

AMENDED AND RESTATED BYLAWS
OF
U.S. FUTURES EXCHANGE, L.L.C.

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions.** In these Exchange Bylaws, the following terms shall, unless the context otherwise indicates, have the meaning set forth below:

“**Act**” means the Commodity Exchange Act, as in effect from time to time.

“**Advisory Committee**” shall have the meaning set forth in Section 7.1(b).

“**Affiliate**” means, with respect to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person.

“**Affiliated Person**” means:

(a) With respect to any Entity, any Person who Controls, is Controlled by or is under common Control with such Entity, and, without limiting the generality of the foregoing, any partner, trustee, officer, director or employee (whether or not having Control) of such Entity; and

(b) With respect to any individual, any Person of which such individual is a partner, member, trustee, officer, director or employee or has Control, and any Person who Controls, is Controlled by, or is under common Control with such Person.

“**Arbitrage Firms**” means any Person, other than a natural person or a Shareholder or an Affiliate of a Shareholder, that trades for its own account in order to profit from pricing disparities between economically related financial products.

“**Board**” means the Board of Directors of the Exchange, who shall constitute the “managers” of the Exchange within the meaning of the Delaware Act.

“**Boston HoldCo**” means Exchange Place Holdings, L.P. (formerly known as BTEX Holdings, L.P.), a Delaware limited partnership.

“**Bylaws**” means, with respect to any Entity, the bylaws or similar code of such Entity, and the interpretations, resolutions, policies, procedures, orders and directives of the Entity thereof or thereunder, as in effect from time to time; and if no other Entity is specified, shall mean these Exchange Bylaws.

“**Business Day**” means any day on which the Exchange is open for trading.

“**Casting Vote**” shall have the meaning set forth in Section 5.1(d).

“**Class A Directors**” means the Directors (other than the Class C Directors) elected by the Class A Shareholders pursuant to Section 5.2 and their respective successors.

“**Class B Directors**” means the Directors elected by the Class B Shareholders pursuant to Section 5.2 and their respective successors.

“**Class C Directors**” means any Director from one of the groups set forth in Section 5.2(d), who has been elected or appointed in accordance with Section 5.2 or 5.4.

“**Class A Shareholder**” means each holder of Class A Shares.

“**Class B Shareholder**” means each holder of Class B Shares.

“**Class A Shares**” means Shares in the Exchange that establish such rights and obligations of the holder thereof as set forth in Section 3.2(b) and other provisions of these Exchange Bylaws.

“**Class B Shares**” means Shares in the Exchange that establish such rights and obligations of the holder thereof as set forth in Section 3.2(c) and other provisions of these Exchange Bylaws.

“**Clearing Member**” means a Person who has the privilege to clear Contracts with the Clearing Organization pursuant to this Agreement, the Rules of the Exchange and the Bylaws and Rules of the Clearing Organization.

“**Clearing Organization**” means any Person designated by the Exchange to clear transactions effected on or subject to the Rules of the Exchange.

“**Code**” means the U.S. Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

“**Commission**” means the U.S. Commodity Futures Trading Commission or any successor agency.

“**Commission Regulation**” means any rule, regulation, or order of the Commission, as in effect from time to time (including any successor provision), and any interpretation thereof by the Commission or its staff.

“**Commodity**” means any “commodity” within the meaning of the Act.

“**Contract**” means a Futures Contract or an Option.

“**Control**” (including the terms “**Controlled by**” and “**under Common Control with**”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

“**Delaware Act**” means the Limited Liability Company Act of the State of Delaware.

“**Director**” means a person appointed or elected to the Board in or pursuant to Section 5.2 or Section 5.4.

“**Disciplinary Committee**” means a disciplinary committee of the Board and any subcommittee or panel thereof.

“**Entity**” means any Person other than an individual.

“**Eurex**” means Eurex Frankfurt AG.

“**Eurex HoldCo**” means U.S. Exchange Holdings, Inc., a Delaware corporation.

“**European Products**” means futures contracts and options on futures contracts (i) that are denominated in a currency other than the U.S. Dollar, and (ii) are substantially similar or identical to futures contracts or options on futures contracts traded by Eurex Frankfurt AG and its Affiliates.

“**Exchange**” means U.S. Futures Exchange, L.L.C. Unless otherwise provided in these Exchange Bylaws or the Rules, any reference to an action required or permitted to be taken by “the Exchange” pursuant to these Exchange Bylaws or the Rules shall include an action to be taken by any duly authorized officer, agent or employee of the Exchange.

“**Exchange Bylaws**” means these Amended and Restated Bylaws of the Exchange, as amended from time to time.

“**Exchange Trading System**” means the Exchange’s electronic system for trading Contracts.

“**Final Class B Shareholders**” shall have the meaning set forth in Section 5.2(e).

“**Fiscal Year**” shall have the meaning set forth in Section 12.1.

“**Futures Contract**” means a contract for the purchase or sale of a Commodity for future delivery traded on or subject to the Rules of the Exchange.

“Governmental Agency” means the Commission, the U.S. Securities and Exchange Commission and any other agency, federal or state, domestic or foreign, regulating trading in commodities, securities, futures contracts, options, currencies or other financial instruments.

“Independent Clearers” means any Person, other than a natural person or a Shareholder or an Affiliate of a Shareholder, (i) that is a clearing member of a clearinghouse that clears transactions conducted on the Exchange and (ii) whose primary business consists of clearing futures transactions for professional traders and trading firms.

“Initial Class A Shareholder” means Eurex HoldCo.

“Initial Class B Shareholder” means Boston Holdco.

“Institutional Investor” means any Person, other than a natural person or a Shareholder or an Affiliate of a Shareholder, who (1) is an institutional investor, such as a pension plan, money manager, mutual fund, hedge fund, insurance company or commodity pool, owning investment assets with an aggregate value in excess of US\$100 million and (2) trades financial futures for its own account or the account of another Person.

“Member” means any Person admitted to membership in the Exchange as provided in the Rules of the Exchange. A Member shall not be a “member” of the Exchange within the meaning of the Delaware Act, unless such Member is also a Shareholder.

“Merger Agreement” means the Merger Agreement dated as of January 15, 2004 between Boston HoldCo, BrokerTec Futures Exchange, L.L.C., the Exchange, Futures Sub LLC, Eurex and Eurex HoldCo.

“Officials” shall have the meaning set forth in Section 10.4(a).

“Option” means an option to purchase or sell a Futures Contract, which option is traded on or subject to the Rules of the Exchange.

“Part 4 Rule Changes” shall mean changes of the trading Rules of the Exchange with respect to which the Class A Directors shall not have a Casting Vote pursuant to Section 5.1(d).

“Percentage Interest” means, with respect to each Shareholder subject to reallocations as may be agreed to among the Shareholders,

- (i) 80% with respect to the Class A Shareholders, pro rata in accordance with their holdings of Class A Shares; and
- (ii) 20% with respect to the Class B Shareholders, pro rata in accordance with their holdings of Class B Shares.

“**Person**” means an individual, sole proprietorship, corporation, partnership, limited liability company, association, firm, trust, or other entity, as the context may require.

