

November 2, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-698
Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail

Dear Mr. Fields:

On April 27, 2016, the Securities and Exchange Commission (“SEC” or “Commission”) published the notice of the National Market System Plan Governing the Consolidated Audit Trail (“Plan”) for public comment. The SEC received 23 comment letters in response to the Plan. On September 6, 2016,¹ September 23, 2016² and October 7, 2016,³ the parties to the Plan – Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors’ Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, the “Participants”) – submitted responses to the issues raised in these letters. Pursuant to discussions with the SEC staff and the Participants’ ongoing analysis of the Plan, the Participants submit this letter to propose that the SEC amend certain aspects of the Plan, as set forth in detail in the Appendix.

Respectfully submitted,

[Signature Pages Follow]

cc: The Hon. Mary Jo White, Chair
The Hon. Kara M. Stein, Commissioner
The Hon. Michael S. Piwowar, Commissioner
Mr. Stephen I. Luparello, Director, Division of Trading and Markets
Mr. Gary L. Goldsholle, Deputy Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets

¹ Letter from Participants to Brent J. Fields, SEC (Sept. 6, 2016).

² Letter from Participants to Brent J. Fields, SEC (Sept. 23, 2016) (the “September 23rd Letter”).

³ Letter from Participants to Brent J. Fields, SEC (Oct. 7, 2016).

APPENDIX

Table of Contents

I.	TAX STATUS	1
II.	NEW PARTICIPANTS	1
III.	CHANGES TO PARTICIPANTS' NAMES.....	1

I. TAX STATUS

The Participants have received advice from counsel to the limited liability company formed under the Plan (“CATLLC”) that CATLLC could qualify for tax exempt status as a “business league” under Section 501(c)(6) of the Internal Revenue Code. The Participants have decided to have CATLLC apply for such tax exempt status as it will allow CATLLC to establish reserves from the fees paid to CATLLC without incurring income taxes on those amounts. Counsel has advised that to qualify for tax exempt status the limited liability company agreement of CATLLC will need to be revised such that CATLLC is treated as a corporation for U.S. tax purposes, that distributions are made only consistent with the purposes of Section 501(c)(6) of the Internal Revenue Code and that certain other provisions be eliminated that solely related to distributions to the Participants or to the taxation of CATLLC as a partnership for U.S. tax purposes. Accordingly, the Participants propose that the SEC amend the Plan as set forth in the Exhibit.⁴

With this proposed change, the Participants expect to operate the CAT on a break-even basis – that is, the fees imposed and collected would be intended to cover CAT costs and an appropriate reserve for CAT costs. Any surpluses would be treated as an operational reserve to offset fees in future payment and would not be distributed to the Participants as profits.⁵

II. NEW PARTICIPANTS

The SEC has approved two new national securities exchange this year – ISE Mercury, LLC and Investors’ Exchange, LLC.⁶ Accordingly, these two new exchanges also will be Participants in the Plan. Therefore, the Participants propose that the SEC amend the Plan to include these two exchanges as Participants, including adding their names to the signature block for the Plan, Exhibit A and any other portion of the Plan that lists the names of the Participants. In addition, for the purposes of Exhibit A, the address for ISE Mercury, LLC is 60 Broad Street, New York, NY 10004, and the address for Investors’ Exchange, LLC is 4 World Trade Center 44th Floor, New York, NY 10007.

III. CHANGES TO PARTICIPANTS’ NAMES

Six of the Participants have changed their names recently. Specifically:

- BATS Exchange, Inc. has changed its name to Bats BZX Exchange, Inc.;
- BATS Y-Exchange, Inc. has changed its name to Bats BYX Exchange, Inc.;
- EDGA Exchange, Inc. has changed its name to Bats EDGA Exchange, Inc.;

⁴ To reflect the revisions proposed in the Exhibit, the Participants also propose that the SEC amend Appendix C of the Plan by deleting the paragraph discussing Section 8.5 of the Plan on page Appendix C-85 of the Plan.

