctions, setting a new Minimum Bid Price, which may be lower than that determined by the formula above, and in any such auction the Clearing Price will be determined as aforesaid, but without the requirement to sell at least 1000 trading licenses. In such case, the Exchange shall use its discretion to conclude an auction that will best serve the dual goals of raising adequate proceeds for the Exchange while selling a number of trading licenses adequate to serve the needs of investors and the broker-dealer community. The price at which the trading licenses are sold in the auction shall be referred to herein as the "Auction Price".

(c) In each auction, the Exchange will limit the number of trading licenses that may be bid for by a single member organization to a number that is the greater of (i) 35 and (ii) 125% of the number of trading licenses utilized by the member organization in its business immediately prior to the auction.

(d) Between auctions, the Exchange shall sell additional trading licenses expiring at the end of the applicable calendar year at a price equal to the last Auction Price, plus a premium equal to ten percent (10%) of the Auction Price (the "Premium"), with the total then pro rated to reflect the amount of time remaining in the year. The Exchange shall not sell additional trading licenses if such sale would cause the number of outstanding trading licenses to exceed 1366.

(e) For purposes of this rule the "Trading License Price" shall mean the Auction Price plus any Premium (as pro-rated, in the case of trading licenses purchased between auctions). A buyer of a trading license shall pay to the Exchange the Trading License Price in equal monthly installments in advance over the period during which the trading license is in effect. Prior to the commencement of the trading license, the holder shall pay to the Exchange the first monthly installment of the Trading License Price, plus a cash deposit (the "Deposit") equal to one month's installment of the Trading License

Price. The Deposit shall be applied to the last month's installment or to any applicable Termination Fee (as defined below).

(f) Trading licenses shall expire at the end of the calendar year for which they are issued. Notwithstanding the foregoing, the holder of a trading license may terminate such trading license prior to the scheduled expiration of such trading license by providing at least 10 days' prior written notice to the Exchange of such termination and by paying the Exchange a Termination Fee. The termination will be effective at the end of the month following the end of such 10-day notice period. The Termination Fee will be equal to one monthly installment of the Trading License Price.

(g) If a holder of a trading license shall cease to be a member organization of the Exchange for any reason, such holder shall be deemed to have terminated the trading license as of the last date of member organization status, and the applicable Termination Fee shall be due.

Rule 300T

Transition Rules Regarding the Merger

(a) For the calendar year in which the business combination involving the New York Stock Exchange, Inc. and Archipelago Holdings, Inc. (the "Merger") occurs, the Exchange may conduct an auction of trading licenses in accordance with the provisions of Rule 300, except that the trading licenses sold in such auction shall expire at the end of the calendar year in which the Merger occurs.

(b) In the auction referred to in paragraph (a) above, the Minimum Bid Price shall be eighty percent (80%) of the Reference Price (as hereinafter defined), and there shall also be imposed a "Maximum Bid Price" which shall be one hundred twenty percent (120%) of the Reference Price. For purposes of this paragraph, the term "Reference Price" shall mean the average annual lease price for leases (including renewal leases) which leases (or renewals) commenced during the six-month period ending on the last business day of the last calendar month ending at least thirty days before the opening of the auction. In addition, in determining the Auction Price, the Clearing Price shall be reduced by multiplying it by a fraction the numerator of which is the number of months for which the license shall be issued and the denominator of which is twelve (12).

(c) In the auction referred to in paragraph (a) above, the Exchange will limit the number of trading licenses that may be bid for by a single member organization to a number that is the greater of (i) 35 and (ii) 125% of the number of regular and electronic access Exchange memberships utilized by the member organization in its business immediately prior to the Merger.

(iii) (d) Subject to their continued compliance with all applicable rules and requirements, each member organization, and each individual regular member qualified and approved to effect transactions on the trading floor, and each allied member, approved person or registered employee, in good standing at the time of the Merger, shall continue qualified in their respective capacities upon completion of the Merger. Without limiting the foregoing, a regular member qualified and approved to effect transactions on

the floor of the Exchange on behalf of his or her member organization shall be deemed qualified and approved to be a person designated by such member organization to effect transactions on the floor of the Exchange on its behalf in connection with a trading license acquired by such member organization.

Rule 301.

[Proposed Transfer or Lease of Membership

(a) An offer or agreement by a member described in Section 1(a) of Article II of the Constitution for the transfer of his membership or for the lease of his membership may be made only in writing in such form as may from time to time be prescribed by the Constitution of the Exchange or the Rules of its Board of Directors and shall be executed personally by such member or by his legal representatives, except that an attorney-in-fact of such member may execute such documents in his behalf only if the following conditions are complied with, vis.:

(1) The Exchange has approved the execution of the power of attorney running to such attorney-in-fact;

g. (2) the Exchange is satisfied as to the validity and continued effectiveness of such power of attorney; and
h. (3) the Exchange is satisfied that the holder of such power of attorney is acting thereunder solely as agent for the member and is neither directly nor indirectly acting in his own behalf or in behalf of any third person and that he is not a creditor of such member and does not directly or indirectly represent any person who is such a creditor, unless
i. (A) the holder of such power of attorney is the Secretary of the Exchange acting pursuant to a power executed by the member and approved by the Exchange in connection with an agreement made with respect to the financing of the purchase of the membership; or

j. (B) the holder of such power of attorney is a partner or a principal executive officer in a member organization with which such member is associated as a member and has no financial interest in the transfer other than such as may arise by virtue of such attorney's interest in such member organization.

(b) No transfer or lease of a membership in the Exchange described in Section 1(a) of Article II of the Constitution shall be effective without the prior approval of the Board of Directors and each application for membership described in Sections 1(a), 1(b), 1(c) or 2 of said Article II shall require the approval of the Board. The membership of a member described in Sections 1(b), 1(c) or 2 of Article II of the Constitution shall not be transferable and shall not be leased.

(c) A member described in Section 1(a) of Article II of the Constitution shall notify the

Exchange in writing prior to any lease of his membership. A fully executed copy of the lease agreement, any amendment thereto and any proxy executed by the lessee as permitted by Section 7 of Article III of the Constitution shall be filed with and found acceptable by the Exchange prior to becoming effective.

In order to be found acceptable by the Exchange, each lease agreement shall include provisions stating:

k. (1) that upon the death of the lessee, the expiration of the term stated in the lease agreement, or the occurrence of any other event specified in such agreement, the lease agreement shall terminate and the Exchange shall be given notice of any termination or proposed termination of the lease agreement as promptly as possible;
l. (2) that the lessor shall not be permitted to transfer his leased membership during the term of the lease;
m. (3) all financial arrangements between the lessor and lessee regarding the lease of the membership;
n. (4) that, in the event the lessee fails to be approved for membership in the Exchange or the Board of Directors does not approve the lease agreement, that agreement shall be void;
o. (5) the Board of Directors may dispose of the membership in accordance with provisions of Section 6 of Article X of the Constitution;
p. (6) during the term of a lease, the lessee, rather than the lessor, shall for all purposes of the Constitution and the Rules thereunder be deemed to be the member of the Exchange, except that the lessor shall be deemed to be the member for the purposes of Article XV of the Constitution and shall be entitled to receive, with respect to such membership, any distribution of the assets of the Exchange in the event of any liquidation, dissolution or winding up the affairs of the Exchange;
q. (7) during the term of the lease agreement and subject to any proxy executed by the lessee and filed with the Secretary of the Exchange pursuant to Section 7 of Article III of the Constitution, the lessee shall exercise all voting rights with respect to the membership; and
r. (8) that all controversies arising between the lessor and lessee relating to the lease agreement, the termination or breach or alleged breach thereof, shall be arbitrated in accordance with the provisions of Article XI of the Constitution.

(d) The lessor of a membership described in Section 1(a) of Article II of the Constitution, who does not intend to renew the lease agreement, shall give written notice to the Exchange as promptly as possible. Such notice shall be posted on the bulletin board and in the Weekly Bulletin of the Exchange for at least ten days]

Qualifications for Membership

[(d) The lessor of a membership described in Section 1(a) of Article II of the Constitution, who does not intend to renew the lease agreement, shall give written notice to the Exchange as promptly as possible. Such notice shall be posted on the bulletin board and in the Weekly Bulletin of the Exchange for at least ten days.

Qualifications

s. ***Supplementary Material:*** ...

.10][(a) **Age.** --An applicant for membership in the Exchange must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which the applicant conducts business.

[**Procedure Regarding Election**

.20 Bids and offers --Memberships. --Agreements for the transfer of memberships described in Section 1(a) of Article II of the Constitution are usually arranged through the Membership Transfer Section who maintains a file of written bids for and offers of memberships. Although such agreements may be negotiated elsewhere, the final arrangements for the transfer must be consummated through the Membership Transfer Section. In general, all documents relating to the transfer must be executed personally by the member. Under certain circumstances, however, a power of attorney running to a third person and authorizing him to act for the member in this connection may be recognized by the Exchange.

.21 Deposit --Indemnity agreement. --A candidate for membership as described in Section 1(a) of Article II of the Constitution must, immediately upon the execution of an agreement for the transfer of a membership (other than a transfer for a nominal consideration), deposit with the Membership Transfer Section either (1) a certified check for twenty percent of the agreed purchase price, or (2) a written guarantee (on a form supplied by the Exchange) by a member organization. The purpose of this requirement is to provide some indemnification protection to the prospective seller against any loss which he may sustain in the eventual price realized by him in the prompt resale and transfer of his membership in case the proposed purchaser repudiates his agreement or fails to deposit the balance of the purchase price and the initiation fee at the proper time, but the amount of the check or guarantee so deposited shall not be a limitation on any rights of either party. In the event that the applicant fails to be eligible for membership, the deposit will be returned to him or the guarantee will become void, as the case may be.

t. **.22](b) Application for membership.** --In making application for membership, a candidate is required to sign a personal statement, on a form prescribed by the Exchange, giving, among other things, complete details as to business history. A candidate who will be active on the Floor will be required to arrange with the Medical Clinic located in the Exchange building for a physical examination. A candidate may also be required to present letters of recommendation from at least three responsible persons. [other than those persons referred to in .24 below.

u. **.23](c) Fingerprinting** --Every member and every applicant for membership is required to be fingerprinted and to submit such fingerprints, or cause the same to be submitted to the Exchange for identification and appropriate processing.

v. **[.24 Sponsorship.** --An applicant for membership shall be sponsored by two members or allied members of the Exchange of at least one year's standing, or be proposed for membership by two other responsible individuals, who have known the applicant sufficiently well and over a long enough period of time that they can

unqualifiedly endorse the character and integrity of the applicant from their personal knowledge of him and of his business connections.

A casual social or business acquaintanceship is not sufficient basis to qualify a member, an allied member or other individual to sponsor or propose the membership applicant.

Individuals who sponsor or propose an applicant for membership are required to read and sign the candidate's application and may be required to appear with an applicant at the time the applicant is presented for consideration.

.25] (d) Appearance of applicant. --An applicant for membership to the Exchange is required to appear personally at the time his application for membership is presented for consideration. The [Membership Transfer Section] Exchange will advise the applicant of the date of such appearance at the time arrangements are entered into for the proposed admission to membership.

[.26 Posting. --The Constitution provides that at least ten days must elapse between posting of a notice of a proposed transfer or leasing of a membership as described in Section 1(a) of Article II and consideration of the proposed transfer or lease. Notice of a proposed transfer or lease is posted on the bulletin board of the Exchange and published in the Weekly Bulletin of the Exchange upon the submission, in proper form, of *all* required documents. The foregoing posting requirements are waived in connection with (i) transfers between employees of a Member Organization that are for a nominal consideration and (ii) leases.

Notice of proposed admission to membership of members described in Sections 1(b) and 1(c) of Article II shall also be posted on the bulletin board of the Exchange and published in the Weekly Bulletin of the Exchange upon the submission, in proper form, of all required documents. At least ten days must elapse between posting of a notice and consideration of the proposed admission to membership.

.27 Payments to be made on day of approval of transfer or lease and payments to be made prior to admission to membership. --On the day on which the application for a membership described in Section 1(a) of Article II of the Constitution is scheduled to be considered, the proposed member (hereinafter referred to as a "new member") must deposit with the Exchange the balance of the purchase price of his membership, and pay to the Exchange an initial contribution to the Gratuity Fund of $15 (Art. XV, Sec. 1), the unexpired portion of the transferor's dues for the period for which dues are then payable, and an initiation fee for the transfer of such membership which shall be determined as follows, notwithstanding the provisions of Section 4 of Article II:

w. (1) in the event that the new member shall have purchased such membership through a membership auction facility furnished by the Exchange the initiation fee for the transfer of the membership shall be the greater of $1,000 or five percent of the purchase price paid for the membership, up to a maximum amount of $5,000;
x. (2) in the event that:
y. (i) a member (hereinafter referred to as "outgoing member") whose membership shall be transferred to a new member shall have had a contractual obligation to transfer the

membership to such person as may be designated by the member organization of which the outgoing member then shall be a partner or an officer or employee therein, and
z. (ii) said contractual obligation shall have been entered into at the same time as the outgoing member shall have acquired said membership, and
aa. (iii) the Exchange at the time said contractual obligation shall have been entered into shall have in writing approved or consented to the entering into of said obligation, and
bb. (iv) the membership of the outgoing member shall in satisfaction of such obligation be transferred to the new member pursuant to such a designation, and the new member shall have substantially the same relationship to and financial interest in the member organization as the outgoing member had, and
cc. (v) the new member shall have a contractual obligation to the same member organization to transfer the membership of the new member to such person as may be designated by the member organization, which obligation shall be upon substantially the same terms and conditions of said contractual obligation of the outgoing member to the member organization, then the initiation fee for the transfer of the membership shall be the greater of $1,000 or five percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of the new member is posted, up to a maximum amount of $5,000;
dd. (3) in the event that the membership of a new member shall have been acquired in a manner other than as contemplated in either clause (1) or clause (2) of this paragraph the initiation fee for the transfer of the membership shall be the greater of $1,000 or five percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of the new member is posted, up to a maximum amount of $5,000.
ee. On the day on which an application for a membership described in Section 2 of Article II of the Constitution is scheduled to be considered, the proposed member shall pay to the Exchange an initiation fee for the leasing of a membership described in Section 1(a) of Article II which initiation fee shall be the greater of $1,000 or five percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of such new member is posted, up to a maximum amount of $5,000, and pay to the lessor the unexpired portion of the lessor's dues for the period for which dues are then payable, provided, however, that no initiation fee shall be required upon the renewal of a lease agreement between the lessor and the lessee. Upon the termination of the lease agreement, the lessor shall pay the lessee the unexpired portion of the dues for the period for which dues are then payable.

Occasionally when a membership is to be transferred pursuant to option (c) of an a-b-c agreement, the member organization has not decided which person within the organization should be designated as the transferee of the membership and "work" the membership on the Floor for the organization or, perhaps, the member organization does not then have within the organization any person it wishes to acquire and "work" the membership. In such case, the member organization may designate, as the immediate transferee of the membership, one of its officers, partners or employees who is acceptable to the Exchange and is not active on the Floor, to hold the membership in his name subject to an Exchange approved a-b-c agreement or subordination agreement with the member organization until the member organization is able to identify another officer, partner or employee satisfactory to the Exchange who will acquire the membership and "work" it for the member organization on the Floor. In any such case, at the time of the

first transfer of the membership to the partner or employee who is not active on the Floor, an initiation fee computed in accordance with (2) of .27 shall be paid to the Exchange. If within 90 days following such transfer, the membership is retransferred to an officer, partner or employee of the member organization satisfactory to the Exchange who is to "work" such membership on the Floor and who is to hold the membership subject to an Exchange approved a-b-c agreement or is to finance the acquisition of such membership by an Exchange approved subordination agreement with the member organization, or if, within such time, the membership is leased to such a partner or employee pursuant to an Exchange approved lease thereof, then, in that event, no initiation fee will be due the Exchange with respect to such second transfer or such lease. In all other cases (for example, if the second transfer, or the lease, occurs or commences after such 90-day period) the normal initiation fee will be due the Exchange with respect to such second transfer or lease.

.28 Signing Constitution. --No person admitted to membership shall be entitled to the privileges of membership until he has signed the Constitution of the Exchange, thereby pledging himself to abide by the Constitution, as from time to time amended, and the rules adopted pursuant thereto. (*Art. II, Sec. 5*.)

Financial Arrangements Regarding Memberships Described in Section 1(a) of Article II of the Constitution

.30 General. --The purchase of a membership described in Section 1(a) of Article II may be financed in whole or in part as follows:

I. By the applicant's own means (see .31);

ff. II. By gift to the applicant, accompanied by a release from the donor (see .32);
gg. III. By funds advanced as a subordinated loan (see .33); or
hh. IV. By funds advanced by a member organization accompanied by a release, the applicant simultaneously entering into an a-b-c agreement with the firm or corporation (see .34).
ii. Financing arrangements which do not conform to one or more of the above will not be approved.

.31 I. Own means. --No special documents are required to be filed with the Exchange when an applicant finances the purchase of his membership, including the payment of the initiation fee, entirely with his own personal means. In his appearance as an applicant for membership, he is required to agree with the Exchange that he will not thereafter enter into any agreement whatsoever with reference to his membership unless the specific approval of the Exchange is first obtained.

.32 II. Gift under release. --If all or any part of the purchase price is being advanced to an applicant as a gift, the Exchange requires that the applicant file with the Exchange a general release from the donor to evidence the fact that the new member will be under no obligation to make any payment to the donor. A similar general release must be obtained from the transferor in the case of a transfer of a membership for a nominal consideration.

.33 III. Funds advanced as a subordinated loan. --If an applicant for membership borrows funds to be used for the purchase of a membership, or if a member borrows funds to refinance a membership, the instrument evidencing the member's obligations must be in the form of a "subordination agreement". Similarly, if a present member who originally financed the purchase of his membership in whole or in part with borrowed funds desires to refund his outstanding obligations, any new agreements must be in the approved form. Copies of all agreements executed in connection with such borrowings or refinancings must be filed with and approved by the Exchange prior to becoming effective, and will be retained by the Exchange as part of its records.

The purpose of the required subordination agreement is to preclude the lender from asserting any claim against the membership or the proceeds of its transfer prior to the payment in full of all claims entitled to priority under the provisions of Article II of the Constitution, and the rules of the Exchange.

Subsection Fourth of Section 11 of Article II of the Constitution expressly provides that the Exchange will not recognize any purported assignment of or attempted lien upon the proceeds or any part of the proceeds of the transfer of a membership, except as specifically provided in the Constitution; nor will the Exchange in general give effect to any power of attorney or direction to pay such proceeds or any part of the proceeds to any person except the member himself or, under the circumstances set forth in subsection Fourth of Section 11 of Article II of the Constitution, to his firm or corporation. (See Rule 302 {¶2302} regarding permissible powers of attorney.)

A subordination agreement may provide that at the date of maturity of the agreement the lender of funds to finance or refinance in whole or in part the purchase of a membership is entitled to repayment of an amount equal to or based upon the value of an Exchange membership. The method by which the value of a membership is to be determined (e.g., last sale, last bid, average sale, etc.) shall be specified in the subordination agreement.

A member organization may enter into a subordination agreement evidencing the lending of funds to enable the borrower to purchase a membership or to refinance outstanding obligations with respect thereto, provided such agreement meets the requirements of Regulation T of the Board of Governors of the Federal Reserve System.

Each subordination agreement shall provide that any controversies arising in connection with the subordination agreement shall be arbitrated in accordance with the provisions of Article XI of the Constitution.

.34 IV. A-B-C agreement. --

Definition. --An a-b-c agreement is a form of arrangement entered into when it is intended that a portion of the risk of fluctuations in the value of a membership owned by a member of the Exchange, who is a general partner or employee of a member firm or an officer or employee of a member corporation, shall rest with the partners of the firm or with the corporation with which such member is associated as a member rather than have the entire risk rest with the member individually. It should be noted a membership, even if it is the subject of an a-b-c agreement, remains a personal franchise vested solely in the member.

All a-b-c agreements must be approved by the Exchange prior to becoming effective.

Terms of agreement. --Under an a-b-c agreement the firm or corporation shall release the member from any obligation to repay the funds advanced, except under the terms of the agreement. Approved forms of releases are available from the Exchange.

The member shall agree that upon the dissolution of the member organization, its ceasing to be a member organization, his ceasing to be a general partner, officer or employee therein, upon his death or upon the occurrence of any other contingency set forth in the agreement, he or his legal representatives shall comply with the terms of one of the three following options:

(a) Retain the membership and pay to the partnership or corporation the amount necessary to purchase another membership; or

jj. (b) sell the membership with the proceeds paid over to the partnership or corporation; or
kk. (c) transfer the membership for a nominal consideration to a person who is designated by the partnership or corporation and who is eligible for membership in the Exchange.

The a-b-c agreement shall clearly state the method by which the amount necessary to purchase another membership is to be determined in the event of the exercise of option (a) and who shall be responsible for the payment of any related initiation fee in the event of the exercise of option (a) or (c).

The member must have the unqualified right, at all times, subject only to his making the agreed payment to his member organization, to retain his membership (i.e., to election option (a)).

The a-b-c agreement shall provide that the member shall have the absolute right for a period of 30 days, or such longer period as specified in the a-b-c agreement, to exercise option (a) computed from the date on which the member organization has dissolved or ceased to be a member organization, the member's status as a partner, officer or employee therein has terminated, or such other contingency as specifically set forth in the a-b-c agreement has occurred. In the event of the death or incompetency of the member the period for exercise of option (a) (at least 30 days) shall be deemed to expire ten days after the appointment of the legal representative or committee of the member.

For the purpose of this rule, a merger or split-up of a firm in which the member who is a partner in such firm and all participants in the a-b-c agreement become partners in a new firm, or in the case where the member is not a partner in such firm, all the partners who are participants in the a-b-c agreement become partners in a new firm; the extension of partnership articles; the entering into of substantially identical new partnership articles; the admittance of a new partner or the death or retirement of a partner; are not regarded *per se* as constituting the dissolution of a partnership.

The a-b-c agreement shall provide that if the member or his legal representative does not elect to retain the membership (option (a)), or does not exercise such option within the time period specified, the member organization shall have the absolute right to elect option (b) or option (c), and shall be obligated to elect such option (b) or option (c) within 30 days, or such longer period as specified in the a-b-c agreement, computed from the date on which notice is specifically given by the member or his legal representative that option (a) will not be exercised, or, if no such notice is given, from the expiration of the time period specified for the exercise of option (a). The a-b-c agreement shall further provide that if the member organization fails to elect option (b) or (c) within the specified period of time, the member or his legal representative shall sell the membership with the proceeds paid over to the member organization.

Any sums payable under option (a) or (b) must be payable to the member organization so as to be wholly available to its creditors.

Each a-b-c agreement shall provide that any controversies arising in connection with the a-b-c agreement shall be arbitrated in accordance with the provisions of Article XI of the Constitution.

Although the Exchange will not object to the inclusion, pursuant to Rule 301 {¶2301}, in the partnership articles or separate agreement, of a power of attorney authorizing a partner or a principal executive officer in the member organization in which such member is a member to execute documents on the member's behalf in connection with the sale or transfer of the membership after the expiration of the 30-day period specified for exercise of option (a), the Exchange reserves the right to pass upon the use of such power of attorney in any particular instance.

Lease of a-b-c membership. --The provisions above under "Terms of Agreement" apply to Exchange memberships described in Section 1(a) of Article II which are not leased as permitted in Section 2 of that Article. The Exchange will not object to the inclusion in the a-b-c agreement of a provision permitting the leasing of the membership in accordance with Exchange Rules. However, the terms of any such lease must be consented to by the member organization. The lease agreement must spell out what the consequences under that agreement will be, if any, in the event that, during the term of the lease, the member organization dissolves, or the lessor ceases to be a participant therein, or the lessor dies, or any other contingency occurs that, in the absence of the lease, would give rise to the election of option (a), (b) or (c).

As provided in Section 2 of Article II, during the term of the lease, the lessee, rather than the lessor, shall for all purposes of the Constitution and Rules be deemed to be the member of the Exchange, except for the limited purposes set forth in said Section 2. Consequently, the lessor cannot, during the term of the lease, qualify a broker or dealer as a member organization.

Transactions of Business as a Member. --A member may, until such time as option (a), (b), or (c) is exercised, transact business as a member not associated with a member organization as a member provided:

(1) The Exchange determines that such action is consistent with the protection of investors and public interest;

ll. (2) the member is a registered broker or dealer unless exempted by the Securities Exchange Act of 1934; and
mm. (3) the member complies with the requirements of Rule 325(e).

(See Rule 312 for status of member organization whose only member has ceased to be a general partner, officer or employee.)

Inclusion in partnership articles or separate agreement. --In the case of firms, all a-b-c agreements must be incorporated in the partnership articles of the firm or an amendment thereto, and in the case of corporations, all a-b-c agreements must be incorporated in a separate written agreement between the member and the corporation. Such articles and agreements must be submitted to and approved by the Exchange prior to becoming effective.

Non-conforming agreements. --An existing a-b-c agreement which does not conform to the requirements above described, having been entered into with the approval of the Exchange prior to the adoption of such requirements, may remain in effect without change until terminated by the dissolution of the member organization, the sale or transfer of the membership, or the death of the Exchange member.

.35 V. Other agreements. --Except as described above, no member of applicant for membership shall execute any instrument or enter into any agreement, oral or written, in regard to the membership or the funds advanced for the purchase or financing of the membership. In an application for membership, the applicant must describe in detail the method by which the acquisition of the membership is being financed and must specifically agree that, without the specific approval of the Exchange, no change whatsoever will thereafter be made in the initial financing arrangements except, without the use of borrowed money, the payment of principal and interest on a subordination agreement or the discharge of the applicants obligations under an a-b-c agreement.

.36] (e) Miscellaneous Provisions

nn. [Proceeds of transfer

(1) The proceeds of the transfer of a membership of each member described in Section 1(a) of Article II of the Exchange Constitution shall be subject to the priorities specified under Article II, Section 11. Such priorities include sums due by the member and his member organization. (See Art. II, Sec. 11.)

oo. Gratuity payments to members

(2) Only the persons specified in Article XV in the Constitution may share in Gratuity benefit payments. Therefore, there may be no oral understanding nor may provisions be embodied in partnership articles, in an agreement, a Will or in any other document which

may have the effect of directly or indirectly defeating the purpose of said Article.]

Floor commissions

[(3)](1) All Floor commissions of an Exchange member who is associated with a member organization as a member must be for the account of the organization.

Specialist trading

[(4)](2) When an Exchange member is a specialist, in a member organization, his ordinary trading business as a specialist must be for the organization's account, or for the joint account in which his organization is permitted to participate under the provisions of Rule 94(b).

[Rule 302.

Surplus of Proceeds of Membership Transferred

Payment of the surplus, if any, of the proceeds of the transfer of a membership described in Section 1(a) of Article II shall be made only to the person or persons specified in subsection Fourth of Section 11 of Article II of the Constitution, except that payment of such proceeds may be made to an attorney-in-fact of the person whose membership has been transferred only if the following conditions are complied with, viz.:

(1) The Exchange has approved the execution of the power of attorney running to such attorney-in-fact;

(iv) (2) the Exchange is satisfied as to the validity and continued effectiveness of such power of attorney; and

(3) the Exchange is satisfied that the holder of such power of attorney is acting thereunder solely as agent for the person whose membership has been transferred and is not, directly or indirectly, acting in his own behalf or in behalf of any third person and that he is not a creditor of the person whose membership has been transferred and does not directly or indirectly represent any person who is such a creditor, unless the holder of such power of attorney is, or immediately preceding the transfer was, a general partner or a principal executive officer in a member organization with which such member was associated as a member and has no financial interest in such proceeds other than such as may arise by virtue of the fact that he is or was such a partner or such an officer in such member organization.
pp.
qq. ***Supplementary Material:*** ...
rr.
.10 Claims against proceeds of memberships. --At the time a membership is posted for transfer or lease, a member or member organization asserting claims for priority of payment out of proceeds of sale pursuant to Article II of the Constitution should promptly file a statement of such claim, in duplicate, with the Secretary of the Exchange. Forms for the filing of claims under subsection Second of Section 11 of Article II may be obtained from the Office of the Secretary.]

Rule 303.

Limitation on Access to Floor

[The Exchange may, in accordance with the procedures set forth in Rule 475, deny access to the Floor of the Exchange to a member, or may impose such conditions and limitations as it may determine with respect to his access thereto and the transactions which he may effect thereon, (1) if legal proceedings of any nature are instituted or if any legal process is served upon the Exchange purporting to attach, levy upon, encumber, or in any way effect any immediate or future disposition or transfer of the membership of such member

or the proceeds of such transfer, or (2) if the then existing obligations or arrangements of such member with respect to the disposition of his membership or of the proceeds of the transfer thereof are not in accordance with the Constitution, Rules and practice of the Exchange.

Supplementary Material: ...

.10 Disposition of memberships. --The Board of Directors may dispose of the membership of

(1) a deceased member (Art. II, Sec. 12);

(2) an expelled member or a member ineligible for reinstatement (Art. II, Sec. 12);

ss. (3) a member delinquent in payment of dues, charges, or fees under Article X; or contributions under Article XV; or fines under Section 5, Article IX; or any sums due to the Exchange (Art. X, Sec. 6).

.20 Designation of alternates. –A member of the Exchange who, in time of national emergency for this country, is on active duty in the armed forces of the United States or of any nation or State which is then allied or associated with the United States, or who is engaged in any public service incident to the national defense, may make application to the Board of Directors for approval of a person who is or shall become an allied member in the member organization in which such member is a general partner, officer or employee to act as his alternate on the Floor of the Exchange. (Art. II, Sec. 7). The procedure in submitting an application for approval of an alternate is, in general, the same as that followed by an applicant for membership.