“**Rules**” means, with respect to any Entity, the rules of such Entity and the interpretations, resolutions, orders, directives and procedures of the Entity thereunder, as in effect from time to time, and, if no other Entity is specified, means the Rules of the Exchange.

“**Services Agreement**” shall have the meaning set forth in the Merger Agreement.

“**Shareholder**” means holder of record of Shares of any class. A Shareholder shall be a “member” of the Exchange within the meaning of the Delaware Act, but shall not be a Member of the Exchange within the meaning of these Exchange Bylaws and Rules of the Exchange, unless it has been admitted as such.

“**Shares**” means shares in the Exchange, which are issued as Class A Shares and Class B Shares. Each class of Shares shall constitute a separate class of limited liability company interests.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The word “will” shall be construed to have the same meaning and effect as the word “shall.”

ARTICLE II

ORGANIZATION

Section 2.1 **Name**. The name of the Exchange shall be “U.S. Futures Exchange, L.L.C.” or such other name as the Board may determine. The Exchange may cause appropriate trade name and similar statements to be filed and published under the name as set forth in this Section, or such other names as the Exchange may have or use in any jurisdiction from time to time.

Section 2.2 **Principal Place of Business and Registered Office and Agent**.(a) The principal place of business of the Exchange shall be such place as the Board may designate from time to time.

(b) The address of the registered office of the Exchange in the State of Delaware shall be The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19808 in the County of New Castle. The name and address of the Registered Agent for service of process on the Exchange in the State of Delaware shall be c/o The Corporation Trust Company, or such other registered office or agent or address as the Board may designate from time to time.

Section 2.3 **Qualification in Other Jurisdictions**. The Board shall cause the Exchange to be qualified to do business or registered under assumed or fictitious names, statutes or similar laws in any jurisdiction in which such qualification or registration is required or

desirable, and shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary to effect such qualification or registration.

Section 2.4 **Term**. The term of the Exchange shall commence upon the adoption of these Exchange Bylaws, and shall continue in full force and effect until the Exchange is dissolved.

Section 2.5 **Purposes**. The Exchange's business and general purpose is to engage in any lawful act or activity for which a limited liability company may be organized under the Delaware Act.

Section 2.6 **No State Law Partnership**. The Shareholders intend that the Exchange shall not be a partnership (including, without limitation, a general partnership or a limited partnership) or joint venture, and that no Shareholder or Director shall be a partner or joint venturer of any other Shareholder or Director with respect to the business of the Exchange, for any purposes other than U.S. federal, state and local tax purposes, and these Exchange Bylaws shall not be construed to suggest otherwise. The Shareholders intend that the Exchange shall be a partnership or disregarded entity for U.S. federal, state and local tax purposes and agree not to take any position or make any election, in a tax return or otherwise, inconsistent with the treatment of the Exchange as a partnership or a disregarded entity for such purposes.

Section 2.7 **Conduct of Business**. (a) The Exchange shall not conduct any portion of its business through any subsidiary, unless all rights of the Class B Shareholders hereunder, including, without limitation, all governance rights, are in effect with respect to such subsidiary such that the rights of the Class B Shareholders apply with respect to such subsidiary, *mutatis mutandis*, substantially as set forth herein.

(b) Without limiting the foregoing, if the Exchange conducts its business through a subsidiary, the Exchange shall ensure that (i) the rules of such subsidiary for the operation of its business appropriately reflect the Rules so that the Class B Shareholders' governance rights with respect to the rules of such subsidiary are the same as the Class B Shareholders' governance rights with respect to the Rules under these Exchange Bylaws and (ii) the Exchange shall take such actions as are necessary to ensure (through assignment of the Services Agreement or otherwise) that such subsidiary receives the benefits of the Services Agreement to which the Exchange is entitled as a party thereto.

ARTICLE III

SHAREHOLDERS

Section 3.1 **Names and Addresses**. The name and address and number of Shares of each class of Shares held by each Shareholder shall be set forth in the books and records of the Exchange.

Section 3.2 **Number and Classes of Shares.** (a) There shall be 1,000 Class A Shares and 1,000 Class B Shares.

(b) Pursuant to Section 5.2, the holders of the outstanding Class A Shares shall be entitled to elect Class A Directors and to remove any Class A Director at any time, with or without cause. The holders of the outstanding Class A Shares shall not be entitled to elect or remove any Class B Directors. Except as specifically set forth herein or as required by the Delaware Act, the holders of the outstanding Class A Shares shall not be entitled to vote upon any matter.

(c) The holders of the outstanding Class B Shares shall be entitled to elect Class B Directors and to remove any Class B Director at any time, with or without cause. Except as specifically set forth herein or as required by the Delaware Act, the holders of the outstanding Class B Shares shall not be entitled to vote upon any matter.

(d) The holders of the Class B Shares shall be entitled to nominate three Class C Directors as set forth in Section 5.2(a). The holders of Class A Shares shall be entitled to elect the Class C Directors from the nominees selected by the Class B Shareholders. The Class C Directors may be removed at anytime, with or without cause, by a vote of the holders of a majority of the Class A Shares and holders of a majority of the Class B Shares.

(e) Shares of any class may be issued and held in fractional amounts.

(f) Notwithstanding any other provision in these Exchange Bylaws to the contrary, the voting power of the Shareholders shall be proportionate to their Percentage Interests.

Section 3.3 **Admission of Shareholders.** (a) Eurex HoldCo, a Delaware corporation, and its permitted transferees, shall be the Class A Shareholders. Additional Class A Shareholders shall be Persons admitted as such by resolution of the Board.

(b) Boston HoldCo, a Delaware limited partnership, and its permitted transferees, shall be Class B Shareholders. Additional Class B Shareholders shall be Persons admitted as such by resolution of the Board. For purposes of clarity, for so long as there are 1,000 Class B Shares outstanding, no additional Class B Shares shall be issued without an amendment to Section 3.2 providing for Class B Shares in excess of 1,000.

Section 3.4 **Limitation of Liability.** Except as required by law and as otherwise provided in these Exchange Bylaws, the debts, obligations and liabilities of the Exchange, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Exchange, and no Shareholder, Member or Director shall be obligated personally for any such debt, obligation or liability of the Exchange solely by reason of being a Shareholder, Member or Director of the Exchange.

Section 3.5 **[Intentionally Omitted].**

Section 3.6 **Time and Place of Meetings.** All meetings of Shareholders of the Exchange shall be held at such time and place, either within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 3.7 **Annual Meeting.** There shall be an annual meeting of each class of Shareholders of the Exchange, to be held at such date, time and place, either within or without the State of Delaware, as shall be determined by the Board and stated in the notice of meeting.

Section 3.8 **Notices.** Whenever under the provisions of this Article Shareholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of any meeting shall be given not less than 10 nor more than 30 days before the date of the meeting to each Shareholder entitled to vote at such meeting. Notice may be given by personal delivery, by mail, by telefacsimile or by electronic mail to such address or telefacsimile number as may appear on the records of the Exchange. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the Shareholder at such Shareholder's address as it appears on the records of the Exchange. If given by delivery, telefacsimile or electronic mail, notice is given when received by the applicable Shareholder. An affidavit of the General Counsel or an Assistant General Counsel of the Exchange that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated.