⁵ The Participants note that this proposed change would update and replace the response previously provided in Section II.B (“Limitations on Distributions on Capital”) of the September 23rd Letter.

⁶ Securities Exchange Act Rel. No. 76998 (Jan. 29, 2016) (ISE Mercury, LLC); and Securities Exchange Act Rel. No. 78101 (June 17, 2016) (Investors’ Exchange, LLC).

- EDGX Exchange, Inc. has changed its name to Bats EDGX Exchange, Inc.;
- NASDAQ OMX BX, Inc. has changed its name to NASDAQ BX, Inc.; and
- NASDAQ OMX PHLX LLC has changed its name to NASDAQ PHLX LLC.

Accordingly, the Participants propose that the SEC amend the Plan to reflect the updated names of the Participants, including as set forth in the signature block for the Plan and Exhibit A.⁷

⁷ Note that the proposed name changes also were made to the Selection Plan. *See* Securities Exchange Act Rel. No. 78477 (Aug. 4, 2016).

EXHIBIT

[Additions underlined; deletions bracketed]

* * * * *

ARTICLE I

DEFINITIONS

* * * * *

[“Capital Account” has the meaning set forth in Section 7.1(a).]

* * * * *

ARTICLE II

EFFECTIVENESS OF AGREEMENT; ORGANIZATION

* * * * *

Section 2.6. Purposes and Powers. The Company may engage in: (a) the creation, implementation, and maintenance of the CAT pursuant to SEC Rule 608 and SEC Rule 613; and (b) any other business or activity that now or hereafter may be necessary, incidental, proper, advisable or convenient to accomplish the foregoing purpose and that is not prohibited by the Delaware Act, the Exchange Act or other applicable law and is consistent with tax exempt status under Section 501(c)(6) of the Code. The Company shall have and may exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Delaware Act.

* * * * *

ARTICLE III

PARTICIPATION

Section 3.1. No change.

Section 3.2. Company Interests Generally.

(a) No change.

(b) Without limiting Section 3.2(a), each Participant shall be entitled to[: (i)] one vote on any matter presented to the Participants for their consideration at any meeting of the Participants (or by written action of the Participants in lieu of a meeting)[; and (ii) participate equally in any distribution made by the Company (other than a distribution made pursuant to Section 10.2, which shall be distributed as provided therein)].

- (c) No change.
- (d) No change.

Section 3.3. New Participants.

(a) Any Person approved by the Commission as a national securities exchange or national securities association under the Exchange Act after the Effective Date may become a Participant by submitting to the Company a completed application in the form provided by the Company. As a condition to admission as a Participant, said Person shall: (i) execute a counterpart of this Agreement, at which time Exhibit A shall be amended to reflect the status of said Person as a Participant (including said Person's address for purposes of notices delivered pursuant to this Agreement); and (ii) pay a fee to the Company in an amount determined by a Majority Vote of the Operating Committee as fairly and reasonably compensating the Company and the Participants for costs incurred in creating, implementing, and maintaining the CAT, including such costs incurred in evaluating and selecting the Initial Plan Processor and any subsequent Plan Processor and for costs the Company incurs in providing for the prospective Participant's participation in the Company, including after consideration of the factors identified in Section 3.3(b) (the "Participation Fee"). The amendment to this Agreement reflecting the admission of a new Participant shall be effective only when: (x) it is approved by the Commission in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608; and (y) the prospective Participant pays the Participation Fee. Neither a prospective Participant nor any Affiliate of such prospective Participant that is already a Participant shall vote on the determination of the amount of the Participation Fee to be paid by such prospective Participant. Participation Fees paid to the Company shall be added to the general revenues of the Company [and shall be allocated as provided in Article VIII].

- (b) No change.
- (c) No change.

Section 3.4. Transfer of Company Interest.