.30 Subletting spaces on Floor. --No member or member organization may, without specific permission of the Exchange, sublet to another member or member organization any telephone or specialist space on the Floor.

.40](a) Members' badges. --All members who execute orders on the Floor must be provided with an identification badge and must wear the same while on the Floor.

Every member's badge must contain his name and a number[, and if he is a participant in a member organization, the name of such organization] and the name of his or her member organization.

(b) Subletting spaces on Floor. --No member or member organization may, without specific permission of the Exchange, sublet to another member or member organization any telephone or specialist space on the Floor.

Rule 304.

Allied Members and Approved Persons

(a) No person shall become or remain an allied member or approved person unless such person meets and continues to meet the standards prescribed in the [Constitution and] Rules of the Exchange.

(b) Any natural person, not a member of the Exchange, shall become an allied member of the Exchange by [pledging himself] agreeing to abide by [the Constitution as the same has been or shall be from time to time amended, and by] all rules adopted [pursuant to the Constitution] from time to time by the Exchange and by being either

(i) a general partner in a member organization [firm] or an employee who controls such member organization [firm; or

tt. (ii) an employee of a member organization [corporation] who is:
uu. (a) a person who controls such organization [corporation], or
vv. (b) a principal executive officer of such member organization [corporation].

Such [pledge] agreement to abide by the [Constitution and] Rules shall be made by written instrument filed with the Exchange in which the signer [pledges himself] agrees as aforesaid. Any person registered with the Exchange in any capacity shall become an allied member upon written notice to the Exchange that such person is included in either (i) or (ii), above.

ww. [(c) Any person becoming an allied member shall have all the rights and privileges and shall be under all duties and obligations of an allied member of the Exchange in accordance with the Constitution. Allied members shall have no right to go upon the Floor of the Exchange except as provided in Articles II and IV.
xx. (d) An allied membership shall not be transferable.

(e)](c) When an allied member dies or is expelled, his allied membership shall terminate.

[(f) When an allied member is elected Chairman of the Board or Chief Executive Officer or is elected to membership in the Exchange, his allied membership shall terminate.]

[(g)](d) When an allied member ceases or fails to be an allied member associated with a particular member organization, and does not forthwith qualify as an allied member associated with another member organization continuing the business of the first member organization, his allied membership shall terminate.
yy.
[(h)](e) Any person who controls a [member or] member organization, or who engages in a securities or kindred business and is controlled by or under common control with a [member or] member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person by furnishing the Exchange with such information with respect to such applicant, its history and business, its equity-holders, officers, partners and directors, any person controlling such applicant, and such other information as the rules of the Exchange may require. Each such applicant shall agree to:

zz. (1) Supply the Exchange with information with respect to such applicant's relationship and dealings with the member or member organization with which it is associated as the Exchange may reasonably require to ascertain whether the applicant is in compliance with applicable provisions of Federal Securities Laws, the rules and regulations thereunder, and the rules of the Exchange; and

aaa. (2) to supply the Exchange with information relating to the existence of any statutory disqualification to which the applicant or any person associated with the applicant may be subject, as defined in the Securities Exchange Act of 1934; and
bbb. (3) to abide by such provisions of the [Constitution and] Rules of the Exchange relating to approved persons as shall from time to time be in effect; and
ccc. (4) to permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the Rules of the Exchange.
ddd. ***Supplementary Material:***

[**.10 Allied member sponsorship.** --An applicant for approval as an allied member of the Exchange shall be sponsored by two members or allied members of the Exchange of at least one year's standing, or be proposed for allied membership by two other responsible individuals who have known the applicant sufficiently well and over a long period of time that they can unqualifiedly endorse the character and integrity of the applicant from their personal knowledge of him and of his business connections. A casual social or business acquaintanceship is not sufficient basis to qualify a member, an allied member or other individual to sponsor or propose the applicant. They should, if possible, not be associated with the organization which the applicant proposes to join. They are required to read and sign the proposed allied member's application.

An applicant for allied membership who has been either a member or an allied member of the Exchange within one year of the date of the new application is not required to be sponsored or proposed.

.11 Posting. --An application for approval of admission of any party (other than an application for a member of the Exchange) or for the approval of the formation and admission of a member organization, is ordinarily not acted upon by the Exchange until after the application has been posted on the bulletin board of the Exchange and published in the Weekly Bulletin of the Exchange for a period of not less than two weeks. Such notice is posted upon submission in proper form of all required papers in connection with the application.

.**12].10** Notwithstanding the provisions of Rule 304[(h)](e)(4), no applicant to become an approved person (the "applicant") or approved person which is domiciled outside the United States shall be required to permit examination by the Exchange, or any person designated by it, of the applicant's or approved person's books and records, at its place of domicile, to verify the accuracy of information required to be supplied by the Rules of the Exchange whenever such examination would, in the opinion of the independent person or government official (as hereinafter specified,) be contrary to the law to which the applicant or approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever an applicant or an approved person chooses to invoke the provisions of the preceding sentence of this paragraph, the applicant or approved person shall, at its expense, submit to the Exchange a written certification acceptable to the Exchange by a person deemed independent of the applicant or approved person and of its affiliated member organization, which person is recognized as an enrolled attorney or counselor at law in such place of domicile (the "independent person") or an appropriate governmental official of the place of domicile

stating that the examination of the books and records of the applicant or approved person by the Exchange or any person designated by it at its place of domicile would be contrary to the law to which the applicant or approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever and so long as an approved person chooses to invoke the provisions of the first sentence of this paragraph, the approved person shall, at its expense, submit to the Exchange, not less frequently than annually and upon specific request by the Exchange, a written certification acceptable to the Exchange by an independent person or a person deemed independent of the applicant or approved person and its affiliated member organization which person is recognized in the place of domicile of the applicant or approved person as an auditor stating that upon reasonable examination conducted by the said person in accordance with generally accepted practices and principles prevalent in the approved person's place of domicile, (i) in respect of any appropriately designated omnibus account carried by the affiliated member organization for the account of the approved person but not for its benefit, said independent person has no reason to believe that any of the persons on whose behalf and for whose benefit any transaction was effected therein was a person associated with the approved person or its affiliated member organization within the meaning of the Securities Exchange Act of 1934 as amended (the "Act"), or the rules thereunder, and (ii) in respect of any account carried by the affiliated member organization in the name and for the account and benefit of the approved person, which account reflects transactions effected in reliance on Section 11(a)(1)(G) of the Act, the rules thereunder and, in particular, Rule 11a1-2 thereunder, the approved person, during its preceding fiscal year, derived more than fifty percent of its gross revenues from one or more of the sources specified in Section 11[(a)](a)(1)(G)(i) of the Act.

Rule 304A.

Member and Allied Member Examination Requirements

(a) Every applicant for membership, or allied membership shall pass [a]an [basic] examination required by the Exchange unless such examination is waived by the Exchange.

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Rule 308.

Acceptability Proceedings

(a) The Exchange may disapprove (i) the application of a prospective member or member organization; or (ii) the application for employment or association with a member or member organization, of any prospective member, allied member, approved person, registered representative, or other person required by the [Constitution or] Rules of the Exchange [thereunder] to be approved by the Exchange; or (iii) any change in the status of any person which change requires approval of the Exchange; or (iv) the application of any non-member broker/dealer accessee, as provided for in the Exchange [Constitution and] Rules [thereunder], or in the Securities Exchange Act of 1934, as amended.

* * * * *

(c) All proceedings under this rule shall be conducted in accordance with the provisions of this rule and shall be held before an Acceptability Committee consisting of at least three persons being members of the Acceptability Board to be selected by the Chief Hearing Officer (as designated under Rule 476(b)) in accordance with paragraph (d) of this rule.

The Chairman of the Board of the Exchange, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board of Directors, shall from time to time appoint an Acceptability Board to be composed of such number of members and allied members of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary. The members of the Acceptability Board shall be appointed annually and shall serve at the pleasure of the Board of Directors.

(d) In any proceeding under this rule involving, as an applicant therein, a prospective member, member organization, allied member, [or] approved person, or non-member broker/dealer accessee, the members of the Acceptability Board serving on the Acceptability Committee shall be members or allied members who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities. In any such proceeding relating to proposed activities on the Floor of the Exchange, all persons serving on the Acceptability Committee shall be members active on the Floor of the Exchange. In any such proceeding relating to any other proposed activities, all persons serving on the Acceptability Committee shall work in the offices of a member or member organization which engages in a business involving substantial direct contact with securities customers.

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(1) The membership of each Acceptability Committee shall designate from among themselves that person who shall serve as [C]chairman.

* * * * *

(g) Any person whose application has been disapproved by an Acceptability Committee, or any member of the Board of Directors of the Exchange, any member of the Committee of NYSE Regulation Board of Directors to which it is delegated the authority to review disciplinary decisions on behalf of the Board, any Executive Floor Governor, and the Division of the Exchange initiating the proceedings [or the Board of Executives of the Exchange] may require a review by the Board of any determination of an Acceptability Committee. A request for review shall be made by filing with the Secretary of the Exchange a written request therefore, within twenty days after notification of the determination of the Acceptability Committee. Upon review, the Board of Directors may sustain any determination, or may modify or reverse any such determination as it deems appropriate. The determination of the Board of Directors shall be final and conclusive action by the Exchange.

* * * * *

Rule 311.

Formation and Approval of Member Organizations

(a) Any person who proposes to form a member organization or who proposes to become [a member or] an allied member in an organization for which application is made for approval as a member organization and any member organization which proposes to admit therein any:

[(1) member]

eee. [(2)](1) allied member
fff. [(3)](2) approved person

shall notify the Exchange in writing before any such formation or admission, pay any applicable fee and shall submit such information as may be required by the Rules of the Exchange. No such [member or] member organization shall become or remain a member organization unless all persons required to be approved are so approved and execute such agreements with the Exchange as the Rules of the Exchange may prescribe.

(b) to (e) – No change.

(f) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof. The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships, or both. Such entities, and persons associated therewith shall, upon approval, be fully, formally and effectively subject to the jurisdiction, and to the [Constitution and] Rules of the Exchange to the same extent and degree as are any other member organization and person associated therewith.

(g) Each member organization shall execute and file with the Exchange a written agreement in a form acceptable to the Exchange evidencing

ggg. (1) the authority of any member who is an officer or employee of such member organization to transact business on the Floor on behalf of such member organization, and
hhh. (2) such member organization's responsibility and obligation with respect to any contract entered into on the Floor by any such member [as specified in Section 3 of Article VII of the Constitution].
iii. (h) Except as may be otherwise permitted by the Exchange, no member organization or allied member shall conduct business under a firm name unless there exists at least two partners in such firm, nor shall any member firm doing business with the public have less

than two general partners who are active in the firm's business; provided however, that if by death or otherwise a member or allied member becomes the sole general partner in a firm, he may continue business under the firm name for such period as may be allowed by the Exchange. [(See Rule 404 {¶2404} re carrying of accounts by individual members.)]

[(See Article II of the Constitution.)]

Supplementary Material:

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.11 Application --The papers required to be submitted prior to approval of the formation or admission of a member organization are as follows:

* * * * *

jjj. (2) individually executed applications by all parties whose approval by the Exchange is required.

kkk. The papers required to be submitted prior to approval of the admission to an existing member organization of any party[, other than a member,] requiring the approval of the Exchange under Rules 304 and 311, are as follows:
(1) Letter stating name of such proposed party and proposed date of admission to member organization; and
lll. (2) an individually executed application by such proposed party.

[The papers required to be submitted prior to approval of the admission of an Exchange member to an existing member organization are as follows:

mmm. (1) Letter signed either by an Exchange member who is a general partner or an officer in the organization or by an allied member who is a general partner or an officer in the organization and by the Exchange member proposed to be admitted to the member organization giving the proposed date of admission to the member organization and stating whether the member will be a general partner, an officer or employee.
nnn. (2) Application executed by the proposed Exchange member proposed to be admitted to the member organization.]

.12 Authorization and Statement of Understanding --Each member organization, or proposed member organization, must submit the following authorization and statement of understanding executed by each natural person requiring the approval of the Exchange under Rule 304:

* * * * *

ooo. "I authorize and request any and all of my former employers, and any other person to furnish to the [New York Stock] Exchange[, Inc.], and any agent acting on its behalf, any information that they may have concerning my character, credit worthiness, ability, business activities, educational background, general reputation, previous employment and reasons for termination thereof ...["] Moreover, I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the [New York Stock] Exchange[, Inc.] and any agent acting on its behalf.
ppp. "Further, I recognize that I will be the subject of an investigative report ordered by the [New York Stock] Exchange[, Inc.] and acknowledge that I have been informed of my right to request information from the [New York Stock] Exchange[, Inc.,] concerning the nature and scope of the investigation requested."

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Rule 312.

Changes Within Member Organizations

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[(f) The Exchange may, on the application of the directors or partners in a member organization whose sole Exchange member has died or ceased to be associated as a member therewith, permit, provided such action is consistent with the protection of investors and the public interest, such organization which otherwise continues to meet Exchange requirements, to have the status of a member organization for a period of 90 days from the date of the death of the member or on which the member has ceased, or shall be alleged to have ceased, to be associated as a member with such member organization. The Exchange may permit up to an additional 90 days where it determines that such additional time period is required for:

(1) The satisfaction of legal requirements (e.g., appointment of executor/administrator, receipt of tax waivers, death certificate or other legal documents, etc.) necessary for the transfer of the membership; or (2) the resolution through an already commenced arbitration proceeding of any controversies that arose in connection with an a-b-c agreement relating to the membership.

(g)]<u>(f)</u>After the completion of a distribution of its securities, no member corporation which has any publicly held security outstanding shall effect any transaction (except on an unsolicited basis) for the account of any customer in, or make any recommendation with respect to, any such security issued by such member corporation or make any recommendation of any such security issued by any corporation controlling, controlled by or under common control with such member corporation.

* * * * *

This Paragraph [(g)](f) is subject to the provisions of Paragraph (c)(vii) of Rule 800 (Basket Trading: Applicability and Definitions).

[(h)] (g) A member corporation shall not without the prior written approval of the Exchange:

(1) Reduce its capital or purchase or redeem any shares of any class of its stock or in any way amend its charter, certificate of incorporation or by-laws, and the Exchange may at any time in its discretion require the corporation to restore or increase capital or surplus, or both.

(2) Issue any bonds, notes or other instruments evidencing funded indebtedness of the corporation except pursuant to the terms and provisions of such security or of any agreement between the member corporation and the holder of such security, which agreement has been previously filed with and approved by the Exchange.

(3) Amend, modify or cancel any agreement made by it or any of its stockholders relating to the management of the corporation or the issue or transfer of securities of the corporation (other than agreements relating to ordinary securities and commodities transactions).

The Exchange will approve any action described in (1), (2) or (3) above unless it determines that such action will impair the financial responsibility or operational capability of the member corporation.

[(i)](h) No member corporation subject to Rule 325 shall, without the prior written consent of the Exchange, redeem or repurchase any shares of its stock on less than six months notice given to the Exchange no sooner than six months after the original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange if any redemption or repurchase of any of its stock is postponed because prohibited under the provisions of [Securities and Exchange Commission] Exchange Act Rule 15c3-1 (see 15c3-1(e)).

[(j)](i) In order to ensure the continued financial responsibility and operational capability of a member corporation, the Exchange may require such member corporation to file with the Exchange a written report showing the use made by the member organization of the proceeds of any offering of any security issued by such member organization.

[(k)](j) No stock shall be issued by a member corporation except for cash or such other consideration as the Exchange determines will not impair the financial responsibility or operational capability of such member corporation.

* * * * *

[(See Article II of the Constitution.)]

[***Supplementary Material:***

.12 Death of sole exchange member. --Member organizations should consult with the Exchange for suggested provisions for inclusion in partnership articles or in an agreement filed with the Exchange to enable a member organization whose sole Exchange member has died, to apply for permission to continue as a member organization.]

Rule 313.

Submission of Partnership Articles --Submission of Corporate Documents

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Supplementary Material:

Information Regarding Partnership Articles

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[**.14 A-B-C agreements.** --For suggested provisions of partnership articles, see ¶2301.34.

.18 Sole board member provision. --For information concerning sole board member provisions, see ¶2312 and Art. II, Sec. 13.]

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Rule 319.

Fidelity Bonds

(a) Each member organization doing business with the public [and each member doing business with the public but not associated with a member organization] shall carry fidelity bonds in such form and in such amounts as the Exchange may require covering [the individual member or, in the case of a member organization,] its general partners or officers and its employees. The Stockbrokers Partnership Bond and the Brokers Blanket Bond approved by the Exchange, are the only forms which may be used. Specific Exchange approval is required for any variation from such forms.

(b) Each such [member and] member organization may self-insure to the extent of $10,000 or 10% of its minimum insurance requirement as fixed by the Exchange, whichever is greater, for each type of coverage required by the rule. This deductible may be taken without considering it as a debit item in the computation of net capital. Self-insurance in amounts exceeding the above maximum may be permitted by the Exchange provided the member or member organization certifies to the satisfaction of the Exchange that it is unable to obtain greater bonding coverage, and agrees to reduce its self-insurance so as to comply with the above stated limits as soon as possible, and appropriate charges to capital are made pursuant to [SEC] Exchange Act Rule 15c3-1.

(c) [Members and] Member organizations subject to this rule are required to maintain basic and specific coverage, which apply both to Stockbrokers Partnership Bond and Brokers Blanket Bond, in amounts not less than those prescribed in this Rule. Where applicable, such coverage must also extend to limited partners as employees, outside organizations providing electronic data processing services and the handling of U.S.

government securities in bearer form.

(d)[Each member doing business with the public but not associated with a member organization and] Each member organization that introduces all customers' accounts on a fully disclosed basis must maintain minimum coverage as follows:

(i) Minimum basic coverage for such [members and] member organizations whose net capital requirement under Rule 325:

(v) A. does not exceed $670,000 shall be the greater of $25,000 or 120% of their net capital requirement.

B. exceeds $670,000 shall be determined by the schedule set forth in paragraph (e) of this rule.

(ii) Specific coverage for such [members and] member organizations shall be as follows:

A. Misplacement and Check Forgery --the amount of basic bond minimum requirement.

B. Fraudulent Trading (not required of [members not associated with a member organization or] partnerships having no employees) --the greater of $25,000 or 50% of the basic bond minimum requirement, up to $500,000.

C. Securities Forgery --the greater of $25,000 or 25% of the basic bond minimum up to $250,000.

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qqq. ***Supplementary Material:***

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.11 Each [member and] member organization will be expected to review carefully any need for coverage greater than that provided by the required minimums. Where experience or the nature of the business warrants additional coverage the Exchange expects it will be acquired.

.12 Each [member and] member organization subject to this rule shall immediately advise the Exchange in writing if its insurance is entirely or partially canceled.

In addition, each bond shall contain a provision that the insurance carrier will use its best efforts to notify the Exchange in the event the bond is canceled, terminated or substantially modified. [*]

[*] The term "substantially modified" shall mean any change in the type or amount of

fidelity bonding coverage, or in the exclusions to which the bond is subject, or any other change in the bond such that it no longer complies with the requirements of this rule.

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Rule 321.

Formation or Acquisition of Subsidiaries

No [member or] member organization may, without the prior written approval of the Exchange, form or acquire a subsidiary company. The [member or] member organization shall require such subsidiary to comply with the following provisions.

Supplementary Material:

Information Regarding Subsidiary Companies of [Members and] Member Organizations

.10 Definition of subsidiary. --For purposes of this rule the term "subsidiary" means an entity engaged in a securities or kindred business that is controlled by a [member or] member organization within the meaning of Rule 2 [of the Constitution and Rules]. However, control shall not be presumed, for purposes of this rule, merely because a member is a director or principal executive officer of another person.

* * * * *

.13 Severance of connection with subsidiary. --The Exchange may at any time require that the [member or] member organization and the partners or stockholders thereof sever all connections with the subsidiary including the disposition of all securities and other interests therein, or such amount thereof as determined by the Exchange. Concurrent with or at any time after directing such severance, the Exchange may require the member organization to change its name if the Exchange finds that the name of the former subsidiary may be confused with the name of such member organization.

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Rule 322.

Guarantees by, or Flow Through Benefits for Members or Member Organizations

Prior written notice shall be given the Exchange whenever any member [not associated with a member organization] or any member organization:

(a) guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person; or

(b) receives flow through capital benefits in accordance with Appendix C of Rule 15c3-1 under the Securities Exchange Act of 1934.

rrr. ***Supplementary Material:***

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.13 FOCUS Reporting Requirements. --For persons referred to in this rule that are registered broker-dealers, the [member or] member organization shall furnish to the Exchange copies of such person's FOCUS Reports simultaneous with their being filed with the person's designated examining authority. For persons referred to in this rule that are not registered broker-dealers, the Exchange requires, in lieu of FOCUS, submission of financial and operational statements, in such format and at such time periods as may be required by the Exchange, sufficient to gauge the capital and operational effects of the arrangement or relationship. See also Rule 416.10.

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Rule 325.

Capital Requirements [for Individual Members and] Member Organizations

General provisions

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(e) In addition to the net capital requirement prescribed in Rule 15c3-1 promulgated under the Securities Exchange Act of 1934, each member organization [described in Section 1(a), Section 1(b) or Section 2 of Article II of the Constitution who] which employs individuals to execute[s] orders on the floor of the Exchange, must present evidence of [his] financial responsibility in the amount of $100,000 for each such employee by one of the following methods;

* * * * *

[(5) in the case of a member described in Section 1(a) of Article II of the Constitution, except any member permitted to transact business as a member not associated with a member organization as a member pursuant to Rule 301.34, his exchange membership provided that the current value of such membership equals or exceeds $150,000 where the current value at any time shall be equal to the price of the last sale of a membership consummated through the Exchange's Membership Transfer Facility during the preceding calendar month (or, if no sale of a membership was consummated during preceding calendar month, then the last sale prior to the preceding calendar month). Where such current value is less than $150,000, the difference, but not to exceed $100,000, shall be provided by any of the methods in subparagraphs (1), (2), (3), or (4) above or by any alternate method approved by the Exchange, or

(6) in the case of a lessee member described in Section (2) of Article II of the Constitution, the value of the lessor's membership, up to an amount of at least $100,000, provided (i) the lease agreement expressly provides for the lessor to pledge the value of his membership, on his lessee's behalf, free of any lien or encumbrance, in accordance with such procedures as the Exchange may from time to time prescribe; and (ii) the current value of the lessor's membership equals or exceeds $150,000. Valuation of the lessor's membership shall be in accordance with the principles stated in subparagraph (5) above. Where such current value is less than $150,000, the lessee shall provide the difference, not to exceed $100,000, by any of the methods in subparagraphs (1), (2), (3) or (4) above or by any alternate method approved by the Exchange.]

Such written guarantee, escrow account, letter of credit [exchange membership] or marketable securities shall be available solely for sums due the Exchange and such sums as the Board of Directors shall determine are due by such member to [other members or] member organizations as the result of losses arising directly from the closing out under the [Constitution and] Rules, [adopted pursuant thereto] of contracts entered into, in the ordinary course of business in the market on the floor of the Exchange for the purchase, sale, borrowing or loaning of securities.

The Exchange will consider alternate methods of compliance with the financial responsibility standard.

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Rule 342.

Offices - Approval, Supervision and Control

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Supplementary Material:

.10 Definition of Branch Office

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For purposes of Rule 342.10(B)(viii) and (C), written supervisory procedures for such residences and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with [NYSE] Exchange [R]rules.

* * * * *

.12 Foreign branch offices.-With prior approval of the Exchange, a [member or] member organization may establish a foreign branch office in corporate or partnership form, provided it is wholly owned by the [member or] member organization. Continuance of the arrangement is subject to any changes in the [Constitution and] Rules of the Exchange as may be thereafter adopted.

Foreign branch offices approved pursuant to this paragraph .12 and their personnel shall be fully subject to the [Constitution and] Rules of the Exchange to the same degree and extent as are members and member organizations and their personnel. All obligations and liabilities of such foreign branch office shall be assumed or guaranteed by its parent [member or] member organization and such [member or] member organization shall be fully responsible for all acts of such foreign branch office.

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Rule 345.

Employees - Registration , Approval , Records

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Supplementary Material:

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.13 Agreements.-Prior to the Exchange's consideration of the application, each candidate for registration, other than a member or allied member of the Exchange shall sign an agreement(s), on a form(s) prescribed by the Exchange, which includes a pledge that the registered person will abide by the [Constitution and] Rules adopted pursuant thereto as these now exist and as from time to time amended.

* * * * *

Rule 347.

Controversies As to Employment or Termination of Employment

* * * * *

Supplementary Material:

.10 Nothing in the Rules of the [New York Stock] Exchange [,Inc.] is intended, nor shall be construed, to prohibit any employee from bringing a claim against any member or member organization arising out of the employment or termination of employment of such employee with such member or member organization before the Equal Employment Opportunity Commission, any state or local anti-discrimination agency, or the National Labor Relations Board.

* * * * *

Rule 388.

Prohibition Against Fixed Rates of Commission

The Exchange does not require its members to charge fixed or minimum rates of commission in connection with transactions effected on, or effected by the use of the facilities of the Exchange. Nothing in the [Constitution,] the Rules[,] or practices of the Exchange shall be construed as conferring authority upon members, or persons associated with members to agree or arrange, directly or indirectly, for the charging of fixed rates of commission.

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sss. **Rule 414**.
ttt.
Index and Currency Warrants

Definitions

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Applicability

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Except as this Rule otherwise provides, or unless the context otherwise requires, the [provisions of the Constitution and all other] Rules of the Exchange shall apply to trading on the Exchange in currency warrants, currency index warrants and stock index warrants.

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Rule 418.

Audit

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Supplementary Material:

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.20 A copy of each audited financial and operational report, all statements, schedules, other reports and all pertinent working papers and memoranda should be retained for at least three years. (Working papers, etc., must be made available for review by a representative of the [New York Stock] Exchange[, Inc.] at the office of the respondent or at the office of the independent public accountant.)

* * * * *

Rule 422.

Loans of and to Directors, etc.

uuu. Without the prior consent of the Exchange LLC Board of Directors no member of the b [B]oards of d[D]irectors [or of the Board of Executives] or of any committee of [the Exchange], NYSE Group, Exchange LLC, NYSE Market, and NYSE Regulation and no officer or employee of NYSE Group, Exchange LLC, NYSE Market, and NYSE Regulation [the Exchange] shall directly or indirectly make any loan of money or securities to or obtain any such loan from any member organization member, allied member, approved person, employee or any employee pension, retirement or similar plan of any member organization unless such loan be (a) fully secured by readily marketable collateral, or (b) made by a director or committee member to or obtained by a director or committee member from the member organization of which he is a member, allied member or employee or from a member, allied member or employee therein.

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Rule 440G.

Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations

Supplementary Material:

Reports on Form 121

.10 Requirements for filing.—Any ROUND-LOT purchase or sale of stock (or certificates thereof[or]) or warrant effected on the floor of the [New York Stock] Exchange for the accounts of:

[(]a) [NYSE] members;

[(]b) [NYSE] Allied members; or

[(]c) [NYSE] member organizations,

must be reported on Form 121 regardless of where the order originated or by whom it was executed.

vvv. **Instructions.-**

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(vi) (13) File this report with the Credit Regulation Department, via the [New York Stock] Exchange's Electronic Filing Platform ("EFP") as soon as possible but not later than 12:00 noon on the Friday following the week covered by the report.

* * * * *

[Rule 440L.

Collection of Assessments in Connection with Instrument of Indemnification and Guarantee dated November 5, 1970 between the Exchange and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

www. • • • ***Supplementary Material:***
xxx. The charges imposed by Sec. 9, Art. X of the Constitution apply to transactions effected on the Exchange or transactions in securities admitted to dealings on the Exchange regardless of the market in which such transactions are effected on or after July 1, l971. These charges will remain in effect until the obligation under the Instrument of Indemnification and Guarantee between the Exchange and Merrill Lynch, Pierce, Fenner & Smith Incorporated is satisfied.