Section 3.9 **Quorum.** (a) Except as otherwise provided by these Exchange Bylaws or by law, Class A Shareholders holding the majority of Class A Shares and Class B Shareholders holding the majority of Class B Shares shall constitute a quorum at any meeting at which Directors are to be elected, except that where a separate vote by a class is required, the holder of the Shares entitled to vote thereat of that class shall be required to constitute a quorum. For purposes of clarity, a separate vote of the Class A Shareholders is required for the election of the Class A Directors and the Class C Directors and a separate vote of Class B Shareholders is required for the election of Class B Directors.

(b) If a quorum shall not be present in person or represented by proxy at any meeting of the Shareholders at which Directors are to be elected, the Shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until such holder of the Shares entitled to vote shall be present or represented by proxy. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Shareholder of record entitled to vote thereat. At the adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.10 **Voting.** At every meeting of the Shareholders at which Directors are elected, each Shareholder having the right to vote shall be entitled to vote in person or by proxy. The election of Directors pursuant to Section 5.2 shall be authorized by a majority of the votes cast by the Shareholders entitled to vote thereon.

Section 3.11 **Votes per Share.** Except as otherwise provided by these Exchange Bylaws or by law and subject to Section 3.2(f), the Class A Shareholders of record and the Class B Shareholders of record shall be entitled to a number of votes equal to the number of Shares standing in his, her or its name on the books of the Exchange as of the relevant record date.

Section 3.12 **Shareholder List.** A complete list of the Shareholders entitled to vote at any meeting of Shareholders arranged in alphabetical order with the address of each and the number of Shares held by each, shall be prepared by the General Counsel. Such list shall be open to the examination of any Shareholder for any purpose germane to the meeting during ordinary business hours for a period of at least 10 days prior to 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 Shareholder who is present.

Section 3.13 **Proxies.** Every Shareholder entitled to vote at a meeting of Shareholders at which Directors are elected or to express consent or dissent without a meeting may authorize any person or persons to act for such Shareholder by proxy. Every proxy must be signed by the Shareholder or the Shareholder's attorney-in-fact. No proxy shall be valid after the expiration of three years from the date thereof unless the proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the Shareholder executing the proxy, except as otherwise provided by law and except that a proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power.

Section 3.14 **Written Consent in Lieu of a Meeting.** The election of Directors by any class of Shareholders may occur without a meeting, without prior notice and without a vote, if a consent in writing setting forth such election in lieu of an annual meeting shall be given by each holder of the Shares of such class.

Section 3.15 **Record Date.** In order that the Exchange may determine the Shareholders entitled to notice of or to vote at any meeting of Shareholders or any adjournment thereof, or entitled to express consent to the election of Directors in writing without a meeting, or entitled to receive payment of any distribution, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than 30 days before the date of such meeting, nor more than 30 days prior to any other action.

Section 3.16 **Shareholders of Record.** The Exchange shall be entitled to treat the holder of record of any Share or Shares as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

Section 3.17 **[Intentionally Omitted]**

Section 3.18 **[Intentionally Omitted]**

Section 3.19 **[Intentionally Omitted]**

Section 3.20 **[Intentionally Omitted]**

Section 3.21 **[Intentionally Omitted]**

Section 3.22 **[Intentionally Omitted]**

Section 3.23 **[Intentionally Omitted]**

Section 3.24 **[Intentionally Omitted]**

Section 3.25 **[Intentionally Omitted]**

Section 3.26 **Other Activities of the Shareholders; Fiduciary Duties.** It is understood and accepted that the Shareholders and their Affiliates have or may hereafter have interests in other business ventures that are or may be competitive with the activities of the Exchange and that, to the fullest extent permitted by law, nothing in these Exchange Bylaws shall limit the current or future business activities of any of the Shareholders or any of their respective Affiliates, whether or not such activities are competitive with those of the Exchange or otherwise. Except as expressly provided herein, nothing in these Exchange Bylaws shall limit in any manner the ability of any Shareholder to exercise its rights under these Exchange Bylaws or as a shareholder of the Exchange and these Exchange Bylaws shall not create, or be deemed or interpreted to create, any fiduciary or similar duty of any Shareholder owing to any other Shareholder or the Exchange; provided, however, that nothing in these Exchange Bylaws, express or implied, shall relieve any officer or director of the Exchange, as such, of any fiduciary duties they may have to the Exchange or its Shareholders.

ARTICLE IV

[INTENTIONALLY OMITTED]

ARTICLE V

DIRECTORS

Section 5.1 **Duties, Powers and Eligibility.** (a) Except as otherwise specifically provided in these Exchange Bylaws or applicable law, all powers of the Exchange shall be held at any time, and all decisions respecting any matter set forth herein or otherwise affecting or arising out of the conduct of the business of the Exchange shall be made, by the

Board, without the vote or approval of any Shareholders or Members. The Board shall have all the powers and duties of managers of a limited liability company as set forth in the Delaware Act, including without limitation the right to authorize any Director, officer or other Person to act on behalf of the Exchange. Any action taken by the Board or any Director, officer or other Person duly authorized in accordance with these Exchange Bylaws shall constitute the act of, and shall serve to bind, the Exchange. Subject to the provisions of these Exchange Bylaws, the Board may create, and delegate any part or all of its powers and authority to, such committees as the Board may deem appropriate. Notwithstanding the foregoing, the Directors, managers and officers of the Exchange shall have authority and power set forth in Rule 804 (Emergency Powers) of the Rules.

(b) Except as otherwise provided in these Exchange Bylaws or authorized by the Board, no Director, manager or officer of the Exchange, and no other Person, shall have the authority or power, directly or indirectly, to act as agent of the Exchange for any purpose, engage in any transaction, make any commitment, enter into any contract or incur any obligation (whether as principal, surety or agent) in the name of the Exchange or in any other way bind the Exchange or hold itself out as acting for or on behalf of the Exchange. Any attempted action in contravention of this Section shall be null, void *ab initio* and not binding upon the Exchange, unless ratified or authorized in writing by the Board.

(c) Without limiting the generality of the foregoing paragraph (a), the Board shall have the power to:

(i) Take such steps as may be necessary in order to make effective the final orders or decisions entered pursuant to the provisions of Section 6(c) of the Act, and comply in all respects with all requirements applicable to the Exchange under the Act;

(ii) Designate any Person as a Clearing Organization to clear transactions effected on or subject to the Rules of the Exchange;

(iii) Impose dues or other charges upon Members of the Exchange;

(iv) Impose such fees or charges for Contracts effected on or subject to the Rules of the Exchange, and waive or reduce such fees or charges under such circumstances, as the Board in its discretion may deem appropriate;

(v) Adopt, amend and repeal such Rules as the Board may in its discretion deem necessary or appropriate in the best interests of the Exchange; provided, however, that no such Rule may be inconsistent with any provision of these Exchange Bylaws;

(vi) Render interpretations of these Exchange Bylaws and the Rules, which shall be binding on all Persons who are subject thereto or who directly or indirectly trade on or subject to the Rules; and

(vii) Waive or extend the time for compliance with any of the provisions of the Rules in any case where the Board in its discretion deems necessary or appropriate.