- (a) No change.
- (b) No change.
- (c) No change.
- (d) No change.

(e) Notwithstanding anything to the contrary contained in this Agreement, without prior approval thereof by the Operating Committee, no Transfer of any Company Interest shall be made if the Company is advised by its counsel that such Transfer: (i) may not be effected without registration under the Securities Act of 1933; (ii) would result in the violation of any applicable state securities laws; (iii) would require the Company to register as an investment company under the Investment Company Act of 1940 or modify the exemption from such registration upon which the Company has chosen to rely; or (iv) would require the Company to

register as an investment adviser under state or federal securities laws[; or (v) if the Company is taxed as a partnership for U.S. federal income tax purposes, (A) would result in a termination of the Company under § 708 of the Code, or (B) would result in the treatment of the Company as an association taxable as a corporation or as a “publicly-traded limited partnership” for tax purposes].

Section 3.5. No change.

Section 3.6. No change.

Section 3.7. Termination of Participation.

(a) No change.

(b) Each Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the “Payment Date”). [If a Participant fails to make such a required payment by the Payment Date, any balance in the Participant’s Capital Account shall be applied to the outstanding balance. If a balance still remains with respect to any such required payment, the] The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. If any such remaining outstanding balance is not paid within thirty (30) days after the Payment Date, the Participants shall file an amendment to this Agreement requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the SEC. Such amendment shall be effective only when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.

(c) In the event a Participant becomes subject to one or more of the events of bankruptcy enumerated in § 18-304 of the Delaware Act, that event by itself shall not cause the termination of the participation in the Company of the Participant so long as the Participant continues to be registered as a national securities exchange or national securities association. [From and after the effective date of termination of a Participant’s participation in the Company, profits and losses of the Company shall cease to be allocated to the Capital Account of the Participant in accordance with Article VIII below.] A terminated Participant shall [be entitled to receive the balance in its Capital Account as of the effective date of termination adjusted for profits and losses through that date, payable within ninety (90) days of the effective date of termination, and shall] remain liable for its proportionate share of costs and expenses allocated to it [pursuant to Article VIII] for the period during which it was a Participant, for obligations under Section 3.8(c), for its indemnification obligations pursuant to Section 4.1, and for obligations under Section 9.6, but it shall have no other obligations under this Agreement following the effective date of termination. This Agreement shall be amended to reflect any termination of participation in the Company of a Participant pursuant to this Section 3.7; provided that such amendment shall be effective only when it is approved by the Commission in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.

Section 3.8. Obligations and Liabilities of Participants.

(a) Except as may be determined by the unanimous vote of all the Participants or as may be required by applicable law, no Participant shall be obligated to contribute capital or make loans to the Company[, and the opening balance in the Capital Account of each Participant that is established in accordance with Section 7.1(a) shall be zero]. No Participant shall have the right to withdraw or to be repaid any capital contributed by it or to receive any other payment in respect of any Company Interest, including as a result of the withdrawal or resignation of such Participant from the Company, except as specifically provided in this Agreement.

(b) No change.

(c) In accordance with the Delaware Act, a member of a limited liability company may, under certain circumstances, be required to return amounts previously distributed to such member. It is the intent of the Participants that no distribution to any Participant [pursuant to Article VIII] shall be deemed a return of money or other property paid or distributed in violation of the Delaware Act. The payment of any such money or distribution of any such property to a Participant shall be deemed to be a compromise within the meaning of the Delaware Act, and the Participant receiving any such money or property shall not be required to return any such money or property to any Person. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Participant is obligated to make any such payment, such obligation shall be the obligation of such Participant and not of the Operating Committee, the Company or any other Participant.

[(d) A negative balance in a Participant's Capital Account, in and of itself, shall not require such Participant to make any payment to the Company or any other Participant.]

Section 3.9. No change.

Section 3.10. No change.

Section 3.11. No change.