[(1)]Reports on Form 601

yyy. **.10 When and by whom reports are to be submitted.—**

zzz. (1) Each member organization and each individual member who is not associated with a member organization as a member is required to submit a report on Form 601 to the Controller's Department.
aaaa. (2) Reports on Form 601 (which are combined with Form 600) are to be filed on or before the 18th day following the month covered by the report unless the Exchange is closed on such day, in which event the report is to be filed on the next business day.
bbbb. (3) A member who transfers his membership or a member organization which dissolves will be required to file a report covering the period previously unreported.
cccc. (4) A member who ceases to be associated as a member with a member organization and does not immediately become associated as a member with another member organization is required to file a report for the period commencing the next business day following such event. (The first report and subsequent reports are to be filed in accordance with instruction 2 above.)
dddd. (5) An individual member who would not as a rule have anything to report on Form 600 may obtain permission to submit only an annual report on Forms 600 and 601 (to be filed on or before December 15 of each year for the period ending November 30) by making a written request to the Controller of the Exchange for such permission, setting forth the reasons therefor.
eeee. **.20 Contents of report.**
ffff. Line 5(A)(1) Enter on this line 3/8 of 1% of the Net Commissions Received and Retained for the month covered by the report.
gggg. Line 5(A)(2) Enter on this line 3/8 of l% of the Net Commissions earned on transactions in securities admitted to dealings on the Exchange but effected in a market other than the Exchange.
hhhh. Line 5(B) (To be filled in by individual members who are not associated with member organizations as members.) Enter the minimum charge of $125 per month.
iiii. Special Credit. Limited partners of member firms and non-voting stock holders of member corporations who participate in the profits of such member organizations, and who are subject to the minimum charge at the rate of $1,500 per year, may claim a credit against such minimum for their percentage of the Indemnification payments by the member organization in which they are limited partners or non-voting stockholders. Show this credit as a subtraction from the minimum charge entered on Line 5(B). If such

special credit exceeds $125 in any month, the excess will be carried forward and applied against the minimum charge for subsequent months.
jjjj. Line 5(C) (To be filled in by member organizations.) Enter the minimum charge of $125 per month for each Exchange member who was associated as a member with the member organization on the last day of the month covered by the report.
kkkk. Enter as Line 5 the highest of (A) (B) or (C).
llll. *Note:* Members and member organizations who ordinarily would report the minimum charge may, in some months, be subject to a higher charge at the rate of 3/8 of l% on net commissions reported for the month. If, however, the aggregate commissions reported for the entire year do not require more than the minimum charge (at the annual rate of $1,500 per member), the Exchange will make an adjustment after the close of the year and will allow any overpayment as a credit against subsequent charges.
mmmm. **.30 Miscellaneous information regarding Form 601.**
nnnn. (1) Individual members who have been given permission to file annual reports on Forms 601 (and Form 600) will be required to file these annual reports in December of each year. During the year, however, such members will automatically be billed for the minimum charge of $125 per month for their share of the Indemnification charges.
oooo. (2) The charge, pursuant to Section 9 of Article X of the Constitution, (¶1459), and any applicable credits, will appear on the next quarterly bill rendered by the Exchange. For example, information shown on reports submitted in August and September for the calendar months of July and August will appear on bills dated September 30.
pppp. (3) A report submitted by a member organization should bear the individual signature of a general partner in that firm, or an officer in that corporation, and a report submitted by an individual member should bear his signature.
qqqq. (4) Additional copies of Form 601 may be obtained at the Subscription and Distribution Divisions.

Instructions—Form 601A

Rule 440M.

Collection of Assessments in Connection with Instrument of Indemnification and Guarantee dated November 5, 1970 between the Exchange and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
rrrr.
ssss. **• • • *Supplementary Material:* ------------------**
tttt. The charges imposed by Sec. 9, Art. X of the Constitution apply to transactions effected on the Exchange or transactions in securities admitted to dealings on the Exchange regardless of the market in which such transactions are effected on or after July 1, 1971. These charges will remain in effect until the obligation under the Instrument of Indemnification and Guarantee between the Exchange and Merrill Lynch, Pierce, Fenner & Smith Incorporated is satisfied.

[[(2)]]Reports on Form 601A

uuuu. **.10 When and by whom reports are to be submitted.**

vvvv. (1) Each member organization and each individual member who is not associated with a member organization as a member who makes transactions on the floor of the

Exchange as an odd lot dealer is required to submit a report on Form 601A to the Controller's Department.
wwww. (2) Reports on Form 601A (which are combined with Form A) are to be filed on or before the 18th day following the month covered by the report unless the Exchange is closed on such day, in which event the report is to be filed on the next business day.
xxxx. (3) A member who transfers his membership or a member organization which dissolves will be required to file a report covering the period previously unreported.
yyyy. **.20 Contents of report.**
zzzz. Line 5(A) Enter on this line 3/64 of 1¢ per share on the total odd lot purchases and odd lot sales effected on the floor of the Exchange as an odd lot dealer for the month covered by the report.
aaaaa. Line 5(B) (To be filled in by individual members who are not associated with member organizations as members.) Enter the minimum charge of $125 per month.
bbbbb. Special Credit. Limited partners of member firms and non-voting stock holders of member corporations who participate in the profits of such member organizations, and who are subject to the minimum charge at the rate of $1,500 per year, may claim a credit against such minimum for their percentage of the Indemnification payments by the member organization in which they are limited partners or non-voting stockholders. Show this credit as a subtraction from the minimum charge entered on Line 5(B). If such special credit exceeds $125 in any month, the excess will be carried forward and applied against the minimum charge for subsequent months.
ccccc. Line 5(C) (To be filled in by member organizations.) Enter the minimum charge of $125 per month for each Exchange member who was associated as a member with the member organization on the last day of the month covered by the report.
ddddd. Enter as Line 5 the highest of (A), (B), (C).
eeeee. *Note:* Members and member organizations who ordinarily would report the minimum charge may, in some months, be subject to a higher charge at the rate of 3/64 of 1¢ per share on odd lot purchases and sales reported for the month. If, however, the aggregate commissions reported for the entire year do not require more than the minimum charge (at the annual rate of $1,500 per member), the Exchange will make an adjustment after the close of the year and will allow any overpayment as a credit against subsequent charges.
fffff. **.30 Miscellaneous information regarding Form 601A.**
ggggg. (1) The charge, pursuant to Section 9 of Article X of the Constitution (¶1459), and any applicable credits, will appear on the next quarterly bill rendered by the Exchange. For example, information shown on reports submitted in August and September for the calendar months of July and August will appear on bills dated September 30.
hhhhh. (2) A report submitted by a member organization should bear the individual signature of a general partner in that firm, or an officer in that corporation, and a report submitted by an individual member should bear his signature.
iiiii. (3) Additional copies of Form 601A may be obtained at the Subscription and Distribution division.]

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Rule 475. Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or Member Organization— Summary Proceedings

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(d) [If the Board of Directors determines, after not less than ten days written notice to a member described in Section 1(a) of Article II who is suspended under the provisions of this Rule, that the protection of the persons entitled to make claim against the proceeds of the transfer of the membership of such member under Section 11 of Article II of the Constitution requires the transfer of the membership of such member, such membership may be disposed of by the Board of Directors. In any case, if a member suspended under the provisions of this Rule is not reinstated within one year from the time of his suspension, or within such further time as the Board of Directors may grant, his membership shall be disposed of by the Board of Directors; but the Board may, by the affirmative vote of a majority of the Directors then in office, extend the time for settlement for periods not exceeding one year each.

(e)] Any person suspended under the provisions of this Rule shall, at the request of the Exchange, submit to the Exchange his or its books and records (including those books and records with respect to which such person has access or control) or the books and records of any employee thereof and furnish information to or to appear or testify before or cause any such employee to appear or testify before the Exchange.

[(f)](e)Any person suspended under the provisions of this Rule may, at any time, be reinstated by the Exchange Board of Directors.

[(g)](f) Any person suspended under the provisions of this Rule may be disciplined in accordance with the Rules of the Exchange for any offense committed by him or it either before or after his or its suspension in all respects as if he or it were not under such suspension.

[(h)](g) A member suspended under the provisions of this Rule shall be deprived during the term of his suspension of all rights and privileges of membership[, but such suspension shall not operate to bar or affect the payments provided for by Article XV of the Constitution in the event of his death]. Any suspension under the provisions of this Rule of a member or allied member shall create a vacancy in any office or position held by such member or allied member.

(h) Any member of the Board of Directors of the Exchange, any member of the committee of NYSE Regulation to which is delegated the authority to review the disciplinary decisions on behalf of the Board as provided for in Rule 476, any Executive Floor Governor, the Division of the Exchange initiating the proceedings, and the respondent may require a review by the Exchange Board of any determination under this rule by filing with the Secretary of the Exchange a written request thereof within ten days following such determination. The Exchange Board shall have the power to affirm, modify or reverse any such determination, or remand the matter for further proceedings.

Rule 476.

Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others

(a) If a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange is adjudged guilty in a proceeding under this Rule of any of the following offenses —

(1) violating any provision of the Securities Exchange Act of 1934 or any rule or regulation thereunder;
(2) violating any of his or its agreements with the Exchange;
(3) violating any provision of [the Constitution or] any Rule adopted by the Board of Directors of the Exchange;

* * * * *

The Chairman of the Board of the Exchange, subject to the approval of the Exchange Board of Directors, shall from time to time appoint a Hearing Board to be composed of such number of members and allied members of the Exchange who are not members of the Exchange Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary. The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors. The Chairman of the Board of the Exchange, subject to the approval of the Exchange Board of Directors, shall also designate from among the officers and employees of the Exchange a Chief Hearing Officer and one or more other Hearing Officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the Exchange Board of Directors.

* * * * *

(f) The Division or Department of the Exchange which brought the charges, the respondent, [or] any member of the Exchange Board of Directors [or of the Board of Executives of the Exchange], any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Board, and any Executive Floor Governor may require a review by the Exchange Board of any determination or penalty, or both, imposed by a Hearing Panel. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served upon the respondent. The Secretary of the Exchange shall give notice of any such request for review to the Division or Department of the Exchange which brought the charges and any respondent affected thereby.

Any review by the Exchange Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel. Upon review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Directors then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of this Rule, as it deems appropriate. Unless the Exchange Board of Directors otherwise

specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

Notwithstanding the foregoing, if either party upon review applies to the Exchange Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Hearing Panel, the Exchange Board of Directors may remand the case to a Hearing Panel for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

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The determination of the Hearing Panel and any penalty imposed shall be final and conclusive, twenty-five days after notice thereof has been served upon the respondent provided in paragraph (d) above, unless a request to the Exchange Board of Directors for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the Exchange Board of Directors for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review.

Any member of the Exchange Board of Directors [or of the Board of Executives of the Exchange], any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Board, and any Executive Floor Governor may require a review by the Exchange Board of any determination or penalty, or both, imposed by a Hearing Panel in connection with a Stipulation and Consent. In addition, the Division or Department of the Exchange which entered into the written consent may require a review by the Exchange Board of Directors of any penalty, including any determination related thereto imposed by the Hearing Panel, which is less severe than the stipulated penalty. The respondent or the Division or Department which entered into the written consent may require a review by the Exchange Board of Directors of any rejection of a Stipulation and Consent by the Hearing Panel.

* * * * *

Any review by the Exchange Board of Directors shall consist of oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel. Upon review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Directors then in office, may fix and impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, or may remand for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

* * * * *

(i) A member or allied member of the Exchange who is associated with a member organization is liable to the same discipline and penalties for any act or omission of such member organization as for his own personal act or omission. The Hearing Panel which considers the charges against such member or allied member, or the Exchange Board of

Directors upon any review thereof, may relieve him from the penalty therefor or may remit or reduce such penalty on such terms and conditions as the Panel or the Exchange Board shall deem fair and equitable.

(j) When a member is suspended under the provisions of this Rule, such member shall be deprived during the term of his suspension of all rights and privileges of membership. [No such suspension shall operate to bar or affect the payments provided for by Article XV of the Constitution of the Exchange in the event of the death of the suspended member.] The expulsion of a member shall terminate all rights and privileges arising out of his membership [except such rights as he may have under the provisions of Sections 11 and 14 of Article II of the Constitution].

(k) Any approved person or registered or non-registered employee who shall neglect to pay any fine within forty five days after the same shall become payable may, after written notice mailed to such person at either his office or last place of residence as reflected in Exchange records, be summarily suspended from association in any capacity with a member organization or have his approval withdrawn until such fine is paid. [(See Art. X, Sec. 6 for penalties imposed upon members, allied members and member organizations for failure to pay fines or other sums due the Exchange.)]

* * * * *

(l) Any member, member organization, allied member, approved person or registered or non-registered employee of a member organization who shall not pay a fine, or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported by the Exchange Treasurer to the Chairman of the Exchange Board and, after written notice mailed to such member, member organization, allied member, approved person or registered or non-registered employee of a member organization of such arrearages, may be suspended by the Exchange Board until payment is made.

Rule 476A.

Imposition of Fines for Minor Violation(s) of Rules

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in [Article IX of the Exchange Constitution] Rule 476, the Exchange may, subject to the requirements set forth in this Rule, impose a [to] fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

* * * * *

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Division or Department of the Exchange taking the action not later than the date by which such determination must be contested, a written response meeting the requirements of an "Answer" as provided in Rule 476(d), at which point the matter shall become a "disciplinary proceeding" subject to the provisions of Rule 476. In any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Panel shall (i) be free to impose any one or more of the disciplinary sanctions provided in Rule 476 and (ii) determine whether the rule violation(s) is minor in nature. NYSE Regulation [The Division or Department of the Exchange which commenced the action under this Rule], the person charged, [and] any member of the Board of Directors [or of the Board of Executives] of the Exchange, any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Board, and any Executive Floor Governor may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rule 476[(f)].

* * * * *

Rule 477.

Retention of Jurisdiction—Failure to Cooperate

(a) If, prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange serves (as provided in paragraph (d) of Rule 476) written notice on such person that it is making inquiry into, or serves a Charge Memorandum on such person with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange may thereafter require such person to comply with any requests of the Exchange to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the [Constitution and] Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization.

(vii) (b) Prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination of a person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, the Exchange may, through the exercise of its jurisdiction, as described in (a) above, require such person to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the [Constitution and] Rules of the Exchange in the same manner and to the same extent as if such person had

remained a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization.

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Rule 497.

Additional Requirements for Listed Securities Issued by NYSE Group, Inc. or its Affiliates

(a) For purposes of this Rule 497 the terms below are defined as follows:

(1) "NYSE Group Affiliate" means NYSE Group, Inc. ("NYSE Group") and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with NYSE Group, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a NYSE Group Affiliate, with the exception of Investment Company Units as defined in Para. 703.16 of the Listed Company Manual.

(3) "New York Stock Exchange LLC" (the "Exchange") is a wholly owned subsidiary of NYSE Group.

(4) "NYSE Market, Inc." ("NYSE Market") is a wholly owned subsidiary of the Exchange. NYSE Market is the entity that will manage the Floor trading of securities.

(5) "NYSE Regulation, Inc." ("NYSE Regulation") is a wholly owned subsidiary of the Exchange and will perform the self-regulatory organization responsibilities pertaining to regulating the NYSE Market and the Exchange.

(b) Prior to the initial listing of the Affiliate Security on the Exchange, NYSE Regulation shall determine that such securities satisfy New York Stock Exchange LLC's rules for listing, and such finding must be approved by the NYSE Regulation Board of Directors.

(c) Throughout the continued listing of the Affiliate Security on the Exchange, NYSE Regulation shall

(1) prepare a quarterly report on the Affiliate Security for the NYSE Regulation board of directors that describes: (a) the NYSE Regulation's monitoring of the Affiliate Security's compliance with the Exchange's listing standards, including, (i) the Affiliate Security's compliance with the Exchange's minimum share price requirement and (ii) the Affiliate Security's compliance with each of the quantitative continued listing requirements; and (b) NYSE's Regulation's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints,

regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure that the Affiliate Security's compliance with the Exchange's listing and trading rules. A copy of said report will be forwarded promptly to the Securities and Exchange Commission ("Commission").

(2) Once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to insure that the issuer is in compliance with the listing requirements and a copy of the report shall be forwarded promptly to the Commission.

(3) In the event that NYSE Regulation determines that the Affiliate Security is not in compliance with any of the Exchange's listing standards, NYSE Regulation shall notify the issuer of such non-compliance promptly and request a plan of compliance. NYSE Regulation shall file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The report shall identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, NYSE Regulation shall notify the Commission of such receipt, whether the plan was accepted by NYSE Regulation or what other action was taken with respect to the plan and the time period provided to regain compliance with the Exchange's listing standards, if any.

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Rule 497T

Transition Rules for the First Listed Security Issued by NYSE Group, Inc.

Prior to the initial listing of NYSE Group common stock on the Exchange, the regulatory staff of the New York Stock Exchange, Inc. shall determine that such security satisfies the proposed New York Stock Exchange LLC's rules for listing, and such finding must be approved by the Regulatory Oversight Committee of the board of directors of the New York Stock Exchange, Inc. in lieu of Rule 497(b) above.

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(viii) **Rule 600.**

Arbitration

(a) Any dispute, claim or controversy between a customer or non-member and a member, allied member, member organization and/or associated person arising in connection with the business of such member, allied member, member organization and/or associated person in connection with his activities as an associated person shall be arbitrated under the [Constitution and] Rules of the [New York Stock] Exchange [, Inc.] as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.

(ix) (b) Under this Code, the [New York Stock] Exchange [, Inc.], shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where, having due regard for the purposes of the [New York Stock] Exchange[, Inc.] and the intent of this Code, such dispute, claim or controversy is not a proper subject matter for arbitration.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the claimant, be referred to the arbitration forum for that market by the [New York Stock] Exchange[, Inc].

(x) (d) Class Action Claims.

(i) A claim submitted as a class action shall not be eligible for arbitration under the Rules of the [New York Stock] Exchange[, Inc].

(ii) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the [New York Stock] Exchange[, Inc.] if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non SRO arbitration forum for class-wide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule 600(a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

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(xi) (e) Shareholder Derivative Actions. Shareholder derivative actions may not be arbitrated under the Rules of the [New York Stock] Exchange[, Inc].

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Rule 601.

Simplified Arbitration

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(j) Except as otherwise provided herein, the general arbitration rules of the [New York Stock] Exchange[, Inc.] shall be applicable to proceedings instituted under this Rule.

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Rule 606.

Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration

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(xiii) (a) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the claimant(s). The tolling shall continue for such period as the [New York Stock] Exchange[, Inc.] shall retain jurisdiction upon the matter submitted.

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Rule 619.

General Provision Governing Subpoenas, Production of Documents, etc.

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(g) Power to Direct Appearance and Production of Documents.

jjjjj.

(xiv) The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any member or member organization of the [New York Stock] Exchange[, Inc.] and/or the production of any records in the possession or control of such persons or members. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

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Rule 628.

Agreement to Arbitrate

(xv) [Article XI of the Constitution and] Rules 600-639 shall be deemed a part of and be incorporated by reference in every agreement to arbitrate under the [Constitution and] Rules of the [New York Stock] Exchange[, Inc].

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Rule 633.

Board of Arbitration

kkkkk. The Director of Arbitration shall appoint a Board of Arbitration to be composed of such number of present or former members, allied members and officers of member corporations of the Exchange[who are not members of the Board of Executives].

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Rule 637.

Failure To Honor Award

(xvi) Any member, allied member, registered representative or member organization who fails to honor an award of arbitrators appointed in accordance with these rules or who fails to honor an award of arbitrators rendered under the auspices of any other self-regulatory organization or pursuant to the rules applicable to securities disputes before the American Arbitration Association, shall be subject to disciplinary proceedings in accordance with Rule 476 [or Article IX of the New York Stock Exchange Constitution and Rules].

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Rule 638.

Mediation

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(b) Mediation Prior to Arbitration

(xvii) (1) If the parties agree, any matter eligible for arbitration under the [Constitution and] Rules of the [New York Stock] Exchange may be mediated at the Exchange. To begin a mediation under this paragraph, the parties must file with the Exchange an agreement to mediate.

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Rule 700.

Applicability, Definitions and References

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lllll. **References**

(c)(i) [Article VII, Section 4 of the Constitution provides that, "] All contracts for the purchase or sale or writing of options contracts issued or issuable by The Options Clearing Corporation occurring on the Exchange, shall be made subject to [the provisions

of the Constitution of the Exchange and of] the rules [adopted pursuant thereto] <u>of the Exchange</u> and of the by-laws and rules of The Options Clearing Corporation; and all such contracts shall be subject to the exercise by the Board of Directors and The Options Clearing Corporation of the powers with respect thereto vested in them by the [Constitution and] rules [adopted pursuant thereto] <u>of the Exchange</u> and by the by-laws and rules of The Options Clearing Corporation.["]

(xviii) (ii) Pursuant to Rule 3 (Security), option contracts (as defined above) are included within the definition of "security" or "securities" as such terms are used in [the Constitution and] the rules of the Exchange.

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Rule 750A.

Option Specialist Reallocation

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(g) Right of Review.—

(xix) A decision by the Committee that option classes or one or more option products should be reallocated shall be final, subject to the specialist unit's right to have such a decision reviewed by the Exchange's Board of Directors [pursuant to the provisions of Article IV, Section 14 of the Exchange's Constitution].

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Rule 753.

Acceptance, Priority and Precedence of Options Bids and Offers
Acceptance of Options Bids and Offers

(a) All bids or offers for option contracts dealt in on the Exchange made and accepted in accordance with this 700 series (Rules 700 through 794) shall constitute binding contracts between the parties thereto but shall be subject to the exercise by the Exchange of the powers in respect thereto vested in the Exchange by [the Constitution, and to] the Rules of the Exchange, and said contracts shall also be subject to the rules of The Options Clearing Corporation and to the exercise by The Options Clearing Corporation of the powers reserved to it in the rules of The Options Clearing Corporation.

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Rule 758.

Competitive Options Traders
Qualification

(a) (i) No member shall initiate Exchange transactions in any option while on the Floor for an account in which he has an interest unless such member is registered with the Exchange as a Competitive Options Trader in options of that kind and unless the

Exchange has approved his so acting as a Competitive Options Trader and has not suspended or withdrawn such approval.

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(xx) A member shall file with the Exchange the agreement required by clause (B) and may so file more than one such agreement. Such an agreement with an earlier effective date will afford the clearing member who is party thereto priority over a clearing member who is a party to a subsequent such agreement for claims [made pursuant to Article II, Section 11 of the Exchange Constitution against the proceeds from the transfer of the member's membership]. The Exchange shall notify each such clearing member of other outstanding agreements that have been filed by the same Competitive Options Trader.

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Rule 772.

Option Contracts of Suspended Members

When a member or member organization, other than a clearing member, is suspended pursuant to the provisions of Rules 475 (Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or a Member Organization—Summary Proceedings)[and] <u>or</u> 476 (Disciplinary Proceedings Involving charges against Members, Member Organizations, Allied Members, Approved Persons, or Employees), all open short positions of the suspended member or member organization in option contracts and all open positions resulting from exercise of option contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the rules of The Options Clearing Corporation, shall be closed without unnecessary delay by all member organizations carrying such positions for the account of the suspended member or member organization; provided, however, that upon any such suspension the Board may, in its discretion, suspend the mandatory close-out provisions of this Rule and may, in its discretion, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions of this Rule shall relieve the suspended member or member organization of his or its obligations or for any damages incurred by member organizations carrying positions for the account of such suspended member or member organization. [Should an open short position or an open position resulting from an exercise of an option contract not be closed when required to be closed by this Rule, the price for the purpose of determining claims pursuant to Article II, Sec. 11 of the Constitution shall be fixed by the price current at the time when such position should have been closed under this Rule.] When a clearing member is suspended pursuant to the provisions of Rules 475 (Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member of a Member Organization—Summary Proceedings) [and] <u>or</u> 476 (Disciplinary Proceedings Involving Charges against Members, Member Organizations, Allied Members, Approved Persons, or Employees) the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.

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Rule 792.

Days and Hours for Options Trading

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(c) The Chief Executive Officer and the two most senior [BOE Floor Representatives] Executive Floor Governors, or in the absence from the Floor of any of them, the next senior [BOE Floor Representative] Executive Floor Governor present on the Floor acting by a majority shall have the power to suspend trading in all option contracts whenever in their opinion such suspension would be in the public interest. A special meeting of the Board of Directors to consider the continuation or termination of such suspension or closing the market shall be held as soon thereafter as a quorum of Directors can be assembled.

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[Rule 795.

Transfer or Lease of Options Trading Right

A transfer or lease of an options trading right ("OTR") separate from a transfer or lease of a membership of a member described in section 1(a) of Article II of the Constitution may be made upon the approval of the transfer or lease by the Board as follows:

Transfers of OTR

(a) Notice of a proposed transfer or lease of an OTR shall be posted on the bulletin board for at least ten days prior to the transfer or the commencement of such lease, which notice shall specify the date on which the proposed transfer or lease will be effective. Consideration of any proposed transfer or lease may be postponed from time to time. Notice of the date of such postponed consideration shall be posted promptly on the bulletin board.

Contracts on the Exchange by Transferors

(b)(i) An OTR holder proposing to transfer or lease the OTR of such holder shall not, after the posting of notice thereof, enter into a contract on the Exchange for the purchase or sale of an Exchange option (hereinafter referred to as "effecting an Exchange option transaction") for settlement on or after the date on which such proposed transfer or lease will become effective unless the contract is made on behalf of a person who, subsequent to the date of the completion of such transfer or the effectiveness of such lease, will continue to be an OTR holder or a firm or corporation having as a general partner, officer or employee an individual qualified to effect Exchange option transactions.

(ii) If an Exchange option transaction with a transferring OTR holder is effected after the posting of notice of the proposed transfer for settlement on

or after the date on which such proposed transfer will be considered by the Board, it shall not, if such transfer is approved, be the basis of a claim against the proceeds of such transfer under sub-division Second of paragraph (d) of this rule. However, if the transferring OTR holder is associated as a general partner, officer or employee with a firm or corporation which, notwithstanding the completion of such transfer, will continue to have associated with it as a general partner, officer or employee an individual qualified to effect Exchange option transactions, such transaction may be the basis of a claim under said subdivision Second of paragraph (d) of this rule against the proceeds of the subsequent transfer of an OTR by any general partner, officer or employee associated with such firm or corporation.

When Contracts Mature

Open Contracts of a Transferring OTR

(c)(i) All open Exchange option transactions of a transferring OTR holder or of an OTR holder proposing to lease the OTR of such holder and of the firm or corporation with which such OTR holder is associated as a general partner, officer or employee, shall mature on the full business day preceding the date on which such proposed transfer or lease becomes effective unless, notwithstanding the completion of such transfer or effectiveness of such lease, such firm or corporation continues to have associated with it as a general partner, officer or employee an individual qualified to effect Exchange option transactions. If the foregoing exception does not apply, all such open Exchange option transactions, if not settled before 2:15 p.m. of such preceding full business day, shall be closed out as in the case of an insolvency, unless the same are assumed or taken over by another OTR holder or by a firm or corporation that has associated with it as a general partner, officer or employee an individual qualified to effect Exchange option transactions.

Notice of Transfer

(ii) Notice of a transfer of an OTR to be made by the Board of Directors shall be posted as in the case of a voluntary transfer and shall have the same effect with respect to open contracts and unmatured debts and obligations of the OTR holder or former OTR holder as in the case of a voluntary transfer.

Priorities in Disposition of Proceeds of Transfer of an OTR

(d)(i) Upon any transfer of an OTR, whether made by an OTR holder or the legal representatives of such holder or by the Board of Directors, the proceeds thereof shall be applied by the Exchange to the following purposes and in the following order of priority, viz:

Due to Exchange

First. The payment of such sums as the Board of Directors shall determine are or may become due to the Exchange from the OTR holder whose OTR is transferred or from the firm or corporation with which such OTR holder is associated as a general partner, officer or employee.

Other Allowed Claims

Second. The payment in the following order of priority of such sums as the Board of Directors shall determine are due by such OTR holder or the firm or corporation with which such OTR holder is associated as a general partner, officer or employee to other members, member firms, member corporations, OTR holders, or firms or corporations with which such holders are associated as general partners, officers or employees, as a result of losses arising directly from the closing out of the following contracts:

(A) option contracts entered into in the ordinary course of business in the market on the Exchange;

(B) Exchange Contracts for the purchase or sale of other securities entered into in the ordinary course of business in the market on the Exchange;

(C) other contracts for the purchase or sale of securities entered into in the ordinary course of business and made subject to the rules of other exchanges;

(D) Exchange Contracts entered into in the ordinary course of business that are not included under clause (A) or (B) of this subsection Second.

Upon the payment, by the clearing member of such OTR holder or of the firm or corporation with which such OTR holder is associated as a general partner, officer or employee, of any losses described in this subsection Second, such clearing member shall be subrogated to any and all rights of the person to whom the payment was made.

Claims Not Allowed Priority

There shall not be allowed as entitled to priority in payment any claim otherwise allowable under this subsection Second, with respect to which the claimant, in the opinion of the Board of Directors, did not take promptly all other proper steps under the Constitution, the Rules adopted pursuant thereto and practice of the Exchange to protect his or its rights and to enforce such claim when due.

Written Statement of Claim Required

No claim asserted under this subsection Second shall be considered by the Board of Directors nor shall any member, member firm, member corporation, OTR holder or firm or corporation asserting such a claim have any rights thereunder, unless a written statement of such claim shall have been filed with the Secretary of the exchange prior to the transfer of the OTR, the transfer of which gave rise to the proceeds.

Pro Rata Payment of Claims

If the proceeds of the transfer of an OTR are insufficient to pay in full all claims allowed under this subsection Second arising from the closing out of the contracts described in clauses (A), (B), (C) and (D) of this subsection Second, then, insofar as possible, the allowed claims from the closing out of contracts described in each such clause of this subsection Second shall be paid in full in the foregoing order of priority. Whenever the proceeds are insufficient to pay in full all allowed claims from the closing out of the contracts described in any one of the foregoing clauses, then such proceeds shall be applied to the payment of such claims described in such clause pro rata.

Expenses Incurred by Exchange

Third. After provision for the payment of sums payable under subsections First and Second of this paragraph (d), there may, in the discretion of the Board of Directors, be deducted from the remaining proceeds, if any, and paid to the Exchange the amount of any unusual expenses incurred by the Exchange in connection with litigation involving the disposition of such proceeds, including counsel fees and disbursements and the cost of producing records pursuant to a court order or other legal process.

Surplus of Proceeds

Fourth. The surplus, if any, of the proceeds of the transfer of an OTR after provision for the payment of sums payable under subsections First, Second and Third of this paragraph (d), shall be paid directly to the person whose OTR is transferred, or to the legal representatives of such person, upon the execution and delivery to the Exchange of a release or releases satisfactory to the Board of Directors, unless the Board, in its discretion, determines that such surplus should be paid to the firm or corporation with which such OTR holder is or was last associated as a general partner, officer or employee, in view of the fact that such OTR holder had expressly agreed, either in the partnership articles or in a writing filed with the Exchange, that such surplus shall be paid either directly by him or directly by the Exchange to such firm or corporation. In the event the Board makes such determination, such surplus shall be paid to such firm or corporation upon the execution and delivery to

the Exchange by such OTR holder or such firm or corporation, or both, of a release or releases satisfactory to the Board of Directors.