(d) Except as otherwise specifically provided herein, Board action may be taken or authorized by vote of a majority of the Directors, provided, however, notwithstanding anything herein to the contrary, the Class A Directors shall have a one vote majority on all matters on which the votes of the Board are evenly divided (the “Casting Vote”), provided that the Class A Directors shall not have a Casting Vote with respect to changes to the following trading Rules of the Exchange during the period from the date these Exchange Bylaws are adopted to the date that the Shareholders agree that the voting and governance rights of the Class B Shareholders shall terminate:

- (i) Opening of Trading;
- (ii) Handling of Orders;
- (iii) Execution of Orders;
- (iv) Correction of Errors;
- (v) Block Trades;
- (vi) Exchange of Futures for Physicals;
- (vii) Exchange of Futures for Swaps;
- (viii) Transfer of Positions;
- (ix) Establishment of Settlement Prices;
- (x) Speculative Position Limits;
- (xi) Exemptions from Speculative Position Limits; and
- (xii) Position Accountability;

provided, however, that the Class A Directors shall have a Casting Vote with respect to the following matters:

- (xiii) trading sessions;
- (xiv) changes of the trading Rules of the Exchange necessary to conform to the functionality of the electronic trading technology of Eurex Frankfurt AG;
- (xv) changes of the trading Rules of the Exchange necessary to accommodate trading in new contracts approved by the Board; and
- (xvi) all Rules of the Exchange with respect to European Products traded on the Exchange.

(e) Each Director shall be at least 18 years of age and shall be eligible to serve pursuant to Section 5.6(a).

(f) Each Director shall have and exercise, in her or his duties to the Exchange and its Shareholders, the fiduciary duties owed by directors of a business corporation formed under the General Corporation Law of the State of Delaware; provided that the Class A Directors shall not in any way be prohibited or restricted from engaging or investing in, independently or with others, any business opportunity of any type or description, including, without limitation, those business opportunities that might be the same or similar to the business of the Exchange.

Section 5.2 **Number; Election; Tenure.** (a) Commencing on the date on which these Exchange Bylaws are adopted, the total number of Directors shall be 12, six of whom shall be elected by the Class A Shareholders, three of whom shall be elected by the Class B Shareholders, and three of whom shall be individuals selected from the groups set forth in paragraph (d) of this Section (the "Class C Directors") and elected pursuant to paragraph (e) of this Section. On the date on which these Exchange Bylaws are adopted, the Class A Shareholders and the Class B Shareholders shall hold a meeting to appoint the Class A Directors, Class B Directors and Class C Directors in accordance with clauses (b), (d) and (e)(i).

(b) Commencing at the first annual meeting of Shareholders following the adoption of these Exchange Bylaws, and except as otherwise provided by these Exchange Bylaws or by law:

(i) The Class A Shareholders shall elect successors to the Class A Directors whose terms are then expiring, the Class B Shareholders shall elect successors to the Class B Directors whose terms are then expiring and successors to the Class C Directors whose terms are then expiring shall be elected pursuant to paragraph (e).

(ii) Directors (including the Class C Directors) shall be elected each year at the annual meeting of Shareholders.

(c) Except as otherwise provided in these Exchange Bylaws or by law, each Director (including Class C Directors) shall hold office until the annual meeting of Shareholders next succeeding his or her election and until his or her successor is elected and has qualified, or until his or her earlier resignation or removal.

(d) Class C Directors shall be directors, officers or employees from one of the following three groups of market participants:

- (i) Arbitrage Firms,
- (ii) Institutional Investors, and
- (iii) Independent Clearers.

(e) (i) Until the date that the Shareholders agree that the voting and governance rights of the Class B Shareholders shall terminate, the Class B Shareholders shall

nominate five candidates each of whom has notified the Class B Shareholders that he or she is willing and able to serve from the applicable group included in paragraph (d) of this Section for each of the three Class C Director positions by written notice to the Class A Shareholders, and the Class A Shareholders shall elect one Class C Director from each group of nominees for each Class C Director position.

(ii) At all times after the period during which clause (i) above applies, (i) the Class A Shareholders and the Exchange shall take all actions necessary, including making any amendments to these Exchange Bylaws necessary to provide that no less than one fourth of the Directors will consist of individuals (x) from the groups specified in Section 5.2(d), with at least one Director from each of the groups, and (y) that are not (1) current or former Class A Directors, (2) a Class A Shareholder, Affiliate of a Class A Shareholder, or officers, directors, principals or employees of a Class A Shareholder or an Affiliate of a Class A Shareholder, (3) Members, (4) officers, directors, principals or employees of a Member or an Affiliate of a Member, (5) salaried employees of the Exchange, or (6) Persons primarily performing services for the Exchange in a capacity other than as a Director and (ii) all special voting and governance rights of the Class B Shareholders and the Class B Directors shall terminate.

(iii) The Class B Shareholders (other than any Person who is also a Class A Shareholder or an Affiliate of a Class A Shareholder) immediately prior to effectiveness of clause (ii) of this Section 5.2(e) (the “Final Class B Shareholders”) shall be intended third-party beneficiaries of such clause (ii), and, after such effectiveness, such clause (ii) shall not be amended without the written consent of Final Class B Shareholders who, immediately prior to such effectiveness, held a majority of the Class B Shares held by the Final Class B Shareholders.

Section 5.3 **Resignation and Removal.** (a) A Director may resign at any time by giving written notice to the Board or to the President of the Exchange. Such resignation shall take effect upon receipt thereof by the Board or by the President, unless otherwise specified therein. The acceptance of a resignation shall not be necessary to make it effective.

(b) Any one or more of the Directors (other than Class C Directors) elected by any class of Shareholders may be removed, either with or without cause, at any time by the affirmative vote of the holders of a majority of the Shares of such class at any meeting called for such purpose.

(c) Any one or more of the Class C Directors may be removed, either with or without cause, at any time by the affirmative vote of the Class A Shareholders holding a majority of the Class A Shares and the Class B Shareholders holding a majority of the Class B Shares.

(d) A Director who becomes ineligible to serve on the Board pursuant to Section 5.6 shall be automatically removed upon the occurrence of such ineligibility without any act of the Shareholders or the Board.

Section 5.4 **Vacancies.** (a) A vacancy occurring among the Class A Directors or Class B Directors for any reason and newly created directorships resulting from an increase in the authorized number of Directors to be elected by the Class A Shareholders or Class B

Shareholders may be filled by majority vote of the Directors (other than Class C Directors) elected by such class of Shareholders then in office, although less than a quorum, or by the sole remaining Director (other than a Class C Director) elected by such class of Shareholders, or by the Shareholder of such class.