* * * * *

ARTICLE VII

INTENTIONALLY OMITTED

[CAPITAL ACCOUNTS]

[Section 7.1. Capital Accounts]

[(a) A separate capital account ("Capital Account") shall be established and maintained by the Company for each Participant in accordance with § 704(b) of the Code and Treasury Regulation § 1.704-1 (b)(2)(iv). There shall be credited to each Participant's Capital Account the capital contributions (at fair market value in the case of contributed property) made by such Participant (which shall be deemed to be zero for the initial Participants), and allocations

of Company profits and gain (or items thereof) to such Participant pursuant to Article VIII (excluding those allocated in Section 8.3). Each Participant's Capital Account shall be decreased by the amount of distributions (at fair market value in the case of property distributed in kind) to such Participant, and allocations of Company losses to such Participant pursuant to Article VIII (including expenditures which can neither be capitalized nor deducted for tax purposes, organization and syndication expenses not subject to amortization and loss on sale or disposition of Company property, whether or not disallowed under §§ 267 or 707 of the Code). Capital Accounts shall not be adjusted to reflect a Participant's share of liabilities under § 752 of the Code.]

[(b) If, following the date hereof, money or property is contributed to the Company in other than a de minimis amount in exchange for an equity interest in the Company (which shall not include the Participation Fee paid by a new Participant pursuant to Section 3.3, which is not treated as a contribution to capital), or money or property is distributed to a Participant in exchange for an interest in the Company but the Company is not liquidated, the Capital Accounts of the Participants shall be adjusted based on the fair market value of Company property at the time of such contribution or distribution and the unrealized income, gain, loss, or deduction inherent in the Company property which has not previously been reflected in the Capital Accounts shall be allocated among the Participants as if there had been a taxable disposition of the Company property at its fair market value on such date. The fair market value of contributed, distributed, or revalued property shall be approved by the Operating Committee or, if there is no such agreement, by an appraisal by an independent third party valuation firm selected by the Operating Committee by Majority Vote.]

[(c) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation § 1.704-1(b) promulgated under § 704(b) of the Code, and shall be interpreted and applied in a manner consistent with such Regulations.]

[Section 7.2 Interest. Except as otherwise provided herein, no Participant shall be entitled to receive interest on amounts in its Capital Account.]

ARTICLE VIII

TAX STATUS

[ALLOCATIONS OF INCOME AND LOSS; DISTRIBUTION]

[Section 8.1. Periodic Allocations. As of the end of each calendar quarter or such other period selected by the Operating Committee, the net profit or net loss of the Company (and each item of income, gain, loss, deduction, and credit for federal income tax purposes) for the period shall be determined, and in the event the book value of any Company property is adjusted pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(f), net profit, net losses and items thereof shall be determined as provided in Treasury Regulation § 1.704-1(b)(2)(iv)(g). Except as provided in Section 8.2, such net profit or net loss (and each item of income, gain, loss, deduction, and credit) shall be allocated equally among the Participants.]

[Section 8.2. Special Allocations. Notwithstanding Section 8.1, this Agreement shall be deemed to contain, and the allocations of net profit and net loss as set forth in Section 8.1 shall be subject to, each of the following: (a) a “qualified income offset” as described in Treasury Regulation § 1.704-1(b)(2)(ii)(d); (b) a “partnership minimum gain chargeback” as described in Treasury Regulation § 1.704-2(f); and (c) a “partner non-recourse debt minimum gain chargeback” as described in Treasury Regulation § 1.704-2(i)(4). The Participants intend that the allocations required to be made pursuant to Section 8.1 and this Section 8.2 shall satisfy the requirements of § 704(b) of the Code and the Treasury Regulations promulgated thereunder. Without the consent of the Participants, the Operating Committee shall have the power to interpret and amend the provisions of Section 8.1 and this Section 8.2 in the manner necessary to ensure such compliance; provided that such amendments shall not change the amounts distributable to a Participant pursuant to this Agreement.]