Prompt Steps to Protect Rights Required

No payment of such surplus under the provisions of this subsection Fourth shall be made to a firm or corporation with which such OTR holder is or was last associated as a general partner, officer or employee if such firm or corporation, in the opinion of the Board of Directors, did not take promptly all proper steps to protect and enforce its rights, or if the Board of Directors, in its sole discretion, shall determine that an unreasonable time has elapsed between the date when the OTR holder ceased to be associated with such firm or corporation as a general partner, officer or employee and the date of the transfer.

Agreements

(ii) Except as otherwise specifically provided for by the Constitution or this Rule, no recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by an OTR holder or the legal representatives of such holder which purports to transfer or assign such holder's interest in such OTR, or in the proceeds or any part thereof, or which purports to create any lien or other right with respect thereto, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such holder; nor shall payment of such proceeds be made by the Exchange to any agent or attorney-in-fact of an OTR holder except as may be permitted by the Rules of the Board of Directors in those cases in which such agent or attorney-in-fact (A) is acting solely for and on behalf of such OTR holder and is neither directly nor indirectly acting on his own behalf or on behalf of any third person or, (B) is a partner or an officer of the firm or corporation with which such OTR holder is associated as a general partner, officer or employee.

Retention of Proceeds

(iii) If the amount of any sum payable under the provisions of this paragraph (d) cannot for any reason be immediately ascertained and determined, the Board of Directors may, out of the proceeds of the OTR, reserve and retain such amount as it may deem appropriate, pending determination of the amount so payable.

OTR of Deceased OTR Holder

(e) When an OTR holder dies, his OTR may be disposed of by the Board of Directors.

Death of Sole Exchange OTR Holder

(f) If, upon the death of an OTR holder, who, at the time of his death, was a general partner, officer or employee in a firm or corporation that had no other general partner, officer or employee qualified to effect Exchange options transactions, the following conditions exist:

(i) the firm or corporation continues in business,

(ii) the deceased OTR holder shall have agreed in the partnership articles of such firm or in a writing filed with the Exchange (1) that such continuing firm or corporation, if permitted by the Board of Directors to have the status of a firm or corporation that has a general partner, officer or employee qualified to effect Exchange option transactions, shall be entitled to have the use of his OTR from the date of his death until the termination of such status of such continuing firm or corporation or until an individual qualified to effect Exchange option transactions becomes a general partner, officer or employee of such continuing firm or corporation and (2) that, subject to the Constitution and Rules of the Exchange, the proceeds of his OTR shall be an asset of the continuing partnership or corporation during such period, and

(iii) such continuing partnership or corporation shall be permitted by the Board of Directors to have the status of a firm or corporation that has a general partner, officer or employee qualified to effect Exchange option transactions,

then upon the transfer of the OTR of such deceased OTR holder, the proceeds thereof shall be applied to the same purposes and in the same order of priority as if such OTR holder had continued to be an OTR holder of the Exchange and a partner, officer or employee of such firm or corporation until the date of the termination of such status, or until an individual qualified to effect Exchange option transactions becomes a general partner, officer or employee of such firm or corporation, whichever event occurs first.

OTR of Expelled OTR Holder

(g) When an OTR holder is expelled or becomes ineligible for reinstatement, the OTR of such holder may be disposed of by the Board of Directors.

Claims Against Deceased, Suspended or Expelled OTR Holder

(h) The death, expulsion, suspension, retirement or dissolution of an OTR holder shall not affect the rights of creditors under the provisions of paragraph (d) of this Rule.

Claims by Former OTR Holders or Deceased OTR Holders

(i) The death, expulsion, suspension, retirement or dissolution of a member or an OTR holder or the transfer of the OTR of such holder, or the suspension, retirement or dissolution of a firm or corporation that has associated with it as a general partner, officer or employee an individual qualified to effect Exchange option transactions, shall not affect the rights of such member or OTR holder or his estate or of such firm or corporation under the provisions of paragraph (d) of this Rule.

Form of Proposed OTR Lease

(j) An OTR holder shall notify the Exchange in writing prior to any lease of the OTR of such holder. A fully executed copy of the lease agreement and any amendment thereto shall be filed with and found acceptable by the Exchange prior to becoming effective. In order to be found acceptable by the Exchange, each lease agreement shall include provisions stating that:

(i) upon the death of the lessee, the expiration of the term stated in the lease agreement or the occurrence of any other event specified in such agreement, the lease agreement shall terminate and the Exchange shall be given notice of any termination or proposed termination of the lease agreement as promptly as possible;

(ii) the lessor shall not be permitted to transfer his or its leased OTR during the term of the lease;

(iii) in the event the lessee fails to be approved as an OTR holder or the Board of Directors does not approve the lease agreement, that agreement shall be void;

(iv) the Board of Directors may dispose of the OTR in accordance with provisions of Section 6 of Article X of the Constitution;

(v) during the term of the lease agreement, the lessee, rather than the lessor, shall for all purposes of the Constitution and the Rules thereunder be deemed to be the OTR holder of the Exchange; and

(vi) all controversies arising between the lessor and lessee relating to the lease agreement, the termination or breach or alleged breach thereof, shall be arbitrated in accordance with the provisions of the 600 series of the Rules.

Each lease agreement shall also include a provision stating all financial arrangements between the lessor and the lessee regarding the lease of the OTR.

• • • Supplementary Material: ------------------

Other Transfer Provisions

.10 Pursuant to Sections 8 and 9 of Article II of the Constitution, the Exchange requires each OTR holder who is not also a member or member organization to enter into an agreement with the Exchange. Such OTR holder undertakes in the agreement to comply with those provisions of the Constitution and Rules that the Exchange from time to time determines to apply to the holder. Through that undertaking, the additional transfer and

lease provisions of paragraphs (a) (b) and (d) and the Supplementary Material of Rule 301 (Proposed Transfer or Lease of Membership) apply.]

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Rule 800.

Basket Trading: Applicability and Definitions

Applicability of 800 Series

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(F) references in incorporated Rules to "Floor Officials" shall refer solely to "Floor Governors" and ["BOE Floor Representatives"] “Executive Floor Governors”.

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Rule 808.

Basket Book Dealers

mmmmm. **Regular Basket Book Dealers**

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nnnnn. **Supplementary Material:**

Temporary Reallocation of Baskets

.10 The Chief Executive Officer or, in his absence, such Exchange Officer(s), as the Chief Executive Officer may designate, or, alternatively, a majority, but not fewer than two, of the [BOE Floor Representatives] Executive Floor Governors then available on the Floor, may determine to reallocate temporarily any basket on an emergency basis to another member or member organization on the Floor whenever in their opinion such reallocation would be in the public interest.

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Rule 816.

Discontinuous Auction Markets; Basket Trading Halts

Discontinuous Auction Markets

(a) Whenever such market conditions as the Exchange may from time to time specify are present, the Exchange shall declare a discontinuous auction market. Whenever the Chief Executive Officer or, in his absence, such other Exchange Officer(s) as the Chief Executive Officer may designate, or, alternatively, a majority, but not fewer than two, of the [BOE Floor Representatives] Executive Floor Governors then available on the Floor, determine that market conditions make it unreasonable to conduct basket trading pursuant to regular auction procedures, or, pursuant to such guidelines as the Exchange may from time to time prescribe, whenever two Floor Governors make such a determination, a discontinuous auction market shall be declared. The Basket Book Dealer shall monitor market conditions and adherence to the guidelines and shall conduct the discontinuous auction market as follows:

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The Chief Executive Officer, the Chief Executive Officer-designated Officer(s), two [BOE Floor Representatives] Executive Floor Governors or two Floor Governors may terminate the discontinuous auction market after determining that the conditions that precipitated the discontinuous auction market no longer exist.

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ooooo. **Basket Trading Halts**

(b) In addition to any halt in basket trading pursuant to Rule 80B (Trading Halts Due to Extraordinary Market Volatility) as Rule 800 incorporates that Rule into these Basket Rules, basket trading through the ESP Service shall halt whenever the Chief Executive Officer or, in his absence, such other Exchange Officer(s) as the Chief Executive Officer may designate, or, alternatively, a majority, but not fewer than two, of the [BOE Floor Representatives] Executive Floor Governors then available on the Floor, determines that market conditions warrant such a halt.

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Rule 1100.

"Investment Company Units"

[Rule 1100.]

Scope

(a) The provisions of the Rule 1100 apply only to "Investment Company Units", as defined and used in Para. 703.16 of the Listed Company Manual. This term shall also mean and apply to securities which fit within said definition but are admitted to dealings by the Exchange on an unlisted trading privileges basis. Except to the extent that specific provisions in this Rule govern, [or unless the context otherwise requires, the provisions of the constitution,] all other Exchange Rules and policies shall be applicable to the trading of Investment Company Units on the Exchange. Pursuant to Exchange Rule 3 ("Security"), Investment Company Units are included within the definition of "security" or "securities" as those terms are used in the [Constitution and] Rules of the Exchange.

ppppp. **Provision of Prospectus and Written Description**

(b) This paragraph shall apply only to a series of Investment Company Units as to which the sponsor or other appropriate party has obtained an exemption from Section 24(d) of the Investment Company Act. In connection with any such series of Investment Company Units listed on the Exchange, members and member organizations shall provide to all purchasers of such series a written description of the terms and characteristics of such securities, in a form prepared or approved by the Exchange, not later than the time a confirmation of the first transaction in such security is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to such series that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to such a series of Investment Company Units as an investment vehicle must include a statement in substantially the following form:

"A circular describing the terms and characteristics of {the series of Investment Company Units} has been prepared or approved by the [New York Stock] Exchange and is available from your broker or the exchange. It is recommended that you obtain and review the circular before purchasing {the series of Investment Company Units}. In addition, upon request, you may obtain from your broker a prospectus for the {the series of Investment Company Units}."

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Rule 1200.

Rules Of General Applicability

The rules in this 1200 series (Rules 1200 through 1202) are applicable only to Trust Issued Receipts. Except to the extent that specific rules in this series govern, or unless context otherwise requires, the provisions of the [Constitution, and all other Exchange] Rules and policies shall be applicable to the trading Trust Issued Receipts on the Exchange. Pursuant to Rule 3 ("Security"), Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the [Constitution and] Rules of the Exchange. (See also Rules 13, 36, 98, 104, 105(l), and 460)

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Rule 1300.

streetTRACKS® Gold Shares

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(c) Except to the extent that specific provisions in this Rule govern, [or unless the context otherwise requires, the provisions of the Constitution,] all other Exchange Rules and policies shall be applicable to the trading of streetTRACKS® Gold Shares on the Exchange. Pursuant to Exchange Rule 3 ("Security"), streetTRACKS® Gold Shares are included within the definition of "security" or "securities" as those terms are used in the [Constitution and] Rules of the Exchange.

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EXHIBIT 5B

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NYSE GROUP, INC.

NYSE Group, Inc., a corporation organized and existing under the laws of the State of Delaware, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, hereby certifies as follows:

1. The name of this corporation is NYSE Group, Inc. The original Certificate of Incorporation was filed on May 2, 2005.

2. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation to read in its entirety as follows:

ARTICLE I

NAME OF CORPORATION

The name of the corporation is NYSE Group, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II

REGISTERED OFFICE

The address of the Corporation's registered office in the State of Delaware is c/o National Registered Agents, Inc., 160 Greentree Drive, in the City of Dover, Suite 101, County of Kent, State of Delaware 19904. The name of the Corporation's registered agent at such address is National Registered Agents, Inc.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (the "DGCL").

ARTICLE IV

STOCK

Section 1. Authorized Stock. The total number of shares of all classes of stock which the Corporation shall have authority to issue is six-hundred million (600,000,000), consisting of four-hundred million (400,000,000) shares of Common Stock, par value $0.01 per share (the "Common Stock"), and two-hundred million (200,000,000) shares of Preferred Stock, par value $0.01 per share (the "Preferred Stock").

Section 2. Preferred Stock. The board of directors of the Corporation (the "Board") is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in one or more series, and by filing a certificate of designations pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof, including without limitation the following:

(1) the distinctive serial designation of such series that shall distinguish it from other series;

(2) whether dividends shall be payable to the holders of the shares of such series and, if so, the basis on which such holders shall be entitled to receive dividends (which may include, without limitation, a right to receive such dividends or distributions as may be declared on the shares of such series by the Board, a right to receive such dividends or distributions, or any portion or multiple thereof, as may be declared on the Common Stock or any other class of stock or, in addition to or in lieu of any other right to receive dividends, a right to receive dividends at a particular rate or at a rate determined by a particular method, in which case such rate or method of determining such rate may be set forth), the form of such dividend, any conditions on which such dividends shall be payable and the date or dates, if any, on which such dividends shall be payable;

(3) whether dividends on the shares of such series shall be cumulative and, if so, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(4) the amount or amounts, if any, which shall be payable out of the assets of the Corporation to the holders of the shares of such series upon the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, and the relative rights of priority, if any, of payment of the shares of such series;

(5) the price or prices (in cash, securities or other property or a combination thereof) at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(6) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices (in

cash, securities or other property or a combination thereof) at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(7) whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events, into shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or any other securities or property of the Corporation or any other entity, and the price or prices (in cash, securities or other property or a combination thereof) or rate or rates of conversion or exchange and any adjustments applicable thereto;

(8) whether or not the holders of the shares of such series shall have voting rights, in addition to the voting rights provided by law, and if so the terms of such voting rights, which may provide, among other things and subject to the other provisions of this Certificate of Incorporation, that each share of such series shall carry one vote or more or less than one vote per share, that the holders of such series shall be entitled to vote on certain matters as a separate class (which for such purpose may be comprised solely of such series or of such series and one or more other series or classes of stock of the Corporation) and that all the shares of such series entitled to vote on a particular matter shall be deemed to be voted on such matter in the manner that a specified portion of the voting power of the shares of such series or separate class are voted on such matter; and

(9) any other relative rights, powers, preferences and limitations of this series.

For all purposes, this Certificate of Incorporation shall include each certificate of designations (if any) setting forth the terms of a series of Preferred Stock.

Subject to the rights, if any, of the holders of any series of Preferred Stock set forth in a certificate of designations, an amendment of this Certificate of Incorporation to increase or decrease the number of authorized shares of Preferred Stock (but not below the number of shares thereof then outstanding) may be adopted by resolution adopted by the Board and approved by the affirmative vote of the holders of a majority of the votes entitled to be cast by the holders of the then-outstanding shares of Common Stock, and no vote of the holders of any series of Preferred Stock, voting as a separate class, shall be required therefor, unless a vote of any such holders is required pursuant to the terms of any Preferred Stock Designation.

Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment of this Certificate of Incorporation that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Preferred Stock if the holders of any such series are entitled, either separately or together with the holders of one or more other series of Preferred Stock, to vote thereon pursuant to this Certificate of Incorporation or the certificate of designations relating to such series of Preferred Stock, or pursuant to the DGCL as then in effect.

Section 3. Options, Warrants and Other Rights. The Board is authorized to create and issue options, warrants and other rights from time to time entitling the holders thereof

to purchase securities or other property of the Corporation or any other entity, including any class or series of stock of the Corporation or any other entity and whether or not in connection with the issuance or sale of any securities or other property of the Corporation, for such consideration (if any), at such times and upon such other terms and conditions as may be determined or authorized by the Board and set forth in one or more agreements or instruments. Among other things and without limitation, such terms and conditions may provide for the following:

(1) adjusting the number or exercise price of such options, warrants or other rights or the amount or nature of the securities or other property receivable upon exercise thereof in the event of a subdivision or combination of any securities, or a recapitalization, of the Corporation, the acquisition by any natural person, company, corporation or similar entity, government, or political subdivision, agency, or instrumentality of a government (each, a "Person") of beneficial ownership of securities representing more than a designated percentage of the voting power of any outstanding series, class or classes of securities, a change in ownership of the Corporation's securities or a merger, statutory share exchange, consolidation, reorganization, sale of assets or other occurrence relating to the Corporation or any of its securities, and restricting the ability of the Corporation to enter into an agreement with respect to any such transaction absent an assumption by another party or parties thereto of the obligations of the Corporation under such options, warrants or other rights;

(2) restricting, precluding or limiting the exercise, transfer or receipt of such options, warrants or other rights by any Person that becomes the beneficial owner of a designated percentage of the voting power of any outstanding series, class or classes of securities of the Corporation or any direct or indirect transferee of such a Person, or invalidating or voiding such options, warrants or other rights held by any such Person or transferee; and

(3) permitting the Board (or certain directors specified or qualified by the terms of the governing instruments of such options, warrants or other rights) to redeem, terminate or exchange such options, warrants or other rights.

qqqqq. This Section 3 shall not be construed in any way to limit the power of the Board to create and issue options, warrants or other rights.
rrrrr.

Section 4. Transfer Restrictions on Common Stock.

(A) Any share of Common Stock issued in the NYSE LLC Merger (each, a "NYSE Share"), as defined in, and to be effected pursuant to, the Agreement and Plan of Merger, dated April 20, 2005, as amended and restated on July 20, 2005, as amended as of October 20, 2005 and as of November 2, 2005 (as amended from time to time, the "Merger Agreement"), by and among New York Stock Exchange, Inc., a New York Type A not-for-profit corporation ("NYSE"), Archipelago Holdings, Inc., a Delaware corporation ("Archipelago"), the Corporation, NYSE Merger Sub LLC, a New York limited liability company, NYSE Merger Corporation Sub, Inc., a Delaware corporation, and Archipelago Merger Sub, Inc., a Delaware corporation, shall be subject to the following restriction: Except as otherwise set forth in Section 4(B) of this Article IV, neither any record owner nor any beneficial owner of any NYSE Share may Transfer (as defined below) such NYSE Share until the Lock-Up Expiration Date applicable to such NYSE Share shall have occurred.

(B) Notwithstanding anything to the contrary in Section 4(A) of this Article IV:

(1) the Board may, from time to time in its sole discretion, Release (as such term is defined below) any Transfer restriction set forth herein from any number of NYSE Shares, on terms and conditions and in ratios and numbers to be fixed by the Board in its sole discretion;

(2) if any Transfer restriction imposed on any Other Shares pursuant to the Amended and Restated Support and Lock-Up Agreement, dated as of July 20, 2005, by and among General Atlantic and the NYSE, or the Amended and Restated Support and Lock-Up Agreement, dated as of July 20, 2005, by and among Goldman Sachs and the NYSE (in each case, as amended from time to time and together, the "Support and Lock-Up Agreements"), is Released, then the same Transfer restriction shall simultaneously be Released from a number of NYSE Shares that are subject to such Transfer restriction under the Lock-Up held by each registered owner equal to the product (rounded up to the nearest whole share) obtained by multiplying (a) the aggregate number of NYSE Shares that are subject to such Transfer restriction under the Lock-Up held by such registered owner by (b) a fraction, the numerator of which shall be the number of Other Shares that were so Released and the denominator of which shall be the aggregate number of Other Shares that were subject to such Transfer restriction immediately prior to such Release (with the aggregate number of NYSE Shares so released to be allocated among the record owners of NYSE Shares pro rata based on the number of NYSE Shares held by such record owners);

(3) in the case of any NYSE Share that is beneficially owned solely by one or more natural person(s), all Transfer restrictions set forth herein shall be Released from such NYSE Share upon the death of the last to die of all of such persons;

(4) Section 4(A) of this Article IV shall not prohibit a record or beneficial owner of a NYSE Share from Transferring such NYSE Share to:

(a) if such owner is an entity (including a corporation, partnership, limited liability company or limited liability partnership), (i) any Person of which such owner directly or indirectly owns all of the common voting and equity interest, (ii) any Person that directly or indirectly owns all of the common voting and equity interest of such owner, (iii) any other entity if a Person directly or indirectly owns all of the common voting and equity interest of both such owner and such other entity, (iv) the equityholders of such owner (including stockholders, partners or members of such holder) upon a *bona fide* liquidation or dissolution of such owner, and (v) a trustee of the bankruptcy estate of such owner if such owner has become bankrupt or insolvent; and

(b) if such owner is a natural person, (i) any Family Member of such owner, (ii) any trust or foundation solely for the benefit of such owner and/or such owner's Family Members (such trust or foundation, a "Qualified Trust"), and (iii) a trustee of the bankruptcy estate of such owner if such owner has become bankrupt or insolvent;

(5) Section 4(A) of this Article IV shall not prohibit the trustee of a Qualified Trust which is the record owner of a NYSE Share from Transferring such NYSE Share to any beneficiary of such Qualified Trust (including a trust for the benefit of such beneficiary) or Transferring such NYSE Share in exchange for cash necessary to pay taxes, debts or other obligations payable by reason of the death of the grantor of such Qualified Trust or any one or more of such beneficiaries, in each case in accordance with the terms of the trust instrument;

(6) Section 4(A) of this Article IV shall not prohibit a record or beneficial owner of a NYSE Share from pledging or hypothecating, or granting a security interest in, such NYSE Share, or Transferring such NYSE Share as a result of any *bona fide* foreclosure resulting therefrom;

(7) in the case of a NYSE Share issued in the NYSE LLC Merger in respect of a NYSE Membership Interest (as defined in the Merger Agreement) that was subject to an a-b-c agreement or a subordination agreement (each as defined in the rules of the NYSE immediately prior to the mergers contemplated by the Merger Agreement) approved by NYSE, Section 4(A) of this Article IV shall not prohibit a record or beneficial owner of such NYSE Share from Transferring such NYSE Share to(a) any counterparty to such a-b-c agreement or subordination agreement in accordance with the terms of such agreement, or (b) any Person who beneficially owns 5% or more of the common voting and equity interest of such counterparty, nor shall Section 4(A) of this Article IV prohibit any such counterparty from Transferring such NYSE Share to any Person who beneficially owns 5% or more of the common voting and equity interest of such counterparty;

(8) in the case of a NYSE Share issued in respect of a NYSE Membership Interest held by the fiduciary of the estate of a deceased person, Section 4(A) of this Article IV shall not prohibit such fiduciary from Transferring such NYSE Share to the one or more beneficiaries of such estate (including a trust for the benefit of such beneficiaries) or Transferring such NYSE Share in exchange for cash necessary to pay taxes, debts or other obligations payable by reason of the death of the deceased person;

provided that, if a record or beneficial owner of a NYSE Share makes any Transfer permitted under paragraph (4), (5), (6), (7) or (8) of this Section 4(B) of Article IV, (x) each NYSE Share so Transferred shall continue to be bound by the terms of this Certificate of Incorporation, including the restrictions on Transfer set forth in this Certificate of Incorporation; and (y) the NYSE Shares so Transferred shall be comprised of a number of Year 1 NYSE Shares, Year 2 NYSE Shares and Year 3 NYSE Shares in the same proportion that such owner held of such NYSE Shares immediately prior to such Transfer; provided that, in no event shall any fractional NYSE Share be Transferred, and in lieu thereof, the Corporation may, in its discretion, round up or round down any of the number of Year 1 NYSE Shares, Year 2 NYSE Shares and/or Year 3 NYSE Shares so Transferred.

Any record or beneficial owner of a NYSE Share that seeks to Transfer a NYSE Share pursuant to this Section 4(B) must, upon the Corporation's request, provide information to the Corporation that any such Transfer qualifies as a permitted Transfer under this Section 4(B),

and any good-faith determination of the Corporation that a particular Transfer so qualifies or does not so qualify shall be conclusive and binding.

(C) The following terms shall have the meanings set forth below:

"Transfer" means (with its cognates having corresponding meanings), with respect to any NYSE Share, any direct or indirect assignment, sale, exchange, transfer, tender or other disposition of such NYSE Share or any interest therein, whether voluntary or involuntary, by operation of law or otherwise (and includes any sale or other disposition in any one transaction or series of transactions and the grant or transfer of an option or derivative security covering such NYSE Share), and any agreement, arrangement or understanding, whether or not in writing, to effect any of the foregoing; provided, however, that a "Transfer" shall not occur simply as a result of (i) a Qualified Change of Control of the record or beneficial owner of such NYSE Share or (ii) the grant of a proxy in connection with a solicitation of proxies subject to the provisions of Section 14 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Qualified Change of Control" means, with respect to any record or beneficial owner of a share of Common Stock, any transaction involving (a) any purchase or acquisition (whether by way of merger, share exchange, consolidation, business combination or consolidation) of more than fifty percent (50%) of the total outstanding voting securities of such owner or any tender offer or exchange offer that results in another person (or the shareholders of such other person) beneficially owning more than fifty percent (50%) of the total outstanding voting securities of such owner; or (b) any sale, exchange, transfer or other disposition of more than fifty percent (50%) of the assets of such owner and its subsidiaries, taken together as whole; provided, however, that the fair market value of all of the shares of Common Stock held or beneficially owned by such owner and its subsidiaries, taken together as a whole, must be less than one-half of one percent of the fair market value of all of the assets of such owner and its subsidiaries, taken together as a whole, at the time of such transaction. Any such owner must, upon the Corporation's request, provide information to the Board that any such transaction qualifies as a Qualified Change of Control, and any good-faith determination of the Corporation that a particular transaction qualifies or does not qualify as a Qualified Change of Control shall be conclusive and binding.

"Lock-Up Expiration Date" means: (a) with respect to one-third of the number of NYSE Shares issued in respect of any particular NYSE Membership Interest (the "Year 1 NYSE Shares"), the first anniversary of the Issuance Date; (b) with respect to a different one-third of the number of NYSE Shares issued in respect of any particular NYSE Membership Interest (the "Year 2 NYSE Shares"), the second anniversary of the Issuance Date; and (c) with respect to the remaining one-third of the number of NYSE Shares issued in respect of any particular NYSE Membership Interest (the "Year 3 NYSE Shares"), the third anniversary of the Issuance Date; provided that, in the event that one-third of the number of NYSE Shares issued in respect of any particular NYSE Membership Interest equals a fraction of a NYSE Share, then the number of Year 1 NYSE Shares shall be rounded up to the nearest whole number, and the number of Year 2 NYSE Shares and Year 3 NYSE Shares shall be rounded down to the nearest whole number.

"Release" means, with respect to any Transfer restriction on any NYSE Share imposed pursuant to Section D of this Article IV, any action or circumstance as a result of which such Transfer restriction imposed on such NYSE Share is removed (and its cognates shall have a corresponding meaning).

"Other Shares" means the shares of Common Stock issued to any of (1) General Atlantic Partners 77, L.P., GAP-W Holdings, L.P., Gapstar, LLC, GAP Coinvestment Partners II, L.P. and GAPCO GMBH & CO. KG (collectively, "General Atlantic"), or (2) GS Archipelago Investment, L.L.C., SLK-Hull Derivatives LLC and Goldman Sachs Execution and Clearing, L.P (collectively, "Goldman Sachs").

"Family Member" means, with respect to any owner of a NYSE Share, such owner's spouse, domestic partner, children, stepchildren, children-in-law, grandchildren, parents, stepparents, parents-in-law, grandparents, brothers, stepbrothers, brothers-in-law, sisters, stepsisters, sisters-in-law, uncles, aunts, cousins, nephews and nieces.

(D) The restrictions on Transfer set forth in this Section 4 of Article IV shall be referred to as the "Lock-Up." If any NYSE Shares shall be represented by a certificate, a legend shall be placed on such certificate to the effect that such NYSE Shares are subject to the Lock-Up, which legend shall be removed from a certificate upon the occurrence of the Lock-Up Expiration Date with respect to all of the NYSE Shares represented by such certificate. Such legend shall also be placed on any certificate representing securities issued subsequent to the original issuance of NYSE Shares in the NYSE LLC Merger and in respect thereof as a result of any stock dividend, stock split or other recapitalization, to the extent that such securities shall be represented by certificates. Such legends will be removed from the certificates representing such shares of Common Stock and any other securities when, and to the extent that, such Transfer restrictions set forth herein are no longer applicable to any of the shares represented by such certificates. If any NYSE Shares or securities issued in respect thereof shall not be represented by certificates, then the Company reserves the right to require that an analogous notification or restriction be used in respect of such NYSE Shares or securities that are subject to the Lock-Up. Upon the Release of any Transfer restriction from any of the NYSE Shares or any securities issued in a subsequent issuance in respect thereof as a result of any stock dividend, stock split or other recapitalization, if the Board shall have designated prior to such Release a particular broker or brokers and/or the particular manner of the Transfer of such shares to be Released, such shares shall be Transferred only through such broker and in such manner as designated by the Board. In furtherance, and not in limitation, of the foregoing, the Board may require, as a condition to the Release, that all such Released NYSE Shares be sold through an underwritten offering registered under the United States Securities Act of 1933, as amended (and that any sale will apply (i) first, to such owner's Year 1 NYSE Shares, (ii) second, to such owner's Year 2 NYSE Shares and (iii) third, to such owner's Year 3 NYSE Shares), and that if an owner does not Transfer such owner's NYSE Shares pursuant to such registered offering, then such holder's NYSE Shares shall not be Released prior to the scheduled Lock-Up Expiration Date, unless the Board shall Release such NYSE Shares on a later occasion. Unless otherwise determined by the Board, all fees and commissions payable to any broker or underwriter in connection with such Transfer shall be borne by the owners of Common Stock participating in such Transfer, *pro rata* based on the relative number of shares of Common Stock of such holder in such Transfer.