(b) A vacancy occurring among the Class C Directors for any reason and newly created directorships resulting from an increase in the authorized number of Class C Directors to be elected shall be filled in the following manner:

(i) in the event of a vacancy,

(A) the Class B Shareholders holding a majority of the Class B Shares shall nominate five candidates, each of whom has notified the Class B Shareholders that he or she is willing and able to serve, from the same group identified in Section 5(d) under which the former Class C Director whose departure created the vacancy qualified; and

(B) the Class A Shareholders shall elect one Class C Director from among the five candidates selected pursuant to clause (A) for the vacant position; and

(ii) in the event of a newly created directorship, in accordance with the amendment to these Exchange Bylaws providing for such directorship.

(c) Any individual appointed by the Board to fill a vacancy as a Director shall hold office for the balance of the term of the Director whose position such successor is filling.

Section 5.5 **Compensation.** Each Director shall receive for services rendered as a Director of the Exchange such compensation as may be fixed by the Board. Nothing herein contained shall be construed to preclude any Director from serving the Exchange in any other capacity and receiving compensation therefor.

Section 5.6 **Eligibility for Service on Boards and Committees.** (a) No individual shall be eligible to serve on the Board, any arbitration panel, oversight panel, or any Disciplinary Committee of the Exchange if such individual:

(i) was found within the prior three years by a final decision of the Commission, any other Governmental Agency, a court of competent jurisdiction or any self-regulatory organization to have committed a disciplinary offense;

(ii) entered into a settlement agreement within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a disciplinary offense;

(iii) currently is suspended from trading on any contract market, is suspended or expelled from membership in any self-regulatory organization, is serving any sentence of probation or owes any portion of a fine imposed pursuant to either:

(A) a finding by a final decision of the Commission, any other Governmental Agency, a court of competent jurisdiction or any self-regulatory organization that such person committed a disciplinary offense; or

(B) a settlement agreement in which any of the findings or, in the absence of such findings, any of the acts charged (and not withdrawn) included a disciplinary offense;

(iv) currently is subject to an agreement with the Commission or any self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) currently is subject to, or has had imposed on such person, within the prior three years, a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in Section 8a(2)(D)(ii) through (iv) of the Act; or

(vi) currently is subject to a denial, suspension or disqualification from serving on a disciplinary committee, arbitration panel or governing board of any “self-regulatory organization” as that term is defined in Section 3(a)(26) of the Securities Exchange Act of 1934.

(vii) in the case of a Class C Director, becomes (1) an Affiliated Person of any Shareholder or any Affiliate of a Shareholder (with the exception of that individual's capacity as a Class C Director), (2) a salaried employee of the Exchange or (3) a Person whose primary employment consists of performing services for the Exchange in a capacity other than as a Director.

(b) Any individual who is a member of the Board, an arbitration panel or a Disciplinary Committee shall immediately notify the President of any final decision which subjects such person to disqualification pursuant to paragraph (a) of this Section.

(c) Terms used in this Section and not defined in these Exchange Bylaws shall have the meanings set forth in Section 1.63(a) of the Commission Regulations.

Section 5.7 **Improper Use or Disclosure of Material, Non-Public**

Information. (a) No member of the Board or any committee established by the Exchange shall use or disclose, for any purpose other than the performance of such person’s official duties as a member of the Board or such committee, any material non-public information obtained by such person as a result of such person’s participation on the Board or on any such committee; provided, however, that if any such person who effects any transactions after having received any such material, non-public information so obtained can show that such transaction was effected in the ordinary course of such person’s business, such person shall not be deemed to have used such information in violation of this Section, unless it can be shown that such person would not have effected such transaction in the absence of such information.

(b) For the purposes of this Section, the terms “material” and “non-public information” shall each have the meaning set forth in Section 1.59(a) of the Commission Regulations.

ARTICLE VI

MEETINGS OF THE BOARD

Section 6.1 **Time and Place.** Meetings of the Board shall be held at such times and places, within or without the State of Delaware, and within or without the United States of America, as shall be determined by the Board or otherwise in accordance with these Exchange Bylaws.

Section 6.2 **Annual Meeting.** An annual meeting of the Board shall be held promptly after each annual meeting of Shareholders on such day and at such time as the Board may fix, for the purpose of organization, the election of officers and any other proper purpose.

Section 6.3 **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall, from time to time, be determined by the Board.

Section 6.4 **Special Meetings.** Special meetings of the Board may be called at any time by the President, the Chief Financial Officer, the General Counsel, or any three members of the Board. At any special meeting of the Board, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any matter is consented to by all of the members of the Board.

Section 6.5 **Quorum and Voting.** (a) A majority of the entire Board shall constitute a quorum at any meeting of the Board.

(b) The act of a majority vote of the Directors present at any duly constituted meeting, if a quorum is present, shall be the act of the Board, except as may otherwise be specifically provided by law or these Exchange Bylaws. If at any meeting of the Board there shall be less than a quorum present, the Director or Directors present thereat may adjourn the

meeting from time to time, without notice other than announcement at the meeting, until a quorum shall have been obtained.

Section 6.6 **Notices.** (a) All meetings of the Board or any committee shall be held on notice to the members thereof. Special meetings of the Board or any committee shall be held upon not less than one day's notice stating the purpose, place, date and hour of the meeting and specifying the person or persons at whose direction the meeting is called, except that notice by mail shall be given not less than five Business Days prior to the date of the meeting.

(b) At any special meeting of the Board or any committee, only the matters stated in the notice of the meeting may be acted upon at such meeting, unless an action on any other matter is consented to by all of the members of the Board or such committee.

(c) A notice pursuant to this Section may be given orally or in writing, by personal delivery, by mail, by telephone, by telefacsimile or by electronic mail to such address, telephone or facsimile number as may be listed on the records of the Exchange.

Section 6.7 **Written Consents in Lieu of a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all Directors of the class or classes of Directors voting on such action consent to such action in writing (including by way of an electronic mail correspondence), and such writing or writings are filed with the minutes of the proceedings of the Board. For the sake of clarity, any action required or permitted to be taken at any meeting of the Board on which the Class B Directors may vote may only be taken without a meeting if all Class B Directors consent to such action in writing.

Section 6.8 **Telephonic Participation in Meetings.** The Board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

Section 6.9 **Rules of Order.** Unless otherwise provided by the Board, all meetings of the Board shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

Section 6.10 **Proxies.** Notwithstanding Section 6.9 or any other provision herein, every Director entitled to vote at a meeting of the Board or any committee of the Board may authorize any individual to act for such Director by proxy. A proxy must be signed by the Director. A proxy may provide that the individual authorized to act for such Director may act at a specific meeting or at any meeting at which such Director is entitled to vote. No proxy shall be valid after the expiration of three years from the date thereof unless the proxy provides for a longer period. A proxy shall (a) be revocable at the pleasure of the Director executing the proxy, except as otherwise provided by law, and (b) shall automatically expire when the individual granting such proxy ceases to be a Director.

ARTICLE VII

COMMITTEES

Section 7.1 **Designation and Powers.** (a) The Board may in its discretion appoint one or more committees of the Board consisting of one or more of the Directors of the Exchange, and may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in a resolution of the Board or in these Exchange Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange; but no such committee shall have power or authority in reference to: (i) approving or adopting, or recommending to the Shareholders, any action or matter expressly required by the Delaware Act to be submitted to Shareholders for approval, (ii) amending these Exchange Bylaws, or (iii) approving or adopting any action or matter set forth in Sections 5.1(d). In the absence or disqualification of any such member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another Director to act at the meeting in place of any such absent or disqualified member. If a committee of the Board has seven or fewer members, at least one member of each such committee of the Board shall consist of one person nominated by the Class B Shareholders. If a committee of the Board has eight or more members, at least one quarter of the members of each such committee of the Board shall consist of persons nominated by the Class B Shareholders.