[Section 8.3. Allocations Pursuant to § 704(c) of the Code. In accordance with § 704(c) of the Code and the Treasury Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Participants so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial fair market value. In the event the book value of any Company property is adjusted pursuant to Treasury Regulation § 1.704-1 (b)(2)(iv)(f), allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted book value in the same manner as under § 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made by the Operating Committee using the “traditional method” set forth in Treasury Regulation § 1.704-3(b). Allocations pursuant to this Section 8.3 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Participant’s share of distributions pursuant to any provision of this Agreement.]

[Section 8.4. Changes in Participants’ Interests. If during any fiscal period of the Company there is a change in any Participant’s Company Interest as a result of the admission or withdrawal of one or more Participants, the net profit, net loss or any other item allocable to the

Participants under this Article VIII for the period shall be allocated among the Participants so as to reflect their varying interests in the Company during the period. In the event that the change in the Company Interests of the Participants results from the admission or withdrawal of a Participant, the allocation of net profit, net loss, or any other item allocable among the Participants under this Article VIII shall be made on the basis of an interim closing of the Company's books as of each date on which a Participant is admitted to or withdraws from the Company; provided that the Company may use interim closings of the books as of the end of the month preceding and the month of the admission or withdrawal, and prorate the items for the month of withdrawal on a daily basis, unless the Operating Committee determines that such an allocation would be materially unfair to any Participant. In the event that the change in the Company Interests of the Participants results from a Transfer of all or any portion of a Company Interest by a Participant, the net profit, net loss, or any other items allocable among the Participants under this Article VIII shall be determined on a daily, monthly, or other basis, as determined by the Operating Committee using any permissible method under § 706 of the Code and the Treasury Regulations promulgated thereunder.]

[Section 8.5. Distributions.]

[(a) Subject to Section 10.2, cash and property of the Company shall not be distributed to the Participants unless the Operating Committee approves by Supermajority Vote (subject to § 18-607 of the Delaware Act) a distribution after fully considering the reason that such distribution must or should be made to the Participants, including the circumstances contemplated under Section 8.3, Section 8.6, and Section 9.3. To the extent a distribution is made, all Participants shall participate equally in any such distribution except as otherwise provided in Section 10.2.]

[(b) No Participant shall have the right to require any distribution of any assets of the Company in kind. If any assets of the Company are distributed in kind, such assets shall be distributed on the basis of their fair market value net of any liabilities as reasonably determined by the Operating Committee. Any Participant entitled to any interest in such assets shall, unless otherwise determined by the Operating Committee, receive separate assets of the Company and not an interest as a tenant-in-common with other Participants so entitled in any asset being distributed.]

[Section 8.6. Tax Status.]

[(a) The Company intends to operate in a manner such that it qualifies as a "business league" within the meaning of Section 501(c)(6) of the Code. The Operating Committee [by Supermajority Vote, without the consent of any Participant, may] shall cause the Company to: (i) make an election to be treated as a corporation for U.S. federal income tax purposes by filing Form 8832 with the Internal Revenue Service effective as of the date of formation and (ii) file with the Internal Revenue Service, Form 1024, Application for Recognition of Exemption under Section 501(a) to [; or (ii)] be treated as a ["trade association"] business league" as described in [§] Section 501(c)(6) of the Code.

[(b) If the Company so elects to be taxed as a corporation or is treated as a "trade association" as described in § 501(c)(6) of the Code, it shall continue to maintain Capital

Accounts in the manner provided in this Agreement, consistent with provisions of § 704 of the Code, to determine the economic rights of the Participants under this Agreement, notwithstanding that it is not taxed as a partnership for U.S. federal income tax purposes, as interpreted by the Operating Committee and the Company's counsel in a manner to preserve the economic rights and obligations of the Participants under this Agreement. Sections 8.2, 8.3 and 9.5 shall not be applicable with respect to any period during which the Company is treated as a corporation for U.S. federal income tax purposes; provided, however, if the Company is initially treated as a partnership for U.S. federal income tax purposes and has made allocations under Section 8.2, it shall adjust the Capital Accounts to reflect the amount the Capital Accounts would have been had all allocations been made pursuant to Section 8.1.]