(E) The Corporation shall not register the purported Transfer of any shares of stock of the Corporation in violation of the restrictions imposed by this Section 4 of Article IV.

ARTICLE V

LIMITATIONS ON VOTING AND OWNERSHIP

Section 1. Voting Limitation.

(A) Notwithstanding any other provision of this Certificate of Incorporation, (1) no Person, either alone or together with its Related Persons (as defined below), as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter, without giving effect to this Article V (such threshold being hereinafter referred to as the "Voting Limitation"), and the Corporation shall disregard any such votes purported to be cast in excess of the Voting Limitation; and (2) if any Person, either alone or together with its Related Persons, is party to any agreement, plan or other arrangement relating to shares of stock of the Corporation entitled to vote on any matter with any other Person, either alone or together with its Related Persons, under circumstances that would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this Article V, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation that would exceed 10% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of the Corporation that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter) (the "Recalculated Voting Limitation"), then the Person, either alone or together with its Related Persons, shall not be entitled to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person, either alone or together with its Related Persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than the Recalculated Voting Limitation, and the Corporation shall disregard any such votes purported to be cast in excess of the Recalculated Voting Limitation.

The Voting Limitation and the Recalculated Voting Limitation, as applicable, shall apply to each Person unless and until: (i) such Person shall have delivered to the Board a notice in writing, not less than 45 days (or such shorter period as the Board shall expressly consent to) prior to any vote, of such Person's intention, either alone or together with its Related Persons, to vote or cause the voting of shares of stock of the Corporation beneficially owned by such Person or its Related Persons, in person or by proxy or through any voting agreement or other arrangement, in excess of the Voting Limitation or the Recalculated Voting Limitation, as applicable; (ii) the Board shall have resolved to expressly permit such voting; and (iii) such resolution shall have been filed with, and approved by, the Securities and Exchange Commission (the "SEC") under Section 19(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and shall have become effective thereunder.

Subject to its fiduciary obligations under applicable law, the Board shall not adopt any resolution pursuant to clause (ii) of this Section 1(A) of Article V unless the Board shall have determined that:

(w) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the ability of either the Corporation or any of the New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., Archipelago Exchange, L.L.C., the Pacific Exchange, Inc. or PCX Equities, Inc. (each, a "Regulated Subsidiary" and together, the "Regulated Subsidiaries") to discharge their respective responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation, its stockholders and the Regulated Subsidiaries;

(x) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or together with its Related Persons, will not impair the SEC's ability to enforce the Exchange Act;

(y) in the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, (1) neither such Person nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act); (2) for so long as the Corporation directly or indirectly controls the Pacific Exchange, Inc. ("PCX") or PCX Equities, Inc. ("PCX Equities") or any facility of PCX, neither such Person nor any of its Related Persons is an ETP Holder (as defined in the PCX Equities rules of PCX, as such rules may be in effect from time to time) of PCX Equities (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an "ETP Holder" for purposes of this Certificate of Incorporation, as the context may require) or an OTP Holder or OTP Firm (each as defined in the rules of PCX, as such rules may be in effect from time to time) of PCX (any such Person that is a Related Person of an OTP Holder or OTP Firm shall hereinafter also be deemed to be an "OTP Holder" or "OTP Firm", as appropriate, for purposes of this Certificate of Incorporation, as the context may require); and (3) for so long as the Corporation directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a "member" or "member organization" (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) (any such Person that is a Related Person of such member or member organization shall hereinafter also be deemed to be a "Member" for purposes of this Certificate of Incorporation, as the context may require); and

(z) in the case of a resolution to approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, but for this Article V, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of the Corporation that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), (1) neither such Person nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act); (2) for so long as the Corporation directly or indirectly controls the Pacific Exchange, Inc. or PCX Equities, Inc. or any facility of PCX, neither

such Person nor any of its Related Persons is an ETP Holder, OTP Holder or an OTP Firm; and (3) for so long as the Corporation directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a Member.

In making such determinations, the Board may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

(B) If and to the extent that shares of stock of the Corporation beneficially owned by any Person or its Related Persons are held of record by any other Person (the "Record Owner"), this Section 1 of Article V shall be enforced against such Record Owner by limiting the votes entitled to be cast by such Record Owner in a manner that will accomplish the Voting Limitation and the Recalculated Voting Limitation applicable to such Person and its Related Persons.

(C) This Section 1 of Article V shall not apply to (x) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (y) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which Section 1 of Article V shall apply).

(D) For purposes of this Section 1 of Article V, no Person shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of the Corporation solely because such Person or any of such Person's Related Persons has or shares the power to vote or direct the voting of such shares of stock as a result of (x) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (y) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act (other than a solicitation pursuant to Rule 14a-2(b)(2) promulgated under the Exchange Act, with respect to which Section 1 of Article V shall apply), except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).

(E) "Related Persons" shall mean with respect to any Person:

(i) any "affiliate" of such Person (as such term is defined in Rule 12b-2 under the Exchange Act);

(ii) any other Person(s) with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation;

(iii) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or director of such

Person and, in the case of a Person that is a partnership or a limited liability company, any general partner, managing member or manager of such Person, as applicable;

(iv) in the case of a Person that is a "member organization" (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time), any "member" (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);

(v) in the case of a Person that is an OTP Firm, any OTP Holder that is associated with such Person (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act);

(vi) in the case of a Person that is a natural person, any relative or spouse of such natural Person, or any relative of such spouse who has the same home as such natural Person or who is a director or officer of the Corporation or any of its parents or subsidiaries;

(vii) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act), or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable;

(viii) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable;

(ix) in the case of a Person that is a "member" (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time), the "member organization" (as defined in the rules of New York Stock Exchange LLC, as such rules may be in effect from time to time) with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act); and

(x) in the case of a Person that is an OTP Holder, the OTP Firm with which such Person is associated (as determined using the definition of "person associated with a member" as defined under Section 3(a)(21) of the Exchange Act).

Section 2. Ownership Concentration Limitation.

(A) Except as otherwise provided in this Section 2 of Article V, no Person, either alone or together with its Related Persons, shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Concentration Limitation").

(B) The Concentration Limitation shall apply to each Person unless and until: (i) such Person shall have delivered to the Board a notice in writing, not less than 45 days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any shares that would cause such Person (either alone or together with its Related Persons) to exceed the Concentration Limitation, of such Person's intention to acquire such ownership; (ii) the Board

shall have resolved to expressly permit such ownership; and (iii) such resolution shall have been filed with, and approved by, the SEC under Section 19(b) of the Exchange Act and shall have become effective thereunder.

(C) Subject to its fiduciary obligations under applicable law, the Board shall not adopt any resolution pursuant to clause (ii) of Section 2(B) of this Article V unless the Board shall have determined that:

(1) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, will not impair the ability of any of the Regulated Subsidiaries to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation, its stockholders and the Regulated Subsidiaries;

(2) such acquisition of beneficial ownership by such Person, either alone or together with its Related Persons, will not impair the SEC's ability to enforce the Exchange Act. In making such determinations, the Board may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation;

(3) neither such Person nor any of its Related Persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act);

(4) for so long as the Corporation directly or indirectly controls PCX or PCX Equities or any facility of PCX, neither such Person nor any of its Related Persons is an ETP Holder or an OTP Holder or OTP Firm; and

(5) for so long as the Corporation directly or indirectly controls New York Stock Exchange LLC or NYSE Market, Inc., neither such Person nor any of its Related Persons is a Member.

(D) Unless the conditions specified in Section 2(B) of this Article V are met, if any Person, either alone or together with its Related Persons, at any time beneficially owns shares of stock of the Corporation in excess of the Concentration Limitation, such Person and its Related Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, at a price equal to the par value of such shares of stock and to the extent funds are legally available therefor, that number of shares of stock of the Corporation necessary so that such Person, together with its Related Persons, shall beneficially own shares of stock of the Corporation representing in the aggregate no more than 20% of the then outstanding votes entitled to be cast on any matter, after taking into account that such repurchased shares shall become treasury shares and shall no longer be deemed to be outstanding.

(E) Nothing in this Section 2 of Article V shall preclude the settlement of transactions entered into through the facilities of New York Stock Exchange LLC; provided, however, that, if any Transfer of any shares of stock of the Corporation shall cause any Person, either alone or together with its Related Persons, at any time to beneficially own shares of stock of the Corporation in excess of the Concentration Limitation, such Person and its Related

Persons shall be obligated to sell promptly, and the Corporation shall be obligated to purchase promptly, shares of stock of the Corporation as specified in Section 2(D) of this Article V.

Section 3. Procedure for Repurchasing Stock.

(A) In the event the Corporation shall repurchase shares of stock (the "Repurchased Stock") of the Corporation pursuant to any provision of Article IV or this Article V, notice of such repurchase shall be given by first class mail, postage prepaid, mailed not less than 5 business nor more than 60 calendar days prior to the repurchase date, to the holder of the Repurchased Stock, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (1) the repurchase date; (2) the number of shares of Repurchased Stock to be repurchased; (3) the aggregate repurchase price, which shall equal the aggregate par value of such shares; and (4) the place or places where such Repurchased Stock is to be surrendered for payment of the aggregate repurchase price. Failure to give notice as aforesaid, or any defect therein, shall not affect the validity of the repurchase of Repurchased Stock. From and after the repurchase date (unless default shall be made by the Corporation in providing funds for the payment of the repurchase price), shares of Repurchased Stock which have been repurchased as aforesaid shall become treasury shares and shall no longer be deemed to be outstanding, and all rights of the holder of such Repurchased Stock as a stockholder of the Corporation (except the right to receive from the Corporation the repurchase price against delivery to the Corporation of evidence of ownership of such shares) shall cease. Upon surrender in accordance with said notice of evidence of ownership of Repurchased Stock so repurchased (properly assigned for transfer, if the Board shall so require and the notice shall so state), such shares shall be repurchased by the Corporation at par value.

(B) If and to the extent that shares of stock of the Corporation beneficially owned by any Person or its Related Persons are held of record by any other Person, this Article V shall be enforced against such Record Owner by requiring the sale of shares of stock of the Corporation held by such Record Owner in accordance with this Article V, in a manner that will accomplish the Concentration Limitation applicable to such Person and its Related Persons.

Section 4. Right to Information; Determinations by the Board. The Board shall have the right to require any Person and its Related Persons that the Board reasonably believes (i) to be subject to the Voting Limitation or the Recalculated Voting Limitation, (ii) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation, or (iii) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) an aggregate of 5% or more of the then outstanding shares of stock of the Corporation entitled to vote on any matter, which ownership such Person, either alone or together with its Related Persons, has not reported to the Corporation, to provide to the Corporation, upon the Board's request, complete information as to all shares of stock of the Corporation beneficially owned by such Person and its Related Persons and any other factual matter relating to the applicability or effect of this Articles V as may reasonably be requested of such Person and its Related Persons. Any constructions, applications or determinations made by the Board pursuant to Articles V in good faith and on the basis of such information and assistance as was then reasonably available for such purpose shall be conclusive and binding upon the Corporation and its directors, officers and stockholders.

ARTICLE VI

BOARD OF DIRECTORS

Section 1. Powers of the Board – General. The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. The Board is authorized to adopt, amend or repeal bylaws of the Corporation.

Section 2. Power to Call and Postpone Stockholder Meetings.

(A) Special meetings of stockholders of the Corporation may be called at any time by, but only by, (1) the Board acting pursuant to a resolution adopted by a majority of the Board, (2) the Chairman of the Board or (3) the Chief Executive Officer of the Corporation.

(B) Any meeting of stockholders may be postponed by action of the Board at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn any meeting of stockholders without a vote of the stockholders, which powers may be delegated by the Board to the chairman of such meeting either in such rules and regulations or pursuant to the bylaws of the Corporation.

Section 3. Number of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board pursuant to a resolution adopted by a majority of the Directors then in office.

Section 4. Election of Directors. The directors shall be elected by the stockholders at each annual meeting of stockholders (or any adjournment or continuation thereof) at which a quorum is present, to hold office until the next annual meeting of stockholders, but shall continue to serve despite the expiration of the director's term until their respective successors are duly elected and qualified. Elections of directors need not be by written ballot except and to the extent provided in the bylaws of the Corporation.

Section 5. Removal of Directors. Any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares at the time entitled to vote at an election of the directors.

Section 6. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause (other than vacancies and newly created directorships which the holders of any class or classes of stock or series thereof are expressly entitled by this Certificate of Incorporation to fill) may be filled by, and only by, a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director appointed to fill a vacancy or a newly created directorship shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 7. Directors Selected by Holders of Preferred Stock. Notwithstanding anything to the contrary contained in this Article VI, in the event that the holders of any class or series of Preferred Stock of the Corporation shall be entitled, voting separately as a class, to elect any directors of the Corporation, then the number of directors that may be elected by such holders voting separately as a class shall be in addition to the number of directors fixed pursuant to a resolution of the Board. Except as otherwise provided in the terms of such class or series, (a) the terms of the directors elected by such holders voting separately as a class shall expire at the annual meeting of stockholders next succeeding their election; and (b) any director or directors elected by such holders voting separately as a class may be removed, with or without cause, by the holders of a majority of the voting power of all outstanding shares of stock of the Corporation entitled to vote separately as a class in an election of such directors.

Section 8. Considerations of the Board. In taking any action, including action that may involve or relate to a change or potential change in the control of the Corporation, a director of the Corporation may consider, among other things, both the long-term and short-term interests of the Corporation and its stockholders and the effects that the Corporation's actions may have in the short term or long term upon any one or more of the following matters:

(1) the prospects for potential growth, development, productivity and profitability of the Corporation and its subsidiaries;

(2) the current employees of the Corporation or its subsidiaries;

(3) the employees of the Corporation or its subsidiaries and other beneficiaries receiving or entitled to receive retirement, welfare or similar benefits from or pursuant to any plan sponsored, or agreement entered into, by the Corporation or its subsidiaries;

(4) the customers and creditors of the Corporation or its subsidiaries;

(5) the ability of the Corporation to provide, as a going concern, goods, services, employment opportunities and employment benefits and otherwise to contribute to the communities in which it does business;

(6) the potential impact on the relationships of the Corporation or its subsidiaries with regulatory authorities and the regulatory impact generally; and

(7) such other additional factors as a director may consider appropriate in such circumstances.

In discharging his or her responsibilities as a member of the Board, each director also must, to the fullest extent permitted by applicable law, take into consideration the effect that the Corporation's actions would have on the ability of the Regulated Subsidiaries to carry out their responsibilities under the Exchange Act and on the ability of the Regulated Subsidiaries and the Corporation (i) to engage in conduct that fosters and does not interfere with the Regulated Subsidiaries' and the Corporation's ability to prevent fraudulent and manipulative acts and practices in the securities markets; (ii) to promote just and equitable principles of trade in the securities markets; (iii) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) to remove impediments to and perfect the mechanisms of a free and open

market in securities and a national securities market system; and (v) in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Corporation, each such director, officer or employee shall (x) comply with the federal securities laws and the rules and regulations thereunder, (y) cooperate with the SEC and (z) cooperate with the Regulated Subsidiaries pursuant to and to the extent of their regulatory authority. Nothing in this Section 8 of Article VI shall create any duty owed by any director, officer or employee of the Corporation 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. No employee, former employee, beneficiary, customer, creditor, community or regulatory authority or member thereof shall have any rights against any director, officer or employee of the Corporation or the Corporation under this Section 8 of Article VI.

ARTICLE VII

STATUTORY DISQUALIFICATION

No person that is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act) may be a director or officer of the Corporation.

ARTICLE VIII

STOCKHOLDER ACTION

Section 1. No Action by Written Consent. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 2. Quorum. At each meeting of stockholders of the Corporation, except where otherwise required by law or this Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum (it being understood that any shares in excess of the Voting Limitation or the Recalculated Voting Limitation shall not be counted as present at the meeting and shall not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that the Voting Limitation or the Recalculated Voting Limitation, as applicable, shall have been duly waived pursuant to Section 1 or Section 2 of Article V). For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the voting power of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. In the absence of a quorum of the holders of any class of stock of the Corporation entitled to vote on a matter, the meeting of such class may be adjourned from time to time until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging to the Corporation or to another

corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity, provided, further, that any such shares of the Corporation's own capital stock held by it in a fiduciary capacity shall be voted by the person presiding over any vote in the same proportions as the shares of capital stock held by the other stockholders are voted (including any abstentions from voting).

If this Certificate of Incorporation provides for more or less than one vote for any share of stock of the Corporation on any matter or to the extent a stockholder is prohibited pursuant to this Certificate of Incorporation from casting votes with respect to any shares of stock of the Corporation, every reference in the bylaws of the Corporation to a majority or other proportion of shares of stock of the Corporation shall refer to such majority or other proportion of the aggregate votes of such shares of stock, taking into account any greater or lesser number of votes as a result of the foregoing.

ARTICLE IX

DIRECTOR LIABILITY

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director of the Corporation, except to the extent that such exemption from liability or limitation thereof is not permitted under the DGCL as currently in effect or as the same may hereafter be amended.

No amendment, modification or repeal of this Article IX shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment, modification or repeal.

ARTICLE X

JURISDICTION

The Corporation, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall 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 and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of the Regulated Subsidiaries (and shall be deemed to agree that the Corporation may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and the Corporation and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his 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 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.

ARTICLE XI

CONFIDENTIAL INFORMATION

To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Pacific Exchange, Inc. and PCX Equities, Inc. (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of any of the Regulated Subsidiaries that shall come into the possession of the Corporation shall: (x) not be made available to any Persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (y) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (z) not be used for any commercial purposes. Notwithstanding the foregoing sentence, nothing in this Certificate of Incorporation shall be interpreted so as to limit or impede the rights of the SEC or any of the Regulated Subsidiaries to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the SEC or the Regulated Subsidiaries. The Corporation's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) by any Regulated Subsidiary; provided that, in the case of (b), such books and records are related to the operation or administration of such Regulated Subsidiary or any other Regulated Subsidiary over which such Regulated Subsidiary has regulatory authority or oversight. The Corporation's books and records related to Regulated Subsidiaries shall be maintained within the United States.

For so long as the Corporation directly or indirectly controls any Regulated Subsidiary, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of such Regulated Subsidiaries for purposes of and subject to oversight pursuant to the Exchange Act.

ARTICLE XII

COMPLIANCE WITH SECURITIES LAWS; OTHER CONSIDERATIONS

Section 1. The Corporation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and the Regulated Subsidiaries pursuant to and to the extent of their respective regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, the Regulated Subsidiaries pursuant to their regulatory authority. No stockholder, employee, former employee, beneficiary, customer, creditor, community or regulatory authority or member thereof shall have any rights against the Corporation or any director, officer or employee of the Corporation under this Section 1 of Article XII.

Section 2. 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 Section 8 of Article VI, Article X, Article XI and Section 3 of this Article XII of this Certificate of Incorporation, as applicable, with respect to their activities related to any Regulated Subsidiary.

Section 3. The Corporation, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of the Regulated Subsidiaries (to the extent of each Regulated Subsidiary's self-regulatory function) and to 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 the Regulated Subsidiaries relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of the Regulated Subsidiaries to carry out their respective responsibilities under the Exchange Act.

ARTICLE XIII

AMENDMENTS TO CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in any manner now or hereafter permitted by law, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding any other provision of this Certificate of Incorporation, (a) the affirmative vote of not less than eighty percent (80%) of the votes entitled to be cast by holders of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend in any respect or repeal Article V, Section 2, 6 or 8 of Article VI or Article VIII of this Certificate of Incorporation, (b) the affirmative vote of not less than eighty percent (80%) of the votes entitled to be cast by holders of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend in any respect or repeal Section 4 of Article IV or this Article XIII of this Certificate of Incorporation, and (c) for so long as this Corporation shall control, directly or indirectly, any of the Regulated Subsidiaries, before any amendment or repeal of any provision of the Certificate of Incorporation of this Corporation shall be effective, such amendment or repeal shall be submitted to the boards of directors of the New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Pacific Exchange, Inc. and PCX Equities, Inc., and if any or all of such boards of directors shall determine that 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.

ARTICLE XIV

ENFORCEABILITY

If any provision of this Certificate of Incorporation is held to be illegal, invalid or unenforceable, (a) such provision shall be construed in such a manner to be legal, valid and enforceable to the maximum extent permitted under applicable law; (b) the legality, validity and enforceability of the remaining provisions of this Certificate of Incorporation shall not be

affected or impaired thereby, and (c) the illegality, invalidity or unenforceability of a provision in a particular jurisdiction shall not invalidate or render illegal, invalid or unenforceable such provision in any other jurisdiction.

EXHIBIT 5C

AMENDED AND RESTATED
BYLAWS
OF
NYSE GROUP, INC.
Incorporated under the Laws of the State of Delaware

ARTICLE I

OFFICES AND RECORDS

Section 1.1. Registered Office. The registered office of NYSE Group, Inc. (the "Corporation") in the State of Delaware shall be established and maintained at the office of National Registered Agents, Inc., 160 Greentree Drive, in the City of Dover, Suite 101, County of Kent, State of Delaware 19904, and the National Registered Agents, Inc. shall be the registered agent of the Corporation in charge thereof.

Section 1.2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, at such places as the Board of Directors may from time to time 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 outside the State of Delaware at such place or places as may from time to time be designated by the Board of Directors.

ARTICLE II

STOCKHOLDERS

Section 2.1. Annual Meetings. An annual meeting of stockholders for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

Section 2.2. Special Meetings. Special meetings of stockholders may be called at any time by, and only by, (a) the Board of Directors acting pursuant to a resolution adopted by a majority of the directors, (b) the Chairman of the Board of Directors or (c) the Chief Executive Officer, in each case, to be held at such date, time and place either within or without the State of Delaware as may be stated in the notice of the meeting.

Section 2.3. Notice of Meetings. Written notice, stating the place, day and hour of the meeting and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, except as otherwise provided herein or required by the Delaware General Corporation Law (the "DGCL"). If mailed, such notice shall be deemed to have been given when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at such stockholder's address as it appears on the records of the Corporation. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Any previously scheduled meeting of the stockholders may be postponed, canceled or adjourned by resolution of the Board of Directors at any time in advance of the date previously scheduled for such meeting.

Section 2.4. Quorum and Adjournment. Except as otherwise provided by law or by the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), the holders of a majority of the votes entitled to be cast by the holders of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. The chairman of the meeting or the holders of a majority of the votes so represented may adjourn the meeting from time to time, whether or not there is such a quorum. No notice of the time and place of adjourned meetings need be given except as required by law. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed, but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof. The stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.5. Organization. Meetings of stockholders shall be presided over by such person or persons as the Board of Directors may have designated or, in the absence of such person, the Chairman of the Board of Directors, if any, or in the absence of a Chairman of the Board of Directors by the Chief Executive Officer, or in the absence of a Chief Executive Officer by an Executive Vice President, or in the absence of an Executive Vice President, by a chairman chosen at the meeting. A Corporate Secretary, or in the absence of a Corporate Secretary an Assistant Corporate Secretary, shall act as secretary of the meeting, but in the absence of a Corporate Secretary and any Assistant Corporate Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting.

The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to adjourn a meeting of stockholders without a vote of stockholders and to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting and are not inconsistent with any rules or regulations adopted by the Board of Directors pursuant to the provisions of the Certificate of Incorporation, including the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such

meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls for each item upon which a vote is to be taken.

Section 2.6. Inspectors of Elections; Opening and Closing the Polls. Prior to any meeting of stockholders, the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or any other officer designated by the Board of Directors shall appoint one or more inspectors, who shall have the powers and duties set forth in Section 231 of the DGCL as currently in effect or as the same may hereafter be amended or replaced, which inspectors may include individuals who serve the Corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at such meeting and make a written report thereof and may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or is able 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 with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law. The chairman of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting.

Section 2.7. Voting; Proxies. Unless otherwise provided in the Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with a Corporate Secretary. Voting at meetings of stockholders need not be by written ballot unless so directed by the chairman of the meeting or the Board of Directors. Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the votes cast for or against the matter at the meeting by stockholders entitled to vote on the subject matter shall be the act of the stockholders. Where a separate vote by class or classes is required, the affirmative vote of the holders of a majority (or, in the case of an election of directors, a plurality) of the votes cast for or against the matter at the meeting by stockholders in that class or classes entitled to vote on the subject matter shall be the act of such class or classes, except as otherwise required by law, the Certificate of Incorporation or these Bylaws.

Section 2.8. Stockholders 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,

except as otherwise required by the DGCL, 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 record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting and (2) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (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 day 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.

Section 2.9. List of Stockholders Entitled to Vote. A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, at the principal place of business of the Corporation or at such other location as specified in the notice of the meeting. 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 entitled to be present.

Section 2.10. Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this Section, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting

or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Bylaw, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Bylaw. In the event that the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Bylaw shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public

announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall not be presented for stockholder action and shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

Section 2.11. No Stockholder Action by Written Consent. Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Board of Directors. In addition to the powers and authorities expressly conferred upon them by these Bylaws, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things

as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. A director need not be a stockholder.

Section 3.2. Independence Requirements. The Chief Executive Officer of the Corporation may be a member of the Board of Directors. All members of the Board of Directors, other than the Chief Executive Officer, shall satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of Directors from time to time. The Chief Executive Officer shall be recused from deliberations of the Board of Directors, whether it is acting as the Board of Directors or as a committee of the Board of Directors, with respect to activities of any committee of the Board of Directors that is required to be comprised solely of directors that satisfy the independence requirements of the Corporation, as modified and amended by the Board of Directors from time to time.

Section 3.3. Election; Term of Office; Resignation. Each director shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the Board of Directors. Such resignation shall take effect at the time specified therein (and if no time be specified, at the time of its receipt by the Board of Directors) and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

Section 3.4. Vacancies. Any vacancy on the Board of Directors resulting from death, retirement, resignation, disqualification or removal from office or other cause, as well as any vacancy resulting from an increase in the number of directors which occurs between annual meetings of the stockholders at which directors are elected, shall be filled only by a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director (and not by stockholders, unless there shall be no remaining directors). The directors chosen to fill vacancies shall hold office for a term expiring at the end of the next annual meeting of stockholders, but shall continue to serve despite the expiration of the director's term until his or her successor shall have been elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten or eliminate the term of any incumbent director. Whenever the holders of any class or classes of stock or series thereof are entitled by the Certificate of Incorporation to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by, and only by, a majority of the directors elected by such class or classes or series then in office, or by the sole remaining director so elected. If the office of any director becomes vacant and there are no remaining directors, the stockholders, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

Section 3.5. Removal. Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any director, or the entire Board of Directors, may be removed from office at any time, with or without cause, by the affirmative vote of the holders of a majority of the votes entitled to be cast by the holders of the then-outstanding shares of the Corporation's capital stock entitled to vote in an election of directors, voting together as a single class.

Section 3.6. Meetings. The newly elected directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent of all the Directors. Regular meetings of the Board of Directors may be

held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by a Chairman of the Board, the Chief Executive Officer or a majority of the directors then in office, and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the call of the meeting.

Section 3.7. Notice. Notice of any special meeting of directors shall be given to each director at his business or residence in writing by hand delivery, first-class or overnight mail or courier service, telegram or facsimile transmission, email or other electronic transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least four (4) days before such meeting. If by telegram, overnight mail or courier service, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company or the notice is delivered to the overnight mail or courier service company at least twenty-four (24) hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least twelve (12) hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least twelve (12) 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. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 7.3 of these Bylaws.

Section 3.8. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or of such committee, as the case may be, 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 pursuant to this Bylaw shall constitute presence in person at such meeting.

Section 3.9. Quorum; Vote Required for Action. At each meeting of the Board of Directors, a whole number of directors equal to at least a majority of the total number of directors constituting the entire Board of Directors (including any vacancies) shall constitute a quorum for the transaction of business. 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 unless the Certificate of Incorporation or these Bylaws shall require a vote of a greater number. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum. In case at any meeting of the Board a quorum shall not be present, the members or a majority of the members of the Board present may adjourn the meeting from time to time until a quorum shall be present.

Section 3.10. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, if any, or in the absence of a Chairman of the Board of Directors, by a chairman chosen at the meeting; provided, however, that, if the Chairman of the Board of Directors is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board of Directors. If the Chairman of the Board of Directors is not the Chief Executive Officer, he or she shall act as a liaison officer between the Board of Directors and the Chief Executive Officer. A Corporate Secretary, or in the absence of

a Corporate Secretary an Assistant Corporate Secretary, shall act as secretary of the meeting, but in the absence of a Corporate Secretary and any Assistant Corporate Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 3.11. Action by Directors Without 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 or of such committee, as the case may be, then in office consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee.

Section 3.12. Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parents or subsidiaries in any other capacity and receiving compensation for such service.

ARTICLE IV

COMMITTEES

Section 4.1. Committees of the Board of Directors. The Board of Directors may from time to time designate one or more committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees and any others provided for herein, elect a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member. The Board of Directors shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. Nothing herein shall be deemed to prevent the Board of Directors from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

Section 4.2. Committee Procedures. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as otherwise provided herein or required by law. A majority of any committee may fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. Adequate provision shall be made for notice of such meetings to be given to members of the committees.