(b) The Board shall appoint an advisory Committee (the “Advisory Committee”) and such other committees as it deems appropriate.

(c) The members of the Advisory Committee shall be nominated by the Class A Shareholders, the Class B Shareholders and market participants identified in Section 5.2(d). At all times, (i) if the Advisory Committee has seven or fewer members, (x) at least one member of the Advisory Committee shall be nominated by Class B Shareholders, and (y) at least one member of the Advisory Committee shall be nominated by such market participants and (ii) if the Advisory Committee has eight or more members, (x) at least one quarter of the members of the Advisory Committee shall be nominated by Class B Shareholders, and (y) at least one quarter of the Advisory Committee shall be nominated by such market participants. The Board shall consult with the Advisory Committee with respect to the Part 4 Rule Changes. Notwithstanding anything herein to the contrary, the Board shall not be bound by the recommendations of the Advisory Committee.

Section 7.2 **Meetings of Committees.** (a) Meetings of any committee may be held at any time or place as shall be determined by resolution of the committee or upon the call of the President, the chairman of the committee or any three members of the committee. Notice of any meeting of a committee shall be given as provided in Section 6.6.

(b) A majority of the entire committee shall constitute a quorum at any meeting of a committee. The act of a majority of the members of a committee shall be the act of

the committee, except as may be specifically provided by law, these Exchange Bylaws or the Rules.

(c) Any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of the committee consent to such action in writing.

(d) Any member of a committee may participate in a meeting of the committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

(e) Unless otherwise provided by the committee, all meetings of the committee shall be conducted in accordance with the then current edition of *Robert's Rules of Order*.

ARTICLE VIII

NOTICES; REPORTS

Section 8.1 **Delivery of Notices.** Notices to Shareholders, Directors and committee members shall be given as provided in Section 6.6. Notice by mail shall be deemed to be given at the time when deposited in the United States mail, postage prepaid, and addressed to Shareholders, Directors or committee members at their respective addresses appearing on the books of the Exchange, unless any such Shareholder, Director or committee member shall have filed with the General Counsel of the Exchange a written request that notices intended for him or her be mailed or delivered to some other address, in which case the notice shall be mailed to or delivered at the address designated in such request. Notice given orally or by personal delivery, telephone, telefacsimile or electronic mail shall be deemed to be given when received by the intended recipient.

Section 8.2 **Waiver of Notice.** Whenever notice is required to be given by these Exchange Bylaws or applicable law, 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. Attendance of a Person at a meeting of Shareholders, Directors or any committee, as the case may be, shall constitute a waiver of notice of such meeting, except where the Person is attending 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 Shareholders, Directors or any committee need be specified in any waiver of notice.

Section 8.3 **[Intentionally Omitted]**

Section 8.4 **Reports Requested by Shareholders to Comply with Law.** The Exchange shall make all reasonable efforts to provide any Shareholder promptly with any reports reasonably requested by such Shareholder in writing that are necessary to enable such Shareholder or its equityholders to comply with applicable law or the request of a Governmental Agency.

ARTICLE IX

OFFICERS

Section 9.1 **Officers.** The Board shall appoint a Chief Executive Officer, a Chief Financial Officer and a General Counsel, and may appoint such other officers as the Board may from time to time determine. No officer need be a member of the Board. Any number of offices may be held by the same individual. Each officer shall be a full-time employee of the Exchange and/or any Affiliate thereof.

Section 9.2 **Other Officers and Agents.** The Board may also appoint such agents as the Board may at any time or from time to time determine, such agents to serve for such terms and to exercise such powers and perform such duties as shall be specified at any time or from time to time by the Board.

Section 9.3 **Tenure; Resignation; Removal; Vacancies.** Each officer of the Exchange shall hold office until his or her successor is elected and qualified, or until his or her earlier resignation or removal; provided that if the term of office of any officer shall have been fixed by the Board, he or she shall cease to hold such office no later than the date of expiration of such term regardless of whether any other person shall have been elected or appointed to succeed him or her. Any officer may be removed at any time, with or without cause, by the Board; provided that any such removal shall be without prejudice to the rights, if any, of the officer so employed under any employment contract or other agreement with the Exchange. An officer may resign at any time upon written notice to the Board. If the office of any officer becomes vacant by reason of death, illness, resignation, retirement, disqualification, removal from office or otherwise, the Board may appoint a successor or successors to hold office for such term as may be specified by the Board.

Section 9.4 **Compensation.** Except as otherwise provided by these Exchange Bylaws, the compensation of all officers of the Exchange appointed by the Board shall be fixed by the Board.

Section 9.5 **Authority and Duties.** There is delegated to the officers of the Exchange such rights and powers to manage and control the business and affairs of the Exchange as are prescribed in these Exchange Bylaws or the Rules or by the Board. In addition to the rights and powers hereinafter specifically prescribed for the respective officers, the Board may from time to time delegate to any of the officers such additional rights and powers as the Board

may see fit, and the Board may from time to time delegate any or all of the rights and powers hereinafter specifically prescribed for any officer upon any other officer or officers. Notwithstanding the foregoing or anything else to the contrary herein, the Board shall not delegate any rights or powers to officers of the Exchange with respect to any of the following matters unless the Board shall have voted previously, at a meeting of which the Class B Directors were given prior notice, to so delegate such rights and powers with respect to specific actions that are in furtherance of any such matters:

(a) any action or vote which otherwise under the terms of these Exchange Bylaws requires approval or vote of the Shareholders or the Board, including without limitation any action or vote that requires the vote or affirmative consent of the Class B Shareholders or Class B Directors;

(b) (i) the merger, consolidation, combination or amalgamation of the Exchange with any other Person or (ii) the conversion of the Exchange to any other entity in accordance with Section 18-216 of the Delaware Act;

(c) the disposal or dilution of the Exchange's interests, directly or indirectly, in any of its subsidiaries;

(d) the establishment of subsidiaries of the Exchange;

(e) to the fullest extent permitted by law, the presentation of any petition for the dissolution or winding-up of the Exchange or any of its subsidiaries;

(f) the taking of any material action with respect to the Merger Agreement or any Revenue Commission Agreement;

(g) Except to effect the provisions of these Exchange Bylaws, (A) any redemption, purchase or other acquisition by the Exchange of any Shares or other capital stock of the Exchange, or (B) the declaration or payment of any dividends or distributions by the Exchange;

(h) except to effect the provisions of these Exchange Bylaws, the issuance or sale of any capital stock, notes, bonds or other securities, or any option warrant or other right to acquire the same, of, or any other interest in, the Exchange;

(i) the acquisition by the Exchange of (A) any share capital, (B) other securities, (C) the substantial portion of the assets or business, or (D) any division or line of business, in each case, of any Person;

(j) the commencement by the Exchange of any litigation (including arbitration) against a Shareholder in respect of these Exchange Bylaws;

(k) the appointment, removal or compensation of any officers of the Exchange;

(l) the entry into, or amendment, modification or consent to the termination of, any of the following (unless such amendment, modification or termination would not be adverse to the Exchange):

(i) any contract or agreement that limits or purports to limit the ability of the Exchange to compete in any line of business or with any Person or in any geographic area during any period of time; or

(ii) any contract or agreement between or among the Exchange and any Affiliate of the Exchange;

(m) any material change in the Exchange's accounting methods or practices for tax purposes or the making, change or revocation of any material tax election or the settlement of compromise of any material tax liability, assessment of adjustment;

(n) the right to approve the annual business plans and budget of the Exchange.