ARTICLE IX

RECORDS AND ACCOUNTING; REPORTS

Section 9.1. No change.

Section 9.2. Accounting.

(a) Except as provided in Section 9.2(b) and Section 9.3, the Operating Committee shall maintain a system of accounting established and administered in accordance with GAAP (or other standard if determined appropriate by the Operating Committee), and all financial statements or information that may be supplied to the Participants shall be prepared in accordance with GAAP (except that unaudited statements shall be subject to year-end adjustments and need not include footnotes) (or other standard if determined appropriate by the Operating Committee). To the extent the Operating Committee determines it advisable, the Company shall prepare and provide to each Participant (1) within 30 days after the end of each calendar month, an unaudited balance sheet, income statement, statement of cash flows and statement of changes in [each Participant's Capital Account] equity for, or as of the end of, (x) such month and (y) the portion of the then current Fiscal Year ending at the end of such month and (2) as soon as practicable after the end of each Fiscal Year, an audited balance sheet, income statement, statement of cash flows and statement of changes in [each Participant's Capital Account] equity for, or as of the end of, such year. The Fiscal Year shall be the calendar year unless otherwise determined by the Operating Committee.

[(b) Assets received by the Company as capital contributions shall be recorded at their fair market values, and the Capital Account maintained for each Participant shall comply with Treasury Regulations § 1.704-1 (b)(2)(iv) promulgated under § 704(b) of the Code. In the event fair market values for certain assets of the Company are not determined by appraisals, the fair market value for such assets shall be reasonably agreed to among the Participants as if in arm's-length negotiations.]

[(c) (b) All matters concerning accounting procedures shall be determined by the Operating Committee.

Section 9.3. Tax Returns. The Operating Committee shall cause federal, state, provincial, and local income tax returns for the Company to be prepared and timely filed with the appropriate authorities. [If the Company is taxed as a partnership, it shall arrange for the timely

delivery to the Participants of such information as is necessary for such Participants to prepare their federal, state and local tax returns.]

Section 9.4. No change.

Section 9.5. [Tax Matters Partner.] Intentionally Omitted.

[(a) A Participant designated by the Operating Committee shall serve as the “Tax Matters Partner” of the Company for all purposes pursuant to §§ 6221-6231 of the Code. As Tax Matters Partner, the Tax Matters Partner shall: (i) furnish to each Participant affected by an audit of the Company income tax returns a copy of each notice or other communication received from the Internal Revenue Service or applicable state authority (except such notices or communications as are sent directly to the Participant); (ii) keep such Participant informed of any administrative or judicial proceeding, as required by § 6623(g) of the Code; (iii) allow each such Participant an opportunity to participate in all such administrative and judicial proceedings; and (iv) advise and consult with each such Participant as to proposed adjustments to the federal or state income tax returns of the Company.]

[(b) The Tax Matters Partner, as such, shall not have the authority to: (i) enter into a settlement agreement with the Internal Revenue Service that purports to bind any Participant, without the written consent of such Participant; or (ii) enter into an agreement extending the period of limitations as contemplated in § 6229(b)(1)(B) of the Code without the prior approval of the Operating Committee.]

[(c) The Company shall not be obligated to pay any fees or other compensation to the Tax Matters Partner in its capacity as such, but may pay compensation to the Tax Matters Partner for services rendered to the Company in any other capacity. However, the Company shall reimburse the Tax Matters Partner for any and all out-of-pocket costs and expenses (including reasonable attorneys and other professional fees) incurred by it in its capacity as Tax Matters Partner. The Company shall indemnify, defend and hold the Tax Matters Partner harmless from and against any loss, liability, damage, costs or expense (including reasonable attorneys’ fees) sustained or incurred as a result of any act or decision concerning Company tax matters and within the scope of such Participant’s responsibilities as Tax Matters Partner, so long as such act or decision does not constitute gross negligence or willful misconduct.]