Section 4.3. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the

conduct of its business. In the absence of a provision by the Board or a provision in the rules of such committee to the contrary, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business unless the committee shall consist of one (1) or two (2) members, in which event one (1) member shall constitute a quorum. The vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE V

OFFICERS; EMPLOYEES

Section 5.1. Officers; Election or Appointment. The Board of Directors shall take such action as may be necessary from time to time to ensure that the Corporation has such officers as are necessary, under Section 5.1 of these Bylaws and the DGCL as currently in effect or as the same may hereafter be amended, to enable it to sign stock certificates. In addition, the Board of Directors at any time and from time to time may elect (i) one or more Chairmen of the Board of Directors from among its members, (ii) one or more Chief Executive Officers, one or more Presidents and/or one or more Chief Financial Officers, (iii) one or more Executive Vice Presidents, one or more Corporate Secretaries and/or (iv) one or more other officers, in the case of each of (i), (ii), (iii) and (iv) if and to the extent the Board deems desirable. The Board of Directors may give any officer such further designations or alternate titles as it considers desirable. In addition, the Board of Directors at any time and from time to time may authorize any officer of the Corporation to appoint one or more officers of the kind described in clauses (iii) and (iv) above. Any number of offices may be held by the same person and directors may hold any office unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 5.2. Term of Office; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution of the Board of Directors electing or authorizing the appointment of any officer, each officer shall hold office until his or her successor is elected or appointed and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or to such person or persons as the Board may designate. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board may remove any officer with or without cause at any time. Any officer authorized by the Board to appoint a person to hold an office of the Corporation may also remove such person from such office with or without cause at any time, unless otherwise provided in the resolution of the Board providing such authorization. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board at any regular or special meeting or by an officer authorized by the Board to appoint a person to hold such office.

Section 5.3. Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these Bylaws or in a resolution of the Board of Directors which is not inconsistent with these Bylaws and, to

the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

ARTICLE VI

STOCK CERTIFICATES AND TRANSFERS

Section 6.1. Certificates; Uncertificated Shares. The shares of stock in the Corporation shall be represented by certificates; provided that the Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to any such shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. If shares of stock in the Corporation are certificated, any signature on such certificates 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 such person were such officer, transfer agent or registrar at the date of issue. Certificates representing shares of stock of the Corporation may bear such legends regarding restrictions on transfer or other matters as any officer or officers of the Corporation may determine to be appropriate and lawful.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise required by law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of such class or series of stock and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated shares of any class or series of stock, the Corporation shall send to the registered owner thereof a written notice containing the information required by law to be set forth or stated on certificates representing shares of such class or series or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of such class or series and the qualifications, limitations or restrictions of such preferences and/or rights.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 6.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. No certificate for shares of stock in the Corporation shall be issued in place of any

certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors or any financial officer may in its or his discretion require.

Section 6.3. Transfer of Shares. The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the Board of Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

ARTICLE VII

MISCELLANEOUS

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 7.2. Seal. The Corporation may have a corporate seal which shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 7.3. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. 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 or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

Section 7.4. Contracts. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the President or any Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the President or any Vice President of the

Corporation may delegate contractual powers to others under his jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

Section 7.5. Proxies. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

Section 7.6. Indemnification and Insurance. (A) Each person who was or is made a party or is threatened to be made a party to or is 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 officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, 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, to the fullest extent permitted by law, 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 attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (C) of this Section 7.6, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the DGCL requires, the payment of such expenses incurred by a director or officer 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 person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of the Board, provide indemnification

to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers. For purposes of this Bylaw, the term "Corporation" shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger.

(B) To obtain indemnification under this Section 7.6, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this paragraph (B), a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority of the Disinterested Directors (as hereinafter defined), even though less than a quorum, or (ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even if less than a quorum, or (iii) if there are no Disinterested Directors, or if a majority of the Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iv) if a majority of the Disinterested Directors so directs, by the stockholders of the Corporation. In the event that the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a "Change of Control," in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

(C) If a claim under paragraph (A) of this Section 7.6 is not paid in full by the Corporation within thirty (30) days after a written claim pursuant to paragraph (B) of this Section 7.6 has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct that makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she 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 Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(D) If a determination shall have been made pursuant to paragraph (B) of this Section 7.6 that the claimant is entitled to indemnification, the Corporation shall be bound by

such determination in any judicial proceeding commenced pursuant to paragraph (C) of this Section 7.6.

(E) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to paragraph (C) of this Section 7.6 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Bylaw.

(F) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any director, officer, employee or agent of the Corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(G) 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. To the extent that the Corporation maintains any policy or policies providing such insurance, each such director or officer, and each such agent or employee to which rights to indemnification have been granted as provided in paragraph (H) of this Section 7.6, shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such director, officer, employee or agent.

(H) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 7.6 with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(I) If any provision or provisions of this Section 7.6 shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Section 7.6 (including, without limitation, each portion of any paragraph of this Section 7.6 containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Section 7.6 (including, without limitation, each such portion of any paragraph of this Section 7.6 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(J) For purposes of this Section 7.6:

(1) "Disinterested Director" means a director of the

Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(2) "Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant's rights under this Section 7.6.

(3) "Change of Control" means the first to occur of:

(I) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of either (A) the then-outstanding shares of common stock of the Corporation (the "Outstanding Common Stock") or (B) the combined voting power of the then-outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the "Outstanding Voting Securities"); provided, however, that the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Corporation, (ii) any acquisition by the Corporation, or (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any affiliated corporation;

(II) Any transaction as a result of which the individuals who, prior to the commencement of the transaction or the efforts to consummate the same, constituted the Board of Directors (the "Incumbent Board") cease in connection with the transaction to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director whose election, or nomination for election by the Corporation's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or

removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors;

(III) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Corporation or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of the Corporation, or the acquisition of assets or stock of another entity by the Corporation or any of its subsidiaries (each, a "Business Combination"), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Common Stock and the Outstanding Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the Corporation resulting from such Business Combination (including, without limitation, a corporation that, as a result of such transaction, owns the Corporation or all or substantially all of the Corporation's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Common Stock and the Outstanding Voting Securities, as the case may be, (B) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Corporation or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 50% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such corporation, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the Board of Directors of the corporation resulting from such Business

Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(IV) Approval by the stockholders of the Corporation of a complete liquidation or dissolution of the Corporation.

(K) Any notice, request or other communication required or permitted to be given to the Corporation under this Section 7.6 shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

Section 7.7. Form of Records. Unless otherwise required by applicable law, any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

Section 7.8. Laws and Regulations; Close of Business. For purposes of these Bylaws, any reference to a statute, rule or regulation of any governmental body means such statute, rule or regulation (including any successor thereto) as the same currently exists or may be amended from time to time. Any reference in these Bylaws to the close of business on any day shall be deemed to mean 5:00 P.M. New York time on such day, whether or not such day is a business day.

Section 7.9. Amendment of Bylaws. (a) These Bylaws may be amended or repealed, and new Bylaws may be adopted at any time, by a majority of the Board of Directors. Stockholders of the Corporation may amend or repeal any Bylaw; provided that notice of the proposed change was given in the notice of the stockholders meeting at which such action is to be taken and, provided, further, that in addition to any vote of the holders of any class or series of stock of the Corporation required by law or the Certificate of Incorporation, the affirmative vote of the holders of a majority of the votes entitled to be cast by the holders of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal any provision of these Bylaws.

(b) Notwithstanding paragraph (a) of this Section 7.9, for so long as the Corporation shall control, directly or indirectly, any of New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., Archipelago Exchange, L.L.C., the Pacific Exchange, Inc. or PCX Equities, Inc., before any amendment or repeal of any provision of these Bylaws shall be effective, such amendment or repeal shall be submitted to the boards of directors of the New York Stock Exchange LLC, NYSE Market, Inc., NYSE Regulation, Inc., the Pacific Exchange, Inc. and PCX Equities, Inc., and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Securities and

Exchange Commission 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 Securities and Exchange Commission, as the case may be.

EXHIBIT 5D

OPERATING AGREEMENT
OF
NEW YORK STOCK EXCHANGE LLC

This Operating Agreement (this "Agreement") of New York Stock Exchange LLC (the "Company") is entered into by NYSE Group, Inc., a Delaware corporation (the "Member"), under the New York Limited Liability Company Act (as amended from time to time and any successor statute thereto, the "Act").

WHEREAS, the Member entered into an Operating Agreement of the Company, dated as of July 14, 2005 (the "Original Operating Agreement");

WHEREAS, the Company is party to an Agreement and Plan of Merger, dated as of April 20, 2005, as amended and restated as of July 20, 2005 and as amended as of October 20, 2005 and as of November 2, 2005 (as amended from time to time, the "Merger Agreement"), by and among the New York Stock Exchange, Inc., Archipelago Holdings, Inc., NYSE Group, Inc., the Company, NYSE Merger Corporation Sub, Inc. and Archipelago Merger Sub, Inc., pursuant to which (1) the New York Stock Exchange, Inc. would merge with and into NYSE Merger Corporation Sub, Inc. (the "NYSE Corporation Merger"); (2) the surviving entity in that merger would merge with and into the Company (the "NYSE LLC Merger"); and (3) Archipelago Merger Sub, Inc. would merge with and into Archipelago Holdings, Inc. (the "Archipelago Merger" and together with the NYSE Corporation Merger and the NYSE LLC Merger, the "Mergers");

WHEREAS, the Member, as the sole member of the Company, is entering into this Agreement to amend and restate in its entirety the Original Operating Agreement, effective immediately after the completion of the NYSE LLC Merger;

WHEREAS, on the date hereof, concurrently with the effectiveness of this Agreement, the Company is causing the filing of a Certificate of Amendment to its Articles of Organization with the Secretary of State of the State of New York to reflect the change in the Company's name from "NYSE Merger Sub LLC" to "New York Stock Exchange LLC"; and

WHEREAS, each of the Board (as defined below) and the Member, in its capacity as the sole member of the Company, has approved and adopted this Agreement.

NOW, THEREFORE, the Member hereby amends and restates in its entirety the Original Operating Agreement and adopts the following as the operating agreement of the Company within the meaning of the Act:

ARTICLE I

NAME, FORMATION, CONTINUATION AND POWERS

SECTION 1.01. Name. The name of the limited liability company for which this Agreement serves as the operating agreement under the Act is "New York Stock Exchange LLC".

SECTION 1.02. Articles of Organization and Continuation. The Company has been formed as a limited liability company pursuant to the provisions of the Act by the execution of the Articles of Organization, and the filing of the Articles of Organization with the office of the Secretary of State of the State of New York, on July 14, 2005. This Agreement shall be deemed to be effective as of the formation of the Company on July 14, 2005, in accordance with Section 417 of the Law. The Member hereby adopts, confirms and ratifies the Articles of Organization and all acts taken in connection therewith. The Member or a Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

SECTION 1.03. Purpose and Scope of Activity. The Company has been formed for the object and purpose of, and the nature of the business to be conducted by the Company is, to: (a) conduct and carry on the functions of an "exchange" within the meaning of that term in the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (b) to engage in any other lawful business purpose or activity for which limited liability companies may be formed under the Act, and (c) to engage in any and all activities necessary or incidental to the foregoing. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, that are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the Company.

SECTION 1.04. Principal Place of Business. For purposes of the Act, the principal place of business of the Company shall be located in New York, New York or at such other place as may hereafter be designated from time to time by the Member.

SECTION 1.05. Registered Office. The address of the registered office of the Company in the State of New York is c/o National Registered Agents, Inc., 875 Avenue of the Americas, Suite 501, New York, NY 10001. At any time, the Company may designate another registered office.

SECTION 1.06 Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of New York is National Registered Agents, Inc., 875 Avenue of the Americas, Suite 501, New York, NY 10001. At any time, the Company may designate another registered agent.

SECTION 1.07 Authorized Persons. The execution and causing to be filed of the Articles of Organization and the Certificate of Amendment to the Articles of Organization by the applicable authorized persons are hereby specifically ratified, adopted and confirmed. The

officers of the Company are hereby designated as authorized persons, within the meaning of the Act, to act in connection with executing and causing to be filed, when approved by the appropriate governing body or bodies hereunder, any certificates required or permitted to be filed with the Secretary of State of the State of New York and any certificates (and any amendments and/or restatements thereof) necessary for the Company to file in any jurisdiction in which the Company is required to make a filing.

ARTICLE II

MANAGEMENT

SECTION 2.01. Management Generally. Except as otherwise expressly provided in this Agreement with respect to the Member, the business and affairs of the Company shall be managed under the direction of the board of directors of the Company (the "Board"). In addition to the powers and authorities by this Agreement expressly conferred upon them, the Board may exercise all such powers of the Company and do all such lawful acts and things as are not by the Act or by this Agreement required to be exercised or done by the Member(s). Certain powers and authorities of the Board may be concurrently allocated to or executed by the Chief Executive Officer, or one or more other officers, when and to the extent expressly delegated thereto by the Board in accordance with this Agreement; provided, that any such delegation may be revoked at any time and for any reason by the Board. Approval by or action taken by the Board in accordance with this Agreement shall constitute approval or action by the Company and shall be binding on the Member(s). Each Director on the Board shall be a "manager" of the Company within the meaning of the Act.

SECTION 2.02. Rules; Supervision of Member Organizations. In furtherance and not in limitation of the foregoing, the Board shall have general supervision over members, allied members and member organizations of the Company ("Member Organizations") and over approved persons in connection with their conduct with or affecting Member Organizations. The Board may examine into the business conduct and financial condition of Member Organizations, shall have supervision over partnership and corporate arrangements and over all offices of Member Organizations, whether foreign or domestic, and over all persons employed by such Member Organizations (and may, by affirmative vote of a majority of the Directors then in office, adopt, amend or repeal rules with respect to the employment, compensation and duties of such employees), shall have supervision relating to the collection, dissemination and use of quotations and of reports of prices on NYSE Market, Inc.("NYSE Market"), shall have the power to approve or disapprove of any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication, may disapprove of any member acting as a specialist or odd lot dealer, and may, by affirmative vote of a majority of the Directors then in office, adopt, amend or repeal any rules as it may deem necessary or appropriate in connection with any of the foregoing, including without limitation rules relating to: the discipline of Member Organizations, approved persons and registered and non-registered employees of Member Organizations for the violation of applicable law or the rules of the Company; and the arbitration of any controversy between parties who are Member Organizations and any controversy between a Member Organization and any other person arising out of the business of such Member Organization. For purposes of clarity, each reference to a

"member" in this Section 2.02 shall refer to a member of the Company as a self-regulatory organization under the Exchange Act, and not as a member of the Company under the Act.

SECTION 2.03 Board. (a) Composition.

(i) Generally. The Board shall consist of a number of managers (referred to herein as "Directors") as determined by the Member from time to time; provided that (1) a majority of the Directors of the Company shall be members of the board of directors of the Member that satisfy the independence requirements of the board of directors of the Member (each such member, a "NYSE Group Independent Director"); and (2) promptly following the first time that the process described in paragraphs (iii), (iv) and (v) below is completed, and thereafter, at least twenty percent (20%), and not less than two, of the Directors shall be persons who are not members of the board of directors of the Member, but shall qualify as independent under the independence policy of the board of directors of the Member (the "Non-Affiliated Directors").

(ii) NYSE Group Independent Directors. Subject to the requirements set forth in Section 2.03(a)(i), each member of the board of directors of the Member who ceases to be a NYSE Group Independent Director, whether because of removal, resignation, death, retirement or any other reason, shall, immediately as of such cessation of being a NYSE Group Independent Director and without any further action on the part of the Member or the Company, be removed as a Director and shall cease to be a manager of the Company within the meaning of the Act.

(iii) Non-Affiliated Directors. The Member shall appoint or elect as Non-Affiliated Directors the candidates nominated by the nominating and governance committee of the board of directors of the Member (such committee, the "NYSE Group NGC" and such candidates, the "Non-Affiliated Director Candidates"). The NYSE Group NGC shall be obligated to designate as Non-Affiliated Director Candidates the candidates (the "DCRC Candidates") recommended jointly by the Director Candidate Recommendation Committee of NYSE Market (the "NYSE Market DCRC") and the Director Candidate Recommendation Committee of NYSE Regulation, Inc. (the "NYSE Regulation DCRC"); provided, however, that, if there shall be any Petition Candidates (as defined below), the NYSE Group NGC shall instead designate as Non-Affiliated Director Candidates the candidates that emerge from the process described in Sections 2.03(a)(iv) and (v) below (such recommended candidates, or the DCRC Candidates if there are no Petition Candidates, the "Fair Representation Candidates"). The number of available Fair Representation Candidate positions shall be limited to the number necessary so that twenty percent (20%) of the Directors are Fair Representation Candidates; provided that in no event will fewer than two of the Directors on the Board be the Fair Representation Candidates. For the avoidance of doubt, it is noted that there may be additional Non-Affiliated Directors who are not appointed or elected from Fair Representation Candidates.

(iv) Petition Candidates. The DCRC Candidates that are recommended to the NYSE Group NGC by the NYSE Market DCRC and the NYSE Regulation DCRC will be announced to the Member Organizations on a date in each year (the "Announcement

Date") sufficient to accommodate the process described in this Section 2.03(a)(iv) and Section 2.03(a)(v) for the proposal by Member Organizations of alternate candidates by petition (such candidates, the "Petition Candidates") for any available Fair Representation Candidate position. Following the Announcement Date, and subject to the limitations described in this Section 2.03(a)(iv) and Section 2.03(a)(v), a person shall be a Petition Candidate if a properly completed petition shall be completed and such person shall be endorsed by a number of signatures equal to at least ten percent (10%) of the signatures eligible to endorse a candidate as described below. For purposes of determining whether a person has been endorsed by the requisite ten percent (10%) of signatures to be a Petition Candidate, each Member Organization in good standing shall be entitled to one signature for each Trading License (as defined in the rules of the Company) owned by it, and each Member Organization in good standing that does not own a Trading License shall be entitled to one signature; provided, however, that no Member Organization, either alone or together with its affiliates as defined under Rule 12b-2 under the Exchange Act ("Affiliates"), may account for more than fifty percent (50%) of the signatures endorsing a particular Petition Candidate, and any signatures of such Member Organization, either alone or together with its Affiliates, in excess of such fifty percent (50%) limitation shall be disregarded.

Each petition for a Petition Candidate must include a completed questionnaire used to gather information concerning Non-Affiliated Director candidates (the Company shall provide the form of questionnaire upon the request of any Member Organization). The petitions must be filed with the Company within two weeks after the Announcement Date. Notwithstanding anything to the contrary, the NYSE Group NGC will determine whether any person endorsed to be a Petition Candidate is eligible to be a Fair Representation Candidate (including whether such person qualifies as independent under the independence policy of the NYSE Group board of directors, and whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination will be final and conclusive.

(v) Voting. If the sum of the number of DCRC Candidates and the number of Petition Candidates exceeds the number of available Fair Representation Candidate positions, all such candidates shall be submitted to the Member Organizations for a vote. The candidates receiving the highest number of votes for the available Fair Representation Candidate positions shall be the Fair Representation Candidates recommended to the NYSE Group NGC. The Member Organizations will be afforded a confidential voting procedure and will be given no less than 20 business days to submit their votes. For purposes of determining which candidates received the highest number of votes and therefore should be the Fair Representation Candidates recommended to the NYSE Group NGC, each Member Organization in good standing shall be entitled to one vote for each Trading License owned by it, and each Member Organization in good standing that does not own a Trading License shall be entitled to one vote; provided, however, that no Member Organization, either alone or together with its Affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such Member Organization, either alone or together with its Affiliates, in excess of such twenty percent (20%) limitation shall be disregarded.

(b) Compensation. Directors of the Company, in their capacity as such, shall not be entitled to compensation, unless, and to the extent, approved by the Member.

(c) Meetings. Meetings of the Board shall be held at the Company's principal place of business or such other place, within or without the State of New York, that has been designated from time to time by the Board. Meetings of the Board for any purpose or purposes may be called at any time by (i) the Member, (ii) the Chief Executive Officer, (iii) the Chairman of the Board, or (iv) a majority of the Directors then in office. Notice of any meeting of the Board shall be given to each Director at his business or residence in writing by hand delivery, first-class or overnight mail or courier service, electronic mail transmission, telegram or facsimile transmission, or orally by telephone. If mailed by first-class mail, 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 telegram, overnight mail or courier service, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company or the notice is delivered to the overnight mail or courier service company at least twenty-four (24) hours before such meeting. If by electronic mail transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least twenty-four (24) hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least twelve (12) hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least twelve (12) 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 need be specified in the notice of such meeting. A meeting may be held at any time without notice if all the Directors are present or if those not present waive notice of the meeting in accordance with Section 2.03(f) of this Agreement.

(d) Quorum; Alternates; Participation in Meetings by Conference Telephone Permitted. Except as otherwise required by law, the presence of a majority of the Directors then in office shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, a majority of the Directors present may adjourn the meeting from time to time without further notice. Directors may participate in a meeting of the Board through use of conference telephone or similar communications equipment, so long as all Directors participating in such meeting can communicate with and hear one another. The Directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

(e) Vote Required for Action. The act of the majority of the Directors present at a meeting of the Board at which a quorum is present shall be the act of the Board.

(f) Waiver of Notice; Consent to Meeting. Notice of a meeting need not be given to any Director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the Company's records and made a part of the minutes of the meeting.

(g) Action by Board Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting and without prior notice if a majority of the Directors then in office shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a vote of the Board in favor of such action.

(h) Committees. The Board may delegate any of its powers to a committee appointed by the Board which may consist partly or entirely of non-Directors and every such committee shall conform to such directions as the Board shall impose on it.

(i) Records. The Board shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board, appropriate books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Company.

(j) Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(k) Considerations of the Board. In discharging his or her responsibilities as a member of the Board, each Director must, to the fullest extent permitted by applicable law, take into consideration the effect that the Company's actions would have on the ability of the Company to carry out its responsibilities under the Exchange Act.

(l) Term of Office; Resignation; Removal; Vacancies. Each Director shall hold office until his or her successor is elected or appointed and qualified or until his or her earlier resignation or removal. Any Director may resign at any time upon written notice to the Board or to such person or persons as the Board may designate. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Member may remove any Director with or without cause at any time; provided, however, that any Director that is appointed or elected from the Fair Representation Candidates may be removed only for cause, which shall include, without limitation, the failure of such Director to qualify as independent under the independence policy of the NYSE Group board of directors or the failure to be free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act). Vacancies and newly created directorships resulting from any increase in the authorized number of Directors or from any other cause shall be filled by, and only by, a majority of the Directors then in office, although less than a quorum, or by the sole remaining Director. Any Director appointed to fill a vacancy or a newly created directorship shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

SECTION 2.04. Officers. (a) The Company may have one or more officers as the Board from time to time may deem proper. Such officers shall have such powers and duties

as from time to time may be conferred by the Board or by any committee thereof. Any number of offices may be held by the same person and directors may hold any office.

(b) Term of Office; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution of the Board electing or authorizing the appointment of any officer, each officer shall hold office until his or her successor is elected or appointed and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the Board or to such person or persons as the Board may designate. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. The Board may remove any officer with or without cause at any time. Any officer authorized by the Board to appoint a person to hold an office of the Company may also remove such person from such office with or without cause at any time, unless otherwise provided in the resolution of the Board providing such authorization. Any vacancy occurring in any office of the Company by death, resignation, removal or otherwise may be filled by the Board at any regular or special meeting or by an officer authorized by the Board to appoint a person to hold such office.

(c) Powers and Duties. The officers of the Company shall have such powers and duties in the management of the Company as shall be stated in this Agreement or in a resolution of the Board which is not inconsistent with this Agreement and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

(d) Contracts. Notwithstanding any other provision contained in this Agreement and except as required by law, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Company by such officer or officers of the Company as the Board may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine.

ARTICLE III

MEMBER; INTERESTS; LIMITED LIABILITY

SECTION 3.01. Member. The name and the mailing address of the member(s) of the Company is set forth on Schedule A attached hereto.

SECTION 3.02. Interests. There shall be only one class of limited liability company interests, all of which are held by the Member.

SECTION 3.03. No Transfers. The Member may not transfer or assign its limited liability company interest, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission (the “SEC”) under Section 19 of the Exchange Act and the rules promulgated thereunder. Any transferee shall be admitted to the Company as a member upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. If the Member transfers all of its interest in the Company pursuant to this Section 3.03, such admission

shall be deemed effective immediately prior to the transfer, and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

SECTION 3.04. Resignation. The Member may resign from the Company only if an additional member shall be admitted to the Company as the Member, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement; provided that any resignation of the Member and any admission of an additional member shall be filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder. Such admission shall be deemed effective immediately prior to the resignation, and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

SECTION 3.05. Admission of Additional Members. One (1) or more additional members of the Company may be admitted to the Company with the written consent of the Member; provided that any admission of an additional member shall be filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

SECTION 3.06. Limited Liability. Except as otherwise expressly provided by the Act and notwithstanding anything in herein to the contrary, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and neither the Member nor any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member, manager or director of the Company.

SECTION 3.07. Other Business. The Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

ARTICLE IV

CAPITAL; ALLOCATIONS; DISTRIBUTIONS

SECTION 4.01. Capital Contributions. The Member is deemed admitted as the Member of the Company upon its execution and delivery of this Agreement. The Member will contribute the amount of United States Dollars to the Company as listed on Schedule A attached hereto.

SECTION 4.02. Additional Capital Contributions. The Member is not required to make any additional capital contribution to the Company. However, a Member may make additional capital contributions to the Company with the written consent of the Member.

SECTION 4.03. Allocation of Profits and Losses. The net profits or net losses of the Company for each fiscal period (and each item of income, gain, loss, deduction, or credit for income tax purposes) shall be allocated to the Member. The percentage interest of the Member in the Company is 100%.

SECTION 4.04. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act or other applicable law.

SECTION 4.05 Limitation on Distributions. The Company shall not use any assets of, or any regulatory fees, fines or penalties collected by, NYSE Regulation, Inc. ("NYSE Regulation") for commercial purposes or distribute such assets, fees, fines or penalties to the Member or any other entity other than NYSE Regulation.

ARTICLE V

DISSOLUTION; LIQUIDATION

SECTION 5.01. Dissolution. (a) The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the written consent of the Member, (ii) at any time there are no members of the Company unless the Company is continued in a manner permitted by the Law, or (iii) the entry of a decree of judicial dissolution under the Act or applicable law.

(b) The bankruptcy of the Member will not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth under the Act.

SECTION 5.02. Liquidation. Upon a dissolution pursuant to Section 5.01, the Company's business and assets shall be wound up promptly in an orderly manner. The Board shall be the liquidator to wind up the affairs of the Company. In performing its duties, the Board is authorized to sell, exchange or otherwise dispose of the Company's business and assets in accordance with the Act in any reasonable manner that the Board determines to be in the best interests of the Members.

SECTION 5.03. Cancellation of Certificate of Formation. Upon completion of a liquidation pursuant to Section 5.02 following a dissolution of the Company pursuant to Section 5.01, the Member shall execute, acknowledge and cause to be filed a certificate of cancellation of the Certificate of Formation of the Company in the office of the Secretary of State of the State of New York.

ARTICLE VI

INDEMNIFICATION AND EXCULPATION

SECTION 6.01. Exculpation. A Director shall not be personally liable to the Company or its Members for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Act as the same exists or may hereafter be amended. Any repeal or modification of the immediately preceding sentence shall not adversely affect any right or protection of a Director existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

SECTION 6.02. Indemnification. (a) Each person who was or is made a party or is threatened to be made a party to or is 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 (i) a director or officer of the Company or (ii) serving at the request of the Company as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, or person, in each case whether the basis of such proceeding is alleged action in an official capacity as a Director, director, officer, employee or agent or in any other capacity while serving as a Director, director, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent authorized by the New York Business Corporation Law (the "NYBCL") as the same exists or may hereafter be amended (but, in the case of any such amendment, to the fullest extent permitted by law, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment), if the Company were a corporation organized under the NYBCL, against all expense, liability and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a Director, director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in Section 6.02(c), the Company shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section 6.02 shall be a contract right and shall include the right to be paid by the Company the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the NYBCL requires, the payment of such expenses incurred by a director or officer 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 person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding shall be made only upon delivery to the Company of an undertaking by or on behalf of person director or officer to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section 6.02 or otherwise. The Company may, by action of the Board, provide indemnification to employees and agents of the Company with the same scope and effect as the foregoing indemnification of directors and officers. For purposes of this Article VI, the

term “Company” shall include any predecessor of the Company and any constituent corporation (including any constituent of a constituent) absorbed by the Company in a consolidation or merger.

(b) To obtain indemnification under this Section 6.02, a claimant shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this Section 6.02(b), a determination, if required by the NYBCL if the Company were a corporation organized under the NYBCL, with respect to the claimant’s entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board by a majority of the Disinterested Directors (as hereinafter defined) even though less than a quorum, or (ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even if less than a quorum, or (iii) if there are no Disinterested Directors, or if a majority of the Disinterested Directors so directs by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the claimant, or (iv) if a majority of Disinterested Directors so directs, such determination shall be approved by the Member. In the event that the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

(c) If a claim under Section 6.02(a) is not paid in full by the Company within thirty (30) days after a written claim pursuant to Section 6.02(b) has been received by the Company, the claimant may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Company) that the claimant has not met the standard of conduct that makes it permissible under the NYBCL 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 Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) for the Company to indemnify the claimant for the amount claimed if the Company were a corporation organized under the NYBCL, but the burden of proving such defense shall be on the Company. Neither the failure of the Company (including the Board, Independent Counsel or Member) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she or she has met the applicable standard of conduct set forth in the NYBCL, nor an actual determination by the Company (including its Board, Independent Counsel or the Member) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(d) If a determination shall have been made pursuant to Section 6.02(b) that the claimant is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to Section 6.02(c).

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to Section 6.02(c) that the procedures and presumptions of this Section 6.02 are not valid, binding and enforceable and shall stipulate in such proceeding that the Company is bound by all the provisions of this Section 6.02.