Section 9.6 **Chief Executive Officer.** The Chief Executive Officer shall have general charge of the business, affairs and property of the Exchange, and shall have control over the officers, agents and employees of the Exchange, subject to the direction of the Board. Without limiting the generality of the foregoing, the Chief Executive Officer shall have the authority to: (a) hire and dismiss employees of the Exchange and to establish their qualifications, duties and compensation; (b) execute and deliver contracts, instruments and other documents on behalf of the Exchange; and (c) perform such other duties as may be specifically assigned to him or her from time to time by the Board. The Chief Executive Officer shall see that all resolutions and orders of the Board are carried into effect, and in connection with the foregoing, shall be authorized to delegate to the other officers such of his or her powers and such of his or her duties as he or she may deem to be advisable.

Section 9.7 **Chief Financial Officer.** The Chief Financial Officer shall have the custody of the Exchange's funds and securities, shall keep full and accurate accounts of receipts and disbursements in the books and records of the Exchange and shall deposit all monies and other valuable effects in the name and to the credit of the Exchange in such depositories as may be selected by the Chief Financial Officer or the Board. The Chief Financial Officer shall also perform such other duties as may be specifically assigned to him or her from time to time by the Board or by the President.

Section 9.8 **Restrictions on Trading and Disclosure by Employees.** (a) No employee of or consultant to the Exchange shall:

(i) trade for such person's own account, or for or on behalf of any other account, in any commodity interest, on the basis of any material, non-public information; or

(ii) disclose for any purpose inconsistent with the performance of such person's official duties as an employee of or consultant to the Exchange any material non-public information obtained through special access related to the performance of

such duties; provided, however, that this Section shall not prohibit disclosures made by such an employee or consultant in the course of such employee's or consultant's duties, or disclosures made to any other self-regulatory organization, a court of competent jurisdiction or any representative of any agency or department of the federal or state government acting in his or her official capacity.

(b) If the President (or, in the case of the President, the Chief Financial Officer), in his or her sole discretion, finds that any employee or consultant has committed a violation of this Section, such employee or consultant shall be subject to such sanctions, including but not limited to demotion, suspension or discharge, as the President (or, in the case of the President, the Board), in his, her or its sole discretion, deems appropriate.

(c) Terms used in this Section and not defined in these Exchange Bylaws shall have the meanings set forth in Section 1.59(a) of the Commission Regulations.

ARTICLE X

EXCULPATION AND INDEMNIFICATION

Section 10.1 **Exculpation; Litigation.** (a) EXCEPT IN INSTANCES WHERE THERE HAS BEEN A FINDING OF WILLFUL OR WANTON MISCONDUCT, IN WHICH CASE THE PARTY FOUND TO HAVE ENGAGED IN SUCH CONDUCT CANNOT AVAIL ITSELF OF THE PROTECTIONS IN THIS SECTION, NEITHER THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE), ITS SHAREHOLDERS, ITS MEMBERS OR ITS CLEARING MEMBERS, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, SHALL BE LIABLE TO ANY PERSON, INCLUDING BUT NOT LIMITED TO A CUSTOMER, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF USE, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES), ARISING FROM (i) ANY FAILURE OR MALFUNCTION, INCLUDING BUT NOT LIMITED TO ANY INABILITY TO ENTER OR CANCEL ORDERS, OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM, OR (ii) ANY FAULT IN DELIVERY, DELAY, OMISSION, SUSPENSION, INACCURACY OR TERMINATION, OR ANY OTHER CAUSE, IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE, USE OF OR INABILITY TO USE ALL OR ANY PART OF THE EXCHANGE TRADING SYSTEM OR ANY EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THE EXCHANGE TRADING SYSTEM. THE FOREGOING SHALL APPLY REGARDLESS OF WHETHER A CLAIM ARISES IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE FOREGOING SHALL NOT LIMIT THE LIABILITY OF ANY SHAREHOLDER, MEMBER, CLEARING MEMBER, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS FOR ANY ACT, INCIDENT, OR OCCURRENCE WITHIN THEIR CONTROL.

(b) THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS PROVIDED BY THE EXCHANGE (INCLUDING ANY AFFILIATES OF THE EXCHANGE) TO ANY PERSON, RELATING TO THE EXCHANGE TRADING SYSTEM, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.

(c) ANY ACTIONS, SUITS OR PROCEEDINGS AGAINST THE EXCHANGE, ANY AFFILIATES OF THE EXCHANGE OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES MUST BE BROUGHT WITHIN TWO YEARS FROM THE TIME THAT A CAUSE OF ACTION HAS ACCRUED. ANY PARTY BRINGING ANY SUCH ACTION, SUIT OR PROCEEDING CONSENTS TO JURISDICTION IN THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF NEW YORK COUNTY, NEW YORK, AND WAIVES ANY OBJECTION TO VENUE THEREIN. THIS PROVISION SHALL IN NO WAY CREATE A CAUSE OF ACTION AND SHALL NOT AUTHORIZE AN ACTION

THAT WOULD OTHERWISE BE PROHIBITED BY THESE EXCHANGE BYLAWS OR THE RULES OF THE EXCHANGE.

(d) ANY SHAREHOLDER, MEMBER OR AFFILIATE OF A MEMBER OR EMPLOYEE OF ANY OF THEM, WHICH OR WHO COMMENCES ANY ACTION OR PROCEEDING, WHETHER IN COURT, ARBITRATION OR ANY OTHER FORUM, AGAINST THE EXCHANGE, ANY MEMBERS OF THE BOARD OR ANY COMMITTEE, OR ANY OFFICERS, EMPLOYEES OR AGENTS OF THE EXCHANGE, ARISING OUT OF OR IN ANY WAY CONNECTED TO ANY TRANSACTIONS EFFECTED ON THE EXCHANGE OR THE CONDUCT OF THE EXCHANGE'S AFFAIRS, WHICH OR WHO FAILS TO PREVAIL IN SUCH ACTION OR PROCEEDING SHALL REIMBURSE ON DEMAND THE EXCHANGE AND ANY SUCH MEMBER OF THE BOARD OR COMMITTEE, OFFICER, AGENT OR EMPLOYEE FOR ANY AND ALL REASONABLE EXPENSES AND DISBURSEMENTS (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COSTS) INCURRED BY IT OR ANY OF THEM IN THE DEFENSE OF SUCH ACTION OR PROCEEDING.