Section 9.6. No change.

ARTICLE X

DISSOLUTION AND TERMINATION

Section 10.1. No change.

Section 10.2. Liquidation and Distribution. Following the occurrence of an event described in Section 10.1, the Operating Committee shall act as liquidating trustee and shall wind up the affairs of the Company by: (a) selling its assets in an orderly manner (so as to avoid the loss normally associated with forced sales); and (b) applying and distributing the proceeds of such sale, together with other funds held by the Company: (i) first, to the payment of all debts

and liabilities of the Company; (ii) second, to the establishments of any reserves reasonably necessary to provide for any contingent recourse liabilities and obligations; and (iii) third, to [the Participants in proportion to the balances in their positive Capital Accounts (after such Capital Accounts have been adjusted for all items of income, gain, deduction, loss and items thereof in accordance with Article VII through the date of the such distribution) at the date of such distribution] such persons or institutions as is consistent with the purposes of the Company and consistent with Section 501(c)(6) of the Code.

Section 10.3. No change.

* * * * *

ARTICLE XII

MISCELLANEOUS

* * * * *

Section 12.3. Amendments. Except as provided by Section 3.3, Section 3.4, Section 3.7, and Section 5.3[, and Section 8.2], this Agreement may be amended from time to time only by a written amendment authorized by the affirmative vote of not less than two-thirds of all of the Participants or with respect to Section 3.8 by the affirmative vote of all of the Participants, in each case that has been approved by the SEC pursuant to SEC Rule 608 or has otherwise become effective under SEC Rule 608. Notwithstanding the foregoing or anything else to the contrary, to the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.

* * * * *

Bats BYX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats BZX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats EDGA EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats EDGX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

BOX Options Exchange LLC

By: Bruce Goodhue

Name: Bruce Goodhue

Title: Chief Regulatory Officer

Date: 10/31/2016

ADDRESS FOR NOTICES:

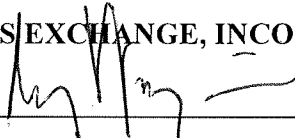
101 Arch Street, Suite 610

Boston, MA 02110

Facsimile: _____

Attention: _____

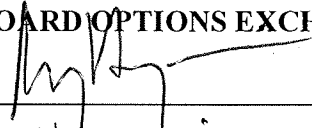
C2 OPTIONS EXCHANGE, INCORPORATED

By: 

Name: Greg Hoogasian

Title: Senior VP & Chief Regulatory Officer

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By: 

Name: Greg Hoogasian

Title: Senior VP & Chief Regulatory Officer

CHICAGO STOCK EXCHANGE, INC.

By: 

Name: Peter D. Santori

Title: Executive Vice President
Chief Regulatory Officer

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By: Marcia E. Asquith

Name: Marcia E. Asquith

Title: Senior Vice President and Corporate Secretary

INTERNATIONAL SECURITIES EXCHANGE, LLC

By: 

Name: John A. Zecca

Title: SVP

ISE GEMINI, LLC

By: 

Name: John A. Zecca

Title: SVP

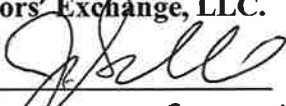
ISE MERCURY, LLC

By: 

Name: John A. Zecca

Title: SVP

Investors' Exchange, LLC.

By: 

Name: John Schwall

Title: COO

Date: 10/28/16

ADDRESS FOR NOTICES:

Investors' Exchange, LLC.
4 World Trade Center, 44th Fl.
New York, NY 10007

Facsimile:

Attention: John Ramsay