(f) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 6.02 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Agreement, agreement, vote of the Members or Disinterested Directors or otherwise. No amendment or other modification of this Section 6.02 shall in any way diminish or adversely affect the rights of any Director, officer, employee or agent of the Company hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(g) The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification, and rights to be paid by the Company the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Company to the fullest extent of the provisions of this Section 6.02 with respect to the indemnification and advancement of expenses of Directors and officers of the Company.

(h) If any provision or provisions of this Section 6.02 shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Section 6.02 (including, without limitation, each portion of any subsection of this Section 6.02 containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Section 6.02 (including, without limitation, each such portion of any subsection of this Section 6.02 containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(i) Any notice, request or other communication required or permitted to be given to the Company under this Section 6.02 shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Board and shall be effective only upon receipt by the Board.

(j) For purposes of this Article VI: (1) "Disinterested Director" means a Director of the Company who is not and was not a party to the matter in respect of which indemnification is sought by the claimant; and (2) "Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional

conduct then prevailing, would not have a conflict of interest in representing either the Company or the claimant in an action to determine the claimant's rights under this Section 6.02.

SECTION 6.03 Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Agreement, agreement, vote of Disinterested Directors or otherwise.

SECTION 6.04. Insurance. The Company may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the Company or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such person against such expense, liability or loss under the NYBCL if the Company were a corporation organized under the NYBCL.

SECTION 6.05. Survival. This Article VI shall survive any termination of this Agreement.

ARTICLE VII

CONFIDENTIAL INFORMATION

To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company shall: (1) not be made available to any Persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (2) be retained in confidence by the Company and the officers, directors, employees and agents of the Company; and (3) not be used for any commercial purposes. Notwithstanding the foregoing sentence, nothing in this Agreement shall be interpreted so as to limit or impede the rights of the SEC to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Company to disclose such confidential information to the SEC. The Company's books and records shall be maintained within the United States.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Amendments. This Agreement may not be modified, altered, supplemented or amended except pursuant to a written agreement executed and delivered by the Member; provided, however, that the Board may authorize, without further approval of another person or group, any amendment to this Agreement to correct any technicality, incorrect statement or error apparent on the face hereof in order to further the intent of the parties hereto.

SECTION 8.02. Benefits of Agreement. Except as provided in Article VI, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of any of the Members. Except as provided in Article VI, 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. Without limiting the generality of the foregoing, except as provided in Article VI, no person not a party hereto shall have any right to compel performance by a manager of its obligations hereunder.

SECTION 8.03. Waiver of Notice. Whenever any notice is required to be given to any Member or Director under the provisions of the Act or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any meeting of the Members (if any shall be called) or the Board or committee thereof need be specified in any waiver of notice of such meeting.

SECTION 8.04. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective estates, heirs, legal representatives, successors and permitted assigns, any additional Member admitted in accordance with the provisions hereof and any successor to a trustee of a trust that is or becomes a party hereto.

SECTION 8.05. Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

SECTION 8.06. Headings. The Article, Section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

SECTION 8.07. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law principles.

Schedule A

MEMBER

Name	Mailing Address	Agreed Value of Capital Contribution	Percentage Interest
NYSE Group, Inc.	11 Wall Street, New York, New York 10005	$100	100% (100 interests)

EXHIBIT 5E

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NYSE MARKET, INC.

NYSE Market, Inc., a corporation organized and existing under the laws of the State of Delaware, pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, hereby certifies as follows:

1. The name of this corporation is NYSE Market, Inc. The original Certificate of Incorporation was filed on July 14, 2005.

2. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation to read in its entirety as follows:

ARTICLE I

NAME OF CORPORATION

The name of the corporation is NYSE Market, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II

REGISTERED OFFICE

The address of the Corporation's registered office in the State of Delaware is c/o National Registered Agents, Inc., 160 Greentree Drive, in the City of Dover, Suite 101, County of Kent, State of Delaware 19904. The name of the Corporation's registered agent at such address is National Registered Agents, Inc.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law (the "DGCL").

ARTICLE IV

STOCK

Section 1. Authorized Stock. The Corporation shall be authorized to issue 100 shares of capital stock, all of which shall be shares of Class A Common Stock, $0.01 par value ("Common Stock").

Section 2. Transfers of Common Stock. All of the authorized shares of Common Stock shall be issued and outstanding, and held by New York Stock Exchange LLC, a New York limited liability company. New York Stock Exchange LLC may not transfer or assign its shares of Common Stock, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission (the "SEC") under Section 19 of the Exchange Act and the rules promulgated thereunder.

ARTICLE V

BOARD OF DIRECTORS

Section 1. Powers of the Board – General. The business and affairs of the Corporation shall be managed by or under the direction of the Board. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. The Board is authorized to adopt, amend or repeal bylaws of the Corporation.

Section 2. Power to Call and Postpone Stockholder Meetings.

(a) Special meetings of stockholders of the Corporation may be called at any time by the holder or holders of a majority of the outstanding shares of Common Stock or by the Board acting pursuant to a resolution adopted by a majority of the directors then in office.

(b) Any meeting of stockholders called by the stockholders of the Corporation may be postponed by the holder or holders of a majority of the outstanding shares of Common Stock, and any meeting of the stockholders called by the Board may be postponed by action of the Board, in each case at any time in advance of such meeting. The Board shall have the power to adopt such rules and regulations for the conduct of the meetings and management of the affairs of the Corporation as they may deem proper and the power to adjourn any meeting of stockholders, which powers may be delegated by the Board to the chairman of such meeting either in such rules and regulations or pursuant to the bylaws of the Corporation.

Section 3. Number of Directors. The number of directors shall be fixed as set forth in the bylaws of the Corporation.

Section 4. Election of Directors. The directors shall be elected by the stockholders at each annual meeting of stockholders (or any adjournment or continuation thereof) at which a quorum is present, to hold office until the next annual meeting of stockholders, but shall continue to serve despite the expiration of the director's term until their respective successors are duly elected. Elections of directors need not be by written ballot except and to the extent provided in the bylaws of the Corporation.

Section 5. Removal of Directors. Except as otherwise set forth in the bylaws of the Corporation, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares at the time entitled to vote at an election of the directors.

Section 6. Vacancies. Except as otherwise set forth in the bylaws of the Corporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause (other than vacancies and newly created directorships which the holders of any class or classes of stock or series thereof are expressly entitled by this Certificate of Incorporation to fill) shall be filled by, and only by, a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director appointed to fill a vacancy or a newly created directorship shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

ARTICLE VI

STOCKHOLDER ACTION

Section 1. Action by Written Consent. Any action required or permitted to be taken by the stockholders of the Corporation may be effected by the written consent of stockholders of the Corporation possessing the required vote to approve such action at a duly called annual or special meeting of stockholders of the Corporation.

Section 2. Quorum. At each meeting of stockholders of the Corporation, except where otherwise required by law or this Certificate of Incorporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of a majority of the voting power of the outstanding shares of such class or classes entitled to vote, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. In the absence of a quorum of the holders of any class of stock of the Corporation entitled to vote on a matter, the meeting of such class may be adjourned from time to time until a quorum of such class shall be so present or represented. Shares of its own capital stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the

Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity, provided, further, that any such shares of the Corporation's own capital stock held by it in a fiduciary capacity shall be voted by the person presiding over any vote in the same proportions as the shares of capital stock held by the other stockholders are voted (including any abstentions from voting).

ARTICLE VII

DIRECTOR LIABILITY

A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director of the Corporation, except to the extent that such exemption from liability or limitation thereof is not permitted under the DGCL as currently in effect or as the same may hereafter be amended.

No amendment, modification or repeal of this Article VII shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment, modification or repeal.

ARTICLE VIII

AMENDMENTS TO CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

EXHIBIT 5F

BYLAWS

OF

NYSE MARKET, INC.

ARTICLE I

OFFICES

SECTION 1. REGISTERED OFFICE -- The registered office of NYSE Market, Inc. (the "Corporation") shall be established and maintained at the office of National Registered Agents, Inc. at 9 East Loockerman Street, Suite 1B in the City of Dover, County of Kent, State of Delaware 19901, and said National Registered Agents, Inc. shall be the registered agent of the Corporation in charge thereof.

SECTION 2. OTHER OFFICES -- The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time select or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 1. ANNUAL MEETINGS -- Annual meetings of stockholders for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of stockholders shall be held at the registered office of the Corporation on the first Tuesday in April. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS -- Special meetings of the stockholders for any purpose or purposes may be called by the Chairman of the Board, the President or the Secretary, or by resolution of the Board of Directors.

SECTION 3. VOTING -- Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these Bylaws

may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. All elections for directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Certificate of Incorporation or the laws of the State of Delaware.

A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. 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 entitled to be present.

SECTION 4. QUORUM -- Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these Bylaws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

SECTION 5. NOTICE OF MEETINGS -- Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

SECTION 6. ACTION WITHOUT MEETING -- Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent 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. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

DIRECTORS

SECTION 1. NUMBER AND TERM; SELECTION; PETITION PROCESS -- (A) Generally. The business and affairs of the Corporation shall be managed under the direction of a Board of Directors which shall consist of not less than three persons. The number of Directors shall be fixed from time to time by the stockholder of the Corporation. Directors shall be elected at the annual meeting of the stockholders and each Director shall be elected to serve until his or her successor shall be elected and shall qualify; provided that, so long as NYSE Group Inc. is the sole member of New York Stock Exchange LLC and New York Stock Exchange LLC is the sole stockholder of the Corporation, the stockholder of the Corporation shall cause the Board of Directors of the Corporation to be comprised as follows: (1) the Chief Executive Officer of NYSE Group, Inc. shall be a Director; (2) a majority of the Directors shall be comprised of independent members of the board of directors of NYSE Group, Inc.; and (3) promptly following the first time that the process described in paragraphs (B), (C) and (D) below is completed, and thereafter, at least twenty percent (20%), and not less than two, of the Directors shall be persons who are not members of the board of directors of NYSE Group, Inc. (the "Non-Affiliated Directors"). The Non-Affiliated Directors need not be independent, and must meet any status or constituent affiliation qualifications prescribed by the Corporation and filed with and approved by the Securities and Exchange Commission. A Director need not be a stockholder. The Chief Executive Officer of the Corporation shall be recused from deliberations of the Board of Directors, whether it is acting as the Board of Directors or as a committee of the Board of Directors, with respect to activities of any committee of the Board of Directors that is required to be comprised solely of Directors that satisfy the independence requirements of the Corporation, as modified and amended by the Board of Directors from time to time.

(B) Non-Affiliated Director Candidates. The stockholder shall appoint or elect as Non-Affiliated Directors the candidates nominated by the nominating and governance committee of the board of directors of NYSE Group, Inc. (such committee, the "NYSE Group NGC" and such candidates, the "Non-Affiliated Director Candidates"). The NYSE Group NGC shall be obligated to designate as Non-Affiliated Director Candidates the candidates (the "DCRC Candidates") recommended by the Director Candidate Recommendation Committee of the Corporation; provided, however, that, if there shall be any Petition Candidates (as defined below), the NYSE Group NGC shall instead designate as Non-Affiliated Director Candidates the candidates that emerge from the process described in paragraphs (C) and (D) of this Section 1 of Article III below (such recommended candidates, or the DCRC Candidates if there are no Petition Candidates, the "Fair Representation Candidates"). The number of available Fair Representation Candidate positions shall be limited to the number necessary so that twenty percent (20%) of the Directors are Fair Representation Candidates; provided that in no event will fewer than two of the Directors on the Board of Directors be the Fair Representation Candidates. For the avoidance of doubt, it is noted that there may be additional Non-Affiliated Directors who are not appointed or elected from Fair Representation Candidates.

(C) Petition Candidates. The DCRC Candidates that are recommended to the NYSE Group NGC by the Director Candidate Recommendation Committee of the Corporation will be announced to the member organizations of New York Stock Exchange LLC, a New York limited liability company ("Member Organization") on a date in each year (the "Announcement Date") sufficient to accommodate the process described in this paragraph (C) and paragraph (D) of this Section 1 of Article III for the proposal by Member Organizations of alternate candidates by petition (such candidates, the "Petition Candidates") for any available Fair Representation Candidate position. Following the Announcement Date, and subject to the limitations described in this paragraph (C) and paragraph (D) of this Section 1 of Article III, a person shall be a Petition Candidate if a properly completed petition shall be completed and such person shall be endorsed by a number of signatures equal to at least ten percent (10%) of the signatures eligible to endorse a candidate as described below. For purposes of determining whether a person has been endorsed by the requisite ten percent (10%) of signatures to be a Petition Candidate, each Member Organization in good standing shall be entitled to one signature for each Trading License (as defined in the rules of New York Stock Exchange LLC) owned by it; provided, however, that no Member Organization, either alone or together with its affiliates ("Affiliates") as defined under Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), may account for more than fifty percent (50%) of the signatures endorsing a particular Petition Candidate, and any signatures of such Member Organization, either alone or together with its Affiliates, in excess of such fifty percent (50%) limitation shall be disregarded. Member Organizations that do not own a Trading License shall not be entitled to sign a petition.

Each petition for a Petition Candidate must include a completed questionnaire used to gather information concerning Non-Affiliated Director candidates (the Corporation shall provide the form of questionnaire upon the request of any Member Organization). The petitions must be filed with the Corporation within two weeks after the Announcement Date. Notwithstanding anything to the contrary, the NYSE Group NGC will determine whether any person endorsed to be a Petition Candidate is eligible to be a Fair Representation Candidate (including whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination will be final and conclusive.

(D) Election. If the sum of the number of DCRC Candidates and the number of Petition Candidates exceeds the number of available Fair Representation Candidate positions, all such candidates shall be submitted to the Member Organizations for a vote. The candidates receiving the highest number of votes for the available Fair Representation Candidate positions shall be the Fair Representation Candidates recommended to the NYSE Group NGC. The Member Organizations will be afforded a confidential voting procedure and will be given no less than 20 business days to submit their votes. For purposes of determining which candidates received the highest number of votes and therefore should be the Fair Representation Candidates recommended to the NYSE Group NGC, each Member Organization in good standing shall be entitled to one vote for each Trading License owned by it; provided, however, that no Member Organization, either alone or together with its Affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such

Member Organization, either alone or together with its Affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. Member Organizations that do not own a Trading License shall not be entitled to vote.

SECTION 2. RESIGNATIONS -- Any Director may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman of the Board, the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 3. VACANCIES -- If the office of any Director becomes vacant, the remaining Directors in the office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. If the office of any Director becomes vacant and there are no remaining Directors, the stockholders, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

SECTION 4. REMOVAL -- Except as hereinafter provided, any Director or Directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of directors, at an annual meeting or a special meeting called for the purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation; provided, however, that any Director that is appointed or elected from the Fair Representation Candidates may be removed only for cause, which shall include, without limitation, the failure of such Director to be free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act).

SECTION 5. COMMITTEES. The Board of Directors may, by resolution or resolutions passed by a majority of the Directors then in office, designate one or more committees, each committee to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers 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. The Board of Directors may also establish one or more other committees, which may be composed of any person appointed to such committee by the Board of Directors and shall perform any function assigned to it by the Board.

The Board of Directors shall, on an annual basis, appoint a Director Candidate Recommendation Committee. The Director Candidate Recommendation Committee will be responsible for recommending Non-Affiliated Director Candidates to the NYSE Group NGC. The Director Candidate Recommendation Committee shall include (i) at least four individuals each of whom is associated with a Member Organization that engages in a business involving substantial direct contact with

securities customers, (ii) at least two individuals each of whom is associated with a Member Organization and registered as a specialist and spends a substantial part of his time on the trading floor of the Corporation, and (iii) at least two individuals each of whom is associated with a Member Organization and spends a majority of his time on the trading floor of the Corporation, and has as a substantial part of his business the execution of transactions on the trading floor of the Corporation for other than his own account or the account of his Member Organization, but is not registered as a specialist. The Board will appoint such individuals after appropriate consultation with representatives of Member Organizations. Any of the individuals on the Director Candidate Recommendation Committee may also serve on the Director Candidate Recommendation Committee of NYSE Regulation, Inc., a New York Type A not-for-profit corporation.

SECTION 6. MEETINGS -- The newly elected Directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the stockholders; or the time and place of such meeting may be fixed by consent of all of the Directors.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors.

Special meetings of the Board of Directors may be called by the Chairman of the Board or the President, or by the Secretary on the written request of any Director, on at least one day's notice to each Director (except that notice to any Director may be waived in writing by such Director) and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the call of the meeting.

Unless otherwise restricted by the Certificate of Incorporation of the Corporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in any meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

SECTION 7. QUORUM – Except as otherwise required by law, a majority of the Directors then in office shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation of the Corporation or these Bylaws shall require the vote of a greater number.

SECTION 8. COMPENSATION -- Directors shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

SECTION 9. ACTION WITHOUT 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 a written consent thereto is signed by a majority of Directors then in office or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee.

ARTICLE IV

OFFICERS

SECTION 1. OFFICERS -- The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer and any additional officer appointed by the Board of Directors as it may deem advisable. Each officer of the Corporation shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified; provided, that for so long as NYSE Group Inc. is the sole member of New York Stock Exchange LLC and New York Stock Exchange LLC is the sole stockholder of the Corporation, the Chief Executive Officer of NYSE Group, Inc. shall be the Chief Executive Officer of the Corporation. Each of the officer of the Corporation shall exercise such powers and perform such duties as shall be set forth in these Bylaws and as determined from time to time by the Board of Directors. Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide.

SECTION 2. CHAIRMAN OF THE BOARD -- The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have and perform such other duties as may be assigned to him or her by the Board of Directors; provided, however, that, if the Chairman of the Board of Directors is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board of Directors. If the Chairman of the Board of Directors is not the Chief Executive Officer, he or she shall act as a liaison officer between the Board of Directors and the Chief Executive Officer. The Chairman of the Board shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and to cause the seal of the Corporation to be affixed to any instrument requiring it.

SECTION 3. CHIEF EXECUTIVE OFFICER -- The Chief Executive Officer shall have the general powers and duties of supervision and management usually vested in the office of chief executive officer of a corporation. The Chief Executive Officer shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and to cause the seal to be affixed to any instrument requiring it.

SECTION 4. OTHER OFFICERS—The Board of Directors may appoint one or more additional officers of the Corporation. Each such officer shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors.

ARTICLE V

MISCELLANEOUS

SECTION 1. TRANSFER OF SHARES -- The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the Board of Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

SECTION 2. STOCKHOLDERS 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 to express consent to corporate action in writing without a meeting, 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 record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (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 day 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; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) 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.

SECTION 3. DIVIDENDS -- Subject to the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Corporation as and when they deem appropriate. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, such sum or sums as the Board of Directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation.

SECTION 4. INDEMNIFICATION AND INSURANCE — (A) Each person who was or is made a party or is threatened to be made a party to or is 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 officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, 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, to the fullest extent permitted by law, 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 attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (C) of this Section 4 of Article V, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the DGCL requires, the payment of such expenses incurred by a director or officer 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 person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined

that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers. For purposes of this Bylaw, the term "Corporation" shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger.

(B) To obtain indemnification under this Section 4 of Article V, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this paragraph (B), a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority of the Disinterested Directors (as hereinafter defined), even though less than a quorum, or (ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even if less than a quorum, or (iii) if there are no Disinterested Directors, or if a majority of the Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iv) if a majority of the Disinterested Directors so directs, by the stockholders of the Corporation. In the event that the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

(C) If a claim under paragraph (A) of this Section 4 of Article V is not paid in full by the Corporation within thirty (30) days after a written claim pursuant to paragraph (B) of this Section 4 of Article V has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct that makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she 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 Counsel or stockholders) that the claimant

has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(D) If a determination shall have been made pursuant to paragraph (B) of this Section 4 of Article V that the claimant is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to paragraph (C) of this Section 4 of Article V.

(E) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to paragraph (C) of this Section 4 of Article V that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Bylaw.

(F) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any director, officer, employee or agent of the Corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(G) 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. To the extent that the Corporation maintains any policy or policies providing such insurance, each such director or officer, and each such agent or employee to which rights to indemnification have been granted as provided in paragraph (H) of this Section 4 of Article V, shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such director, officer, employee or agent.

(H) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 4 of Article V with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(I) If any provision or provisions of this Section 4 of Article V shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Section 4 of Article V (including, without limitation, each portion of any paragraph of this Section 4 of Article V containing any such provision held to be invalid, illegal or unenforceable, that is not

itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Section 4 of Article V (including, without limitation, each such portion of any paragraph of this Section 4 of Article V containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(J) For purposes of this Section 4 of Article V:

(1) "Disinterested Director" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(2) "Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant's rights under this Section 4 of Article V.

(K) Any notice, request or other communication required or permitted to be given to the Corporation under this Section 4 of Article V shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

SECTION 5. SEAL -- The corporate seal of the Corporation shall be in such form as shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.

SECTION 6. FISCAL YEAR -- The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 7. CHECKS -- All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 8. NOTICE AND WAIVER OF NOTICE -- Whenever any notice is required to be given under these Bylaws, personal notice is not required unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by law. Whenever any notice is required to be given under the

provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or of these Bylaws, a waiver thereof, in writing and signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice.

SECTION 9. FORM OF RECORDS – Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, electronic files or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

ARTICLE VI

AMENDMENTS

These Bylaws may be altered, amended or repealed, and new bylaws adopted, at any annual meeting of the stockholders (or at any special meeting thereof if notice of such proposed alteration, amendment, repeal or adoption to be considered is contained in the notice of such special meeting) by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present alter, amend or repeal these Bylaws, or enact such other Bylaws as in their judgment may be advisable for the regulation and conduct of the affairs of the Corporation.

EXHIBIT 5G

CERTIFICATE OF INCORPORATION
OF
NYSE REGULATION, INC.

Under Section 402 of the Not-for-Profit Corporation Law

NYSE Regulation, Inc., a corporation organized and existing under the laws of the Not-for-Profit Corporation Law of the State of New York, as the same may be amended and supplemented, hereby certifies as follows:

1. The name of this corporation is NYSE Regulation, Inc. The original Certificate of Incorporation was filed on August 25, 2005.

2. This Amended and Restated Certificate of Incorporation restates and amends the original Certificate of Incorporation to read in its entirety as follows:

ARTICLE I

The name of the corporation (which is hereinafter referred to as the "Corporation") is "NYSE Regulation, Inc."

ARTICLE II

The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law of the State of New York. The purpose of the Corporation shall be:

(a) to promote and inculcate just and equitable principles of trade and business;

(b) to conduct and carry on the functions of a "board of trade" within the meaning of that term in Section 1410 (Boards of trade and chambers of commerce) of the Not-for-Profit Corporation Law of the State of New York, i.e. fostering trade and commerce, or the interests of those having a common trade, business, financial or professional interest, to reform abuses relative thereto, to secure freedom from unjust or unlawful exactions, to diffuse accurate and reliable information as to the standing of merchants and other matters, to procure uniformity and certainty in the customs and usages of trade and commerce, and of

those having a common trade, business, financial or professional interest; to settle and adjust differences between its members and others and to promote a more enlarged and friendly intercourse among business people; to advance the civic, commercial, industrial and agricultural interests of the territory where the corporation is situated; to promote the general welfare and prosperity of such territory and to stimulate public sentiment to these ends; and to provide such civic, commercial, industrial, agricultural and social features as will promote these purposes;

(c) to conduct and carry on the functions of an “exchange” within the meaning of that term in the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (to the extent such functions are delegated to the Corporation by an “exchange” within the meaning of that term in the Exchange Act) and

(d) to engage in any lawful act or activity incidental to the foregoing which may lawfully be conducted and carried on by a corporation of its type formed under the Not-for-Profit Corporation Law of the State of New York.

It shall be a Type A corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law of the State of New York.

ARTICLE III

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

ARTICLE IV

The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served. The Post Office address to which the Secretary of State shall mail a copy of process is:

c/o National Registered Agents, Inc.
875 Avenue of the Americas, Suite 501
New York, New York 10001

ARTICLE V

The sole equity member of the Corporation shall be New York Stock Exchange LLC, a New York limited liability company. New York Stock Exchange LLC may not transfer or assign its equity membership in the Corporation, in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission (the “SEC”) under Section 19 of the Exchange Act and the rules promulgated thereunder.

ARTICLE VI

Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of Directors of the Corporation need not be by written ballot.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by law, the Board of Directors of the Corporation (the “Board”) is expressly authorized and empowered to adopt, amend and repeal the Bylaws of the Corporation by a majority vote at any regular or special meeting of the Board or by written consent, subject to the power of the members of the Corporation to adopt, amend or repeal any Bylaws made by the Board.

ARTICLE VIII

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of New York at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon members, Directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article.

ARTICLE IX

A Director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for breach of fiduciary duty as a Director, except to the extent such exemption from liability or limitation thereof is not permitted under the Not-for-Profit Corporation Law of the State of New York as currently in effect or as the same may hereafter be amended.

Any repeal or modification of the foregoing paragraph shall not adversely affect any right or protection of a Director of the Corporation existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

EXHIBIT 5H

AMENDED AND RESTATED BYLAWS
OF
NYSE REGULATION, INC.

ARTICLE I

OFFICES

SECTION 1. REGISTERED OFFICE -- The registered office of NYSE Regulation, Inc. (the "Corporation") shall be established and maintained at the office of National Registered Agents, Inc., 875 Avenue of the Americas, Suite 501, New York, New York 10001, and said National Registered Agents, Inc. shall be the registered agent of the Corporation in charge thereof.

SECTION 2. OTHER OFFICES -- The Corporation may have other offices, either within or without the State of New York, at such place or places as the Board of Directors may from time to time select or the business of the Corporation may require.

ARTICLE II

MEETINGS OF MEMBERS

SECTION 1. ANNUAL MEETINGS -- Annual meetings of members for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of New York, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. If the Board of Directors fails so to determine the time, date and place of meeting, the annual meeting of members shall be held at the registered office of the Corporation on the first Tuesday in April. If the date of the annual meeting shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At each annual meeting, the members entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

SECTION 2. SPECIAL MEETINGS -- Special meetings of the members for any purpose or purposes may be called by the Chairman of the Board, the President or the Secretary, or by resolution of the Board of Directors.

SECTION 3. VOTING -- Each member entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these Bylaws may vote in person

or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. All elections for Directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Certificate of Incorporation or the laws of the State of New York.

A complete list of the members entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any member, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. 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 member who is entitled to be present.

SECTION 4. QUORUM -- Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these Bylaws, the presence, in person or by proxy, of members holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the members. In case a quorum shall not be present at any meeting, a majority in interest of the members entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those members entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

SECTION 5. NOTICE OF MEETINGS -- Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each member entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the members entitled to vote thereat.

SECTION 6. ACTION WITHOUT MEETING -- Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of members may be taken without a meeting, without prior notice and without a vote, if a consent 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. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those members who have not consented in writing.

ARTICLE III

DIRECTORS

SECTION 1. NUMBER AND TERM; SELECTION – (A) Generally. The business and affairs of the Corporation shall be managed under the direction of a Board of Directors which shall consist of not less than three persons. The number of Directors shall be fixed from time to time by the equity member of the Corporation. Directors shall be elected at the annual meeting of the member, and each Director shall be elected to serve until his or her successor shall be elected and shall qualify; provided that, so long as NYSE Group Inc. is the sole member of New York Stock Exchange LLC and New York Stock Exchange LLC is the sole member of the Corporation, the member of the Corporation shall cause the Board of Directors of the Corporation to be comprised as follows: (1) the Chief Executive Officer of the Corporation shall be a Director; provided that the Chief Executive Officer of the Corporation shall not be a Director until from and after the first time that the Fair Representation Candidates (as defined below) shall be appointed or elected as Directors in accordance with the procedures described in paragraphs (B), (C) and (D) below; (2) a majority of the Directors shall be persons who are not members of the board of directors of NYSE Group, Inc., but shall qualify as independent under the independence policy of the board of directors of NYSE Group, Inc. (each, a "Non-Affiliated Director"); and (3) the remaining Directors shall be comprised of members of the board of directors of NYSE Group, Inc. that qualify as independent under the independence policy of the board of directors of NYSE Group, Inc. (each, a "NYSE Group Independent Director"). All of the Directors, with the exception of the Chief Executive Officer, must qualify as independent under the independence policy of the board of directors of NYSE Group, Inc., as modified and amended from time to time. A Director need not be an equity member of the Corporation. The Chief Executive Officer of the Corporation shall be recused from deliberations of the Board of Directors, whether it is acting as the Board of Directors or as a committee of the Board of Directors, with respect to activities of any committee of the Board of Directors that is required to be comprised solely of Directors that satisfy the independence requirements of the Corporation, as modified and amended by the Board of Directors from time to time.

(B) Non-Affiliated Directors. The member of the Corporation shall appoint or elect as Non-Affiliated Directors the candidates nominated by the Nominating and Governance Committee of the Corporation (such candidates, the "Non-Affiliated Director Candidates"). The Nominating and Governance Committee of the Corporation shall be obligated to designate as Non-Affiliated Director Candidates the candidates (the "DCRC Candidates") recommended by the Director Candidate Recommendation Committee of the Corporation; provided, however, that, if there shall be any Petition Candidates (as defined below), the Nominating and Governance Committee of the Corporation shall instead designate as Non-Affiliated Director Candidates the candidates that emerge from the process described in paragraphs (C) and (D) of this Section 1 of Article III below (such recommended candidates, or the DCRC Candidates if there are no Petition Candidates, the "Fair Representation Candidates"). The number of available Fair Representation Candidate positions shall be limited to the number necessary so that twenty percent (20%) of the Directors are Fair Representation Candidates; provided that in no event will fewer than two of the Directors on the Board of Directors be the Fair Representation Candidates. For the avoidance of doubt, it is noted that there may be additional Non-Affiliated Directors who are not appointed or elected from Fair Representation Candidates.