(e) IN ANY ACTION, SUIT OR PROCEEDING UNDER OR IN CONNECTION WITH THESE EXCHANGE BYLAWS, EACH PARTY WAIVES ANY RIGHT IT MIGHT HAVE TO A TRIAL BY JURY.

Section 10.2 Indemnification. (a) **Actions, Suits or Proceedings Other Than by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board indemnify any current or former employee or agent of the Exchange, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Exchange) by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permissible under the Delaware Act, as then in effect, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; except that any funds paid or required to be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person seeking indemnification did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Exchange, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

(b) **Actions or Suits by or in the Right of the Exchange.** The Exchange shall indemnify any current or former Director or officer of the Exchange, and may at the discretion of the Board, indemnify any current or former employee or agent of the Exchange who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit, by or in the right of the Exchange to procure a judgment in its favor by reason of the fact that such person is or was a Director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans) to the fullest extent permitted under the Delaware Act, as then in effect, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Exchange; except that (i) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Exchange unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper; and (ii) any funds paid or required to

be paid to any person as a result of the provisions of this Section shall be returned to the Exchange or reduced, as the case may be, to the extent that such person receives funds pursuant to an indemnification from any such other limited liability company, corporation, partnership, joint venture, trust or enterprise.

(c) **Indemnification for Expenses of Successful Party.** To the extent that a Director, officer, employee or agent of the Exchange has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraph (a) or (b) of this Section, or in defense of any claim, issue or matter therein, such person shall be indemnified by the Exchange against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) **Determination of Right to Indemnification.** Any indemnification under paragraph (a) or (b) of this Section (unless ordered by a court) shall be made by the Exchange only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section. Such determination shall be made by the Board by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or if there are no such Directors, by independent legal counsel in a written opinion, or by the Shareholders.

(e) **Advancement of Expenses.** Expenses (including attorneys' fees) incurred by an officer or Director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Exchange as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

(f) **Other Rights.** The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under these Exchange Bylaws, any agreement, vote of Shareholders or disinterested Directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. Nothing contained in these Exchange Bylaws shall prevent the Board from approving the indemnification of or advancement of expenses for any Person against and for any liability, cost or expense (including attorneys' fees) incurred by such Person in connection with defending any claim or any civil, criminal, administrative or investigative action, suit or proceeding arising out of any alleged act or omission by or on behalf of the Exchange, to the extent the Board considers it in the best interests of the Exchange to do so.

(g) **Insurance.** By action of the Board, notwithstanding an interest of the directors in the action, the Exchange may purchase and maintain insurance, in such amounts as the Board deems appropriate, on behalf of any person who is or was a Director, officer,

employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent (including trustee) of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (including employee benefit plans), against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Exchange shall have the power to indemnify such person against such liability under the provisions of this Section.

Section 10.3 **Enforcement.** (a) The right to be indemnified or to the advancement or reimbursement of expenses pursuant to this Article:

(i) is a contract right pursuant to which the individual entitled thereto may bring suit as if the provisions hereof or of any such resolution were set forth in a separate written contract between the Exchange and such individual, and

(ii) shall continue to exist after any rescission or restrictive modification hereof or of any such resolution or agreement with respect to events occurring prior thereto.

(b) If a request to be indemnified or for the advancement or reimbursement of expenses pursuant to this Article is not paid in full by the Exchange within 30 days after a written claim has been received by an officer of the Exchange therefor and the claimant thereafter brings suit against the Exchange to recover the unpaid amount of the claim which is successful in whole or in part, the Exchange shall be obligated to pay the claimant the expenses, including attorneys' fees and expenses, of prosecuting such claim.

Section 10.4 **Indemnification by Members and Shareholders.** (a) If any action or proceeding is brought or threatened against the Exchange or any individual entitled to be indemnified by the Exchange pursuant to this Article (such individuals being collectively referred to as "**Officials**"), claiming, directly or indirectly, in whole or in part, that the Exchange or such Official has failed, neglected or omitted to prevent, detect or require any conduct by a Member, a Shareholder or an Affiliated Person of a Member or Shareholder, which conduct is alleged to constitute a violation of any federal or state law, any Commission Regulation, any rule of any self-regulatory organization, these Exchange Bylaws, or any Rule, such Member or Shareholder shall indemnify and hold harmless the Exchange and each such Official from and against all loss, liability, damage and expense (including but not limited to attorneys' fees, legal expenses, judgments and amounts paid in settlement) incurred by the Exchange or such Official in or in connection with any such action or proceeding.

(b) If any action or proceeding is brought against the Exchange or an Official which could result in indemnification by a Member or Shareholder pursuant to paragraph (a) of this Section:

(i) The Exchange or such Official, as the case may be, shall promptly give such Member or Shareholder notice thereof in writing.

(ii) Neither the Exchange nor any such Official may settle a claim to the extent it seeks the recovery of money damages without the prior consent of such Member or Shareholder; provided that if such Member or Shareholder does not consent to any proposed settlement within 10 days following the date it receives written notice of the terms of such settlement, the Exchange or such Official may require such Member or Shareholder to post such security for the payment of its indemnification obligations to the Exchange or such Official as the Exchange or such Official deems necessary, but not in excess of the money damages claimed plus interest and anticipated expenses.

Section 10.5 **Exculpation and Reimbursement of Exchange.** Any Member or Shareholder which institutes an action or proceeding against the Exchange, or any of the officers, Directors, committee members, agents or employees of the Exchange, and which fails to prevail in such action or proceeding, shall reimburse the Exchange and such officer, Director, committee member, agent or employee, for any and all costs or expenses (including but not limited to attorneys' fees, legal expenses and amounts paid by way of indemnifying any officers, Directors, employees or other persons by the Exchange) incurred in connection with the defense of such action or proceeding.

ARTICLE XI

[INTENTIONALLY OMITTED]

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1 **Fiscal Year.** The Fiscal Year of the Exchange for accounting and tax purposes shall be from January 1 through December 31 of each calendar year except as otherwise fixed by the Board or required by the Code.

Section 12.2 **Amendments of These Exchange Bylaws.** These Exchange Bylaws may be amended, in whole or in part, by majority vote of the Board as a whole, with the concurrence of a majority of the Class A Directors and a majority of the Class B Directors; provided that upon the termination of the voting and governance rights of the Class B Shareholders pursuant to an agreement among the Shareholders, these Exchange Bylaws may not be amended in a manner adverse to the Class B Shareholders without the written consent of Class B Shareholders (other than the Class A Shareholders and their Affiliates) holding a majority of the Class B Shares held by such Class B Shareholders. Notwithstanding the foregoing, these Exchange Bylaws may be amended, in whole or in part, by majority vote of the Class A Directors in order to divide the voting rights of the Class A Directors with any additional Class A Shareholder who shall be a holder of at least 10% of the Class A Shares.

Section 12.3 **Captions.** Section titles or captions contained in these Exchange Bylaws are inserted only as a matter of convenience and for reference and in no way define,

limit, extend or describe the scope of these Exchange Bylaws or the intent of any provision hereof.