(C) Petition Candidates. The DCRC Candidates that are recommended to the Nominating and Governance Committee by the Director Candidate Recommendation Committee will be announced to the member organizations of New York Stock Exchange LLC, a New York limited liability company ("Member Organizations"), on a date in each year (the "Announcement Date") sufficient to accommodate the process described in this paragraph (C) and paragraph (D) of this Section 1 of Article III for the proposal by Member Organizations of alternate candidates by petition (such candidates, the "Petition Candidates") for any available Fair Representation Candidate position. Following the Announcement Date, and subject to the limitations described in this paragraph (C) and paragraph (D) of this Section 1 of Article III, a person shall be a Petition Candidate if a properly completed petition shall be completed and such person shall be endorsed by a number of signatures equal to at least ten percent (10%) of the signatures eligible to endorse a candidate as described below. For purposes of determining whether a person has been endorsed by the requisite ten percent (10%) of signatures to be a Petition Candidate, each Member Organization in good standing shall be entitled to one signature for each Trading License (as defined in the rules of New York Stock Exchange LLC) owned by it, and each Member Organization in good standing that does not own a Trading License shall be entitled to one signature; provided, however, that no Member Organization, either alone or together with its affiliates ("Affiliates") as defined under Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), may account for more than fifty percent (50%) of the signatures endorsing a particular Petition Candidate, and any signatures of such Member Organization, either alone or together with its Affiliates, in excess of such fifty percent (50%) limitation shall be disregarded.

Each petition for a Petition Candidate must include a completed questionnaire used to gather information concerning Non-Affiliated Director candidates (the Corporation shall provide the form of questionnaire upon the request of any Member Organization). The petitions must be filed with the Corporation within two weeks after the Announcement Date. Notwithstanding anything to the contrary, the Nominating and Governance Committee of the Corporation will determine whether any person endorsed to be a Petition Candidate is eligible to be a Fair Representation Candidate (including whether such person qualifies as independent under the independence policy of the NYSE Group board of directors, and whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination will be final and conclusive.

(D) Election. If the sum of the number of DCRC Candidates and the number of Petition Candidates exceeds the number of available Fair Representation Candidate positions, all such candidates shall be submitted to the Member Organizations for a vote. The candidates receiving the highest number of votes for the available Fair Representation Candidate positions shall be the Fair Representation Candidates recommended to the Nominating and Governance Committee of the Corporation. The Member Organizations will be afforded a confidential voting procedure and will be given no less than 20 business days to submit their votes. For purposes of determining which candidates received the highest number of votes and therefore should be the Fair Representation Candidates recommended to the Nominating and Governance Committee of the Corporation, each Member Organization in good standing shall be entitled to one vote for each Trading License owned by it, and each Member Organization in good standing that does not own a Trading License shall be entitled to one vote; provided, however, that no Member Organization, either alone or together with its Affiliates, may account for more than

twenty percent (20%) of the votes cast for a candidate, and any votes cast by such Member Organization, either alone or together with its Affiliates, in excess of such twenty percent (20%) limitation shall be disregarded.

SECTION 2. RESIGNATIONS -- Any Director may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman of the Board, the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 3. VACANCIES -- If the office of any Director becomes vacant, the remaining Directors in the office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. If the office of any Director becomes vacant and there are no remaining Directors, the members, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

SECTION 4. REMOVAL -- Except as hereinafter provided, any Director or Directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of Directors, at an annual meeting or a special meeting called for the purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation; provided, however, that any Non-Affiliated Director may be removed only for cause, which shall include, without limitation, the failure of such Non-Affiliated Director to qualify as independent under the independence policy of the NYSE Group board of directors or the failure to be free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act).

SECTION 5. COMMITTEES -- The Board of Directors may, by resolution or resolutions passed by a majority of the Directors then in office, designate one or more committees, each committee to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise all the powers 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. The Board of Directors may also establish one or more other committees, which may be composed of any person appointed to such committee by the Board of Directors and shall perform any function assigned to it by the Board.

The Board of Directors shall, on an annual basis, appoint (1) a Nominating and Governance Committee, (2) a Compensation Committee, (3) a Director Candidate Recommendation Committee, and (4) a Committee for Review.

All members of the Nominating and Governance and the Compensation Committees shall be comprised of directors of the Corporation that satisfy the independence requirements for directors of the Corporation, as modified and amended by the Board of

Directors from time to time. Each such Committee shall be comprised of a majority of Non-Affiliated Directors.

The Compensation Committee will be responsible for setting the compensation for NYSE Regulation employees.

The Director Candidate Recommendation Committee will be responsible for recommending Non-Affiliated Director Candidates to the Nominating and Governance Committee. The Director Candidate Recommendation Committee shall include (i) at least four individuals each of whom is associated with a Member Organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals each of whom is associated with a Member Organization and registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Market, Inc., a Delaware corporation, and (iii) at least two individuals each of whom is associated with a Member Organization and spends a majority of his time on the trading floor of NYSE Market, Inc., and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Market, Inc. for other than his own account or the account of his Member Organization, but is not registered as a specialist. The Board will appoint such individuals after appropriate consultation with representatives of Member Organizations. Any of the individuals on the Director Candidate Recommendation Committee may also serve on the Director Candidate Recommendation Committee of NYSE Market, Inc.

The Committee for Review shall be comprised of both Directors of the Corporation that satisfy the independence requirements for Directors of the Corporation, as well as persons who are not Directors; provided, however, that a majority of the members of the Committee for Review voting on a matter subject to a vote of the committee shall be Directors of the Corporation. Among the persons on the Committee for Review who are not Directors, there shall be included at least three individuals who meet the respective criteria specified in clauses (i), (ii) or (iii) of the immediately preceding paragraph. The Board will appoint such individuals after appropriate consultation with representatives of Member Organizations. The Committee for Review will be responsible for, among other things, reviewing the disciplinary decisions on behalf of the Board of Directors.

SECTION 6. MEETINGS -- The newly elected Directors may hold their first meeting for the purpose of organization and the transaction of business, if a quorum be present, immediately after the annual meeting of the members; or the time and place of such meeting may be fixed by consent of all the Directors.

Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors.

Special meetings of the Board of Directors may be called by the Chairman of the Board or the President, or by the Secretary on the written request of any Director, on at least one day's notice to each Director (except that notice to any Director may be waived in writing by such Director) and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the call of the meeting.

Unless otherwise restricted by the Certificate of Incorporation of the Corporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in any meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

SECTION 7. QUORUM -- Except as otherwise required by law, a majority of the Directors then in office shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation of the Corporation or these Bylaws shall require the vote of a greater number.

SECTION 8. COMPENSATION -- Directors shall not receive any stated salary for their services as Directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

SECTION 9. ACTION WITHOUT 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 a written consent thereto is signed by a majority of the Board of Directors then in office or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee.

ARTICLE IV

OFFICERS

SECTION 1. OFFICERS -- The officers of the Corporation shall be a Chairman of the Board, a Chief Executive Officer and any additional officer appointed by the Board of Directors as it may deem advisable. Each officer of the Corporation shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified. Each of the officer of the Corporation shall exercise such powers and perform such duties as shall be set forth in these Bylaws and as determined from time to time by the Board of Directors. Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide.

SECTION 2. CHAIRMAN OF THE BOARD -- The Chairman of the Board shall preside at all meetings of the Board of Directors and shall have and perform such other duties as may be assigned to him or her by the Board of Directors; provided, however, that, if the Chairman of the Board of Directors is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board of Directors. If the Chairman of the Board of

Directors is not the Chief Executive Officer, he or she shall act as a liaison officer between the Board of Directors and the Chief Executive Officer. The Chairman of the Board shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and to cause the seal of the Corporation to be affixed to any instrument requiring it.

SECTION 3. CHIEF EXECUTIVE OFFICER -- The Chief Executive Officer shall have the general powers and duties of supervision and management usually vested in the office of chief executive officer of a corporation. The Chief Executive Officer shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and to cause the seal to be affixed to any instrument requiring it.

SECTION 4. OTHER OFFICERS—The Board of Directors may appoint one or more additional officers of the Corporation. Each such officer shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors.

ARTICLE V

MISCELLANEOUS

SECTION 1. MEMBERS RECORD DATE -- In order that the Corporation may determine the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or to express consent to corporate action in writing without a meeting, 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 record date: (1) in the case of determination of members entitled to vote at any meeting of members or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of members entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the day next preceding the day 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; (2) the record date for determining members entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining members 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 members of record entitled to notice of or to vote at a meeting of members 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.

SECTION 2. INDEMNIFICATION AND INSURANCE — (A) Each person who was or is made a party or is threatened to be made a party to or is 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 officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, 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 NYBCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, to the fullest extent permitted by law, 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 attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (C) of this Section 2 of Article V, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the NYBCL requires, the payment of such expenses incurred by a director or officer 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 person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of the Board, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers. For purposes of this Bylaw, the term "Corporation" shall include any predecessor of the Corporation and any constituent corporation (including any constituent of a constituent) absorbed by the Corporation in a consolidation or merger.

(B) To obtain indemnification under this Section 2 of Article V, a claimant shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this paragraph (B), a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (1) if requested by the claimant, by Independent Counsel (as hereinafter defined), or (2) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority of the Disinterested

Directors (as hereinafter defined), even though less than a quorum, or (ii) by a committee of Disinterested Directors designated by majority vote of the Disinterested Directors, even if less than a quorum, or (iii) if there are no Disinterested Directors, or if a majority of the Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iv) if a majority of the Disinterested Directors so directs, by the members of the Corporation. In the event that the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

(C) If a claim under paragraph (A) of this Section 2 of Article V is not paid in full by the Corporation within thirty (30) days after a written claim pursuant to paragraph (B) of this Section 2 of Article V has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct that makes it permissible under the NYBCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or members) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the NYBCL, nor an actual determination by the Corporation (including its Board of Directors, Independent Counsel or members) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(D) If a determination shall have been made pursuant to paragraph (B) of this Section 2 of Article V that the claimant is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to paragraph (C) of this Section 2 of Article V.

(E) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to paragraph (C) of this Section 2 of Article V that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of this Bylaw.

(F) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of members or Disinterested Directors or otherwise. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any director, officer, employee or agent of the

Corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

(G) 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 NYBCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such director or officer, and each such agent or employee to which rights to indemnification have been granted as provided in paragraph (H) of this Section 2 of Article V, shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such director, officer, employee or agent.

(H) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in defending any proceeding in advance of its final disposition, to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 2 of Article V with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

(I) If any provision or provisions of this Section 2 of Article V shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Section 2 of Article V (including, without limitation, each portion of any paragraph of this Section 2 of Article V containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Section 2 of Article V (including, without limitation, each such portion of any paragraph of this Section 2 of Article V containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

(J) For purposes of this Section 2 of Article V: (1) “Disinterested Director” means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant; and (2) “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant’s rights under this Section 2 of Article V.

(K) Any notice, request or other communication required or permitted to be given to the Corporation under this Section 2 of Article V shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

SECTION 3. SEAL -- The corporate seal of the Corporation shall be in such form as shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.

SECTION 4. FISCAL YEAR -- The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 5. CHECKS -- All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 6. NOTICE AND WAIVER OF NOTICE -- Whenever any notice is required to be given under these Bylaws, personal notice is not required unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Members not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by law. Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or of these Bylaws, a waiver thereof, in writing and signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice.

SECTION 7. FORM OF RECORDS – Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs, electronic files or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

ARTICLE VI

AMENDMENTS

These Bylaws may be altered, amended or repealed, and new bylaws adopted, at any annual meeting of the members (or at any special meeting thereof if notice of such proposed alteration, amendment, repeal or adoption to be considered is contained in the notice of such special meeting) by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present alter, amend or repeal these Bylaws, or enact such other Bylaws as in their judgment may be advisable for the regulation and conduct of the affairs of the Corporation.

EXHIBIT 5I

DELEGATION AGREEMENT

This DELEGATION AGREEMENT, (the "Agreement"), is by and among New York Stock Exchange LLC, a New York limited liability company, NYSE Regulation, Inc., a New York Type A not-for-profit corporation ("NYSE Regulation"), and NYSE Market, Inc., a Delaware corporation ("NYSE Market").

WHEREAS, New York Stock Exchange LLC is a registered national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

WHEREAS, NYSE Regulation and NYSE Market are wholly owned subsidiaries of New York Stock Exchange LLC; and

WHEREAS, New York Stock Exchange LLC desires to delegate to NYSE Regulation and NYSE Market, and NYSE Regulation and NYSE Market desire to assume, certain responsibilities and obligations of New York Stock Exchange LLC, on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties hereto agree as follows:

I. New York Stock Exchange LLC

New York Stock Exchange LLC shall have ultimate responsibility for the operations, rules and regulations developed by NYSE Regulation and NYSE Market, as well as their enforcement. Actions taken by NYSE Regulation or NYSE Market pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of New York Stock Exchange LLC in accordance with procedures established by that board of directors provided that action taken upon review of disciplinary decisions by the board of NYSE Regulation shall be final action of New York Stock Exchange LLC.

In addition, New York Stock Exchange LLC will expressly retain the following authority and functions (together, the "Retained Functions"):

1. To exercise overall responsibility for ensuring that statutory and self-regulatory obligations and functions of New York Stock Exchange LLC are fulfilled and to perform any duties and functions not delegated.

2. To delegate authority to NYSE Regulation and, to the extent applicable, NYSE Market to take actions on behalf of New York Stock Exchange LLC.

3. To elect the members of the boards of directors of NYSE Market and NYSE Regulation.

4. To coordinate actions of NYSE Regulation and NYSE Market as necessary.

5. To resolve as appropriate any disputes between NYSE Regulation and NYSE Market.

6. To direct NYSE Regulation and NYSE Market to take action necessary to effectuate the purposes and functions of New York Stock Exchange LLC, consistent with the independence of the regulatory functions delegated to NYSE Regulation, exchange rules, policies and procedures and the federal securities laws.

II. NYSE Regulation

A. Delegation of Functions and Responsibilities

Subject to the retention of the Retained Functions, New York Stock Exchange LLC shall delegate to NYSE Regulation, and NYSE Regulation shall assume, the following responsibilities and functions of New York Stock Exchange LLC, as a registered national securities exchange (each, a “Delegated Regulatory Responsibility” and together the “Delegated Regulatory Responsibilities”):

1. To establish and administer rules and regulations, including developing and adopting necessary or appropriate amendments thereto, interpretations, exemptions, policies and procedures relating to the business of New York Stock Exchange LLC members, member organizations and their employees, allied members, and approved persons (“member organizations and persons associated therewith”) including, but not limited to, regulatory fees, qualifications, reporting and membership requirements, trading, financial, operational, sales practice and disciplinary rules, and rules governing hearings, arbitrations and dispute resolution.

2. To take necessary or appropriate action to assure compliance with the rules, interpretations, policies and procedures of New York Stock Exchange LLC, the federal securities laws, or other laws, rules and regulations that New York Stock Exchange LLC has the authority to

administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.

3. To administer programs and systems for the surveillance and enforcement of rules governing trading on the NYSE Market and any facilities thereof and in NYSE-listed securities by New York Stock Exchange LLC member organizations and persons associated therewith.

4. To review complaints, examine and investigate New York Stock Exchange LLC member organizations and persons associated therewith to determine if they have violated the rules and policies of New York Stock Exchange LLC, the federal securities laws, and other laws, rules and policies that New York Stock Exchange LLC has authority to administer, interpret or enforce.

5. To administer New York Stock Exchange LLC enforcement and disciplinary programs, including investigation, adjudication of cases and the imposition of fines and other sanctions. A decision upon appeal to the board of NYSE Regulation of disciplinary matters shall be the final action of New York Stock Exchange LLC.

6. To administer New York Stock Exchange LLC's Office of the Hearing Board.

7. To conduct arbitrations, mediations and other dispute resolution programs.

8. To conduct qualification examinations and continuing education programs.

9. To determine whether natural person designees for Trading Licenses and applications for member organizations have met the requirements established by New York Stock Exchange LLC.

10. To place restrictions on the business activities of New York Stock Exchange LLC member organizations and persons associated therewith consistent with the public interest, the protection of investors, the rules and policies of New York Stock Exchange LLC, the federal securities laws, and other laws, rules and policies that New York Stock Exchange LLC has the authority to administer, interpret or enforce.

11. To determine whether persons seeking to register as associated persons of New York Stock Exchange LLC member organizations, including members, have met such qualifications for registration as may be established by New York Stock Exchange LLC, including whether statutorily disqualified persons will be permitted to associate with

particular New York Stock Exchange LLC member organizations and members, and the conditions of such association.

12. To determine whether applicants for listing on New York Stock Exchange LLC have met the initial listing requirements established by New York Stock Exchange LLC and to determine whether listed issues and issuers meet the continuing listing requirements and to administer rules governing listing standards established by New York Stock Exchange LLC.

13. To coordinate with NYSE Market with respect to the operations of Market Watch.

14. To determine, assess, collect and retain for regulatory purposes such examination, access, registration, qualification, continuing education, arbitration, mediation, dispute resolution and other regulatory fees as may be imposed from time to time and to retain disciplinary fines and penalties as may be imposed in disciplinary actions, for regulatory purposes.

15. To establish the annual budget for NYSE Regulation.

16. To determine allocation of NYSE Regulation resources.

17. To establish and assess fees and other charges on New York Stock Exchange LLC member organizations and persons associated therewith, and others using the services or facilities of NYSE Regulation.

18. To manage external relations on enforcement and regulatory policy issues with Congress, the SEC, state regulators, other self-regulatory organizations, business groups, and the public.

A. Covenants Relating to NYSE Regulation

For so long as NYSE Regulation has any Delegated Regulatory Responsibility pursuant to this Agreement, NYSE Regulation agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC or any Delegated Regulatory Responsibility (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of New York Stock Exchange LLC or NYSE Market that shall come into the possession of NYSE Regulation shall: (a) not be made available to any person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the NYSE Regulation who have a reasonable need to know the contents thereof; (b) be retained in

confidence by NYSE Regulation and the officers, directors, employees and agents of NYSE Regulation; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the Securities and Exchange Commission (the "SEC") or New York Stock Exchange LLC to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NYSE Regulation to disclose such confidential information to the SEC or New York Stock Exchange LLC.

2. NYSE Regulation's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) by New York Stock Exchange LLC.

3. NYSE Regulation's books and records shall be maintained within the United States.

4. The books, records, premises, officers, directors and employees of NYSE Regulation shall be deemed to be the books, records, premises, officers, directors and employees of New York Stock Exchange LLC for purposes of and subject to oversight pursuant to the Exchange Act.

5. NYSE Regulation shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and New York Stock Exchange LLC pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, New York Stock Exchange LLC pursuant to their regulatory authority.

6. NYSE Regulation, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall 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 and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of New York Stock Exchange LLC or any Delegated Regulatory Responsibility (and shall be deemed to agree that NYSE Regulation may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and NYSE Regulation and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his 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 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.

For so long as NYSE Regulation has any Delegated Regulatory Responsibility pursuant to this Agreement, New York Stock Exchange LLC agrees that New York Stock Exchange LLC shall not transfer or assign its membership in NYSE Regulation to another person.

III. NYSE Market

A. Functions and Responsibilities

Subject to the retention of the Retained Functions, New York Stock Exchange LLC shall delegate to NYSE Market, and NYSE Market shall assume, the following responsibilities and functions of New York Stock Exchange LLC, as a registered national securities exchange (each, a "Delegated Market Responsibility" and together the "Delegated Market Responsibilities"):

1. To operate NYSE Market, including automated systems supporting it.

2. To provide and maintain a communications network infrastructure linking market participants for the efficient process and handling of quotations, orders, transaction reports and comparisons of transactions.

3. To act as a Securities Information Processor for quotations and transaction information related to securities traded on NYSE Market and other trading facilities operated by NYSE Market.

4. To administer the participation of the New York Stock Exchange LLC in National Market System Plans.

5. To collect, process, consolidate and provide to NYSE Regulation accurate information requisite to operation of the surveillance audit trail.

6. To develop and adopt rules governing listing standards applicable to securities listed on New York Stock Exchange LLC and the issuers of those securities in consultation with NYSE Regulation.

7. To establish and assess listing fees, access fees, transaction fees, market data fees and other fees for the products and services offered by NYSE Market.

8. To develop, adopt and administer rules governing the issuance of Trading Licenses.

9. To operate Market Watch in coordination with NYSE Regulation and to refer to NYSE Regulation any complaints of a regulatory nature involving potential rule violations by Trading License holders, member organizations or employees.

10. To establish the annual budget for NYSE Market.

11. To determine allocation of NYSE Market resources.

12. To manage external relations on matters related to trading on and the operation and functions of NYSE Market with Congress, the SEC, state regulators, other self-regulatory organizations, business groups, and the public.

B. Covenants Relating to NYSE Market

For so long as NYSE Market has any Delegated Market Responsibility pursuant to this Agreement, NYSE Market agrees that:

1. To the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of New York Stock Exchange LLC or any Delegated Market Responsibility (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of New York Stock Exchange LLC or NYSE Regulation that shall come into the possession of NYSE Market shall: (a) not be made available to any person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the NYSE Market who have a reasonable need to know the contents thereof; (b) be retained in confidence by NYSE Market and the officers, directors, employees and agents of NYSE Market; and (c) not be used for any commercial purposes; provided, that nothing in this sentence shall be interpreted so as to limit or impede the rights of the SEC or New York Stock Exchange LLC to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of NYSE Market to disclose such confidential information to the SEC or New York Stock Exchange LLC.

2. NYSE Market's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) by New York Stock Exchange LLC.

3. NYSE Market's books and records shall be maintained within the United States.

4. The books, records, premises, officers, directors and employees of NYSE Market shall be deemed to be the books, records, premises, officers, directors and employees of New York Stock Exchange LLC for purposes of and subject to oversight pursuant to the Exchange Act.

5. NYSE Market shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the SEC and New York Stock Exchange LLC pursuant to and to the extent of its regulatory authority, and shall take reasonable steps necessary to cause its agents to cooperate, with the SEC and, where applicable, New York Stock Exchange LLC pursuant to their regulatory authority.

6. NYSE Market, its directors, officers and employees shall give due regard to the preservation of the independence of the self-regulatory function of New York Stock Exchange LLC delegated to NYSE Regulation and to 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 New York Stock Exchange LLC and NYSE Regulation relating to their regulatory functions (including disciplinary matters) or that would interfere with the ability of New York Stock Exchange LLC to carry out its responsibilities under the Exchange Act or NYSE Regulation with respect to regulatory responsibilities delegated by New York Stock Exchange LLC..

7. NYSE Market, its directors and officers, and those of its employees whose principal place of business and residence is outside of the United States shall 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 and regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the activities of New York Stock Exchange LLC or any Delegated Market Responsibility (and shall be deemed to agree that NYSE Market may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), and NYSE Market and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his 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 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.

For so long as NYSE Market has any Delegated Market Responsibility pursuant to this Agreement, New York Stock Exchange LLC agrees that New York Stock Exchange LLC may not transfer or assign any of its shares of common stock of NYSE Market.

IV. Amendments

This Agreement may not be modified except pursuant to a written agreement among New York Stock Exchange LLC, NYSE Regulation and NYSE Market; provided that, prior to the effectiveness of any such amendment, such amendment shall be filed with, and approved by, the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder.

EXHIBIT 5J

INDEPENDENCE POLICY OF THE [EXCHANGE] NYSE GROUP BOARD OF DIRECTORS

Purpose

The purpose of this Policy is to set forth the independence requirements that shall apply to the members of the Board of Directors (the "Board") of [the Exchange in accordance with Article IV, Section 2 of the New York Stock Exchange Constitution] NYSE Group.

Independence Requirements

1. Each Director [elected by the members] other than the Chief Executive Officer, and the Chairman of the Board if not also the Chief Executive Officer, shall be independent within the meaning of this Policy. A list of the Directors shall be maintained on [the Exchange] NYSE Group's web site.

2. A Director shall be independent only if the Board determines that the Director does not have any material relationships with [the Exchange] NYSE Group or its subsidiaries. When assessing a Director's relationships and interests, the Board shall consider the issue not merely from the standpoint of the Director, but also from the standpoint of persons or organizations with which the Director is affiliated[1] or associated.

3. In making independence determinations, the Board shall consider the special responsibilities of a Director in light of the [status of the Exchange as a New York not-for-profit corporation, and as a] fact that NYSE Group has subsidiaries that are self-regulatory [organization] organizations and national securities [exchange] exchanges subject to the supervision of the Securities and Exchange Commission.

4. The Board shall make an independence determination with respect to each Director [elected by the members] required to be independent hereunder upon the Director's nomination or appointment to the Board and thereafter at such times as the Board considers advisable in light of the Director's circumstances and any changes to this Policy, but in any

1 An "affiliate" of, or a person "affiliated" with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

event not less frequently than annually. [Upon adoption of this Policy, the Board shall make an affirmative determination with respect to the independence of each Director then serving on the Board.]

5. It shall be the responsibility of each Director to inform the Chairman of the Board and the Chairman of the Nominating & Governance Committee[2] promptly and otherwise as requested of the existence of such relationships and interests which might reasonably be considered to bear on the Director's independence.

6. Any Director [elected by the members who is no longer independent due to the existence of a relationship described in Article IV, Section 2(a)-(d) of the Constitution or] required to be independent hereunder whom the Board otherwise determines not to be independent [from the Exchange] under this Policy shall[, pursuant to Article IV, Section 9,] be deemed to have tendered his or her resignation for consideration by the Board, and such resignation shall not be effective unless and until accepted by the Board.

Independence Qualifications

1. In making an independence determination with respect to any Director or Director candidate, the Board shall consider the standards below with respect to relationships or interests of the Director or Director candidate with or in (a) [the Exchange] NYSE Group or its subsidiaries, (b) members[, allied members, and lessor members] and allied members (as defined in paragraphs (a) and (c), respectively, of Rule 2 of New York Stock Exchange LLC), and OTP Holders and "allied persons" (as defined respectively in Rule 1.1(q) and Rule 1.1(b) of the Pacific Exchange and Rule 1.1(c) of PCX Equities, Inc.), (c) member organizations of [the Exchange (] New York Stock Exchange LLC and OTP Firms of the Pacific Exchange and ETP Holders of PCX Equities, Inc. (collectively, "Member Organizations") or non-member broker-dealers that engage in business involving substantial direct contact with securities customers ("Non-Member Broker-Dealers"), and (d) companies other than Member Organizations whose securities are listed on [the] New York Stock Exchange LLC or on the Pacific Exchange ("Listed Companies"). The standards below relating to category (a) are the same as those that [the] New York Stock Exchange LLC applies to its own [l]Listed [c]Companies. The standards below relating to categories (b), (c) and (d) stem from the differing regulatory responsibilities and roles that [the] New York Stock Exchange LLC and the Pacific Exchange [exercises] exercise in overseeing the organizations and companies included in those categories.

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2 As applied to the board of NYSE Regulation, Inc., this reference is to the Nominating and Governance Committee of NYSE Regulation, Inc.

2. The term "approved person" used herein has the meaning set forth in the [NYSE Constitution.] Rules of New York Stock Exchange LLC, the Pacific Exchange, Inc. and PCX Equities, Inc., as applicable.

3. The term "immediate family member" with respect to any Director has the meaning set forth in the NYSE Listed Company Manual.

4. The following independence criteria shall apply:

Independence from* [*the Exchange*] *NYSE Group and its Subsidiaries

A Director is not independent if the Director or an immediate family member of the Director has or had a relationship or interest with or in [the Exchange] NYSE Group or its subsidiaries which, if such relationship or interest existed with respect to a Listed Company on NYSE Stock Exchange LLC, would preclude a Director of the Listed Company from being considered an independent Director of the Listed Company pursuant to Section 303A.02(a) or (b) of the Listed Company Manual.[2]3

Members, Allied Members, Allied Persons and* [*Lessor* Members] *Approved Persons

A Director is not independent if he or she is, or within the last three years was, or has an immediate family member who is, or within the last three years was, a member, allied member, [lessor member] allied person or approved person.

Member Organizations

A Director is not independent if the Director (a) is, or within the last three years was, employed by a Member Organization, (b) has an immediate family member who is, or within the last three years was, an executive officer of a Member Organization, (c) has within the last three years received from any Member Organization more than $100,000 per year in direct compensation, or received from Member Organizations in the aggregate an amount of direct compensation which in any one year is more than 10 percent of the Director'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), or (d) is affiliated, directly or indirectly, with a Member Organization.

Non-Member Broker-Dealers

A Director is not independent if the Director is employed by or affiliated, directly or indirectly, with a Non-Member Broker-Dealer.

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[2]3 The relevant sections of the Listed Company Manual and commentary are available on the website at www.nyse.com/pdfs/finalcorpgovrules.pdf.

Listed Companies

A Director is not independent if the Director is an executive officer of an issuer of securities listed on [the] New York Stock Exchange LLC or the Pacific Exchange.

[5.] The [Exchange] NYSE Group shall make disclosure of any charitable relationship that a [l]Listed [c]Company would be required to disclose pursuant to Listed Company Manual Section 303A.02(b)(v) and commentary. Gifts by [the Exchange or by] [t]The NYSE [Foundation, Inc.] Group shall not favor charities on which any Director serves as an executive officer or member of the board of trustees or directors or comparable governing body.

EXHIBIT 5K

Exchange Constitution

[Deleted in its entirety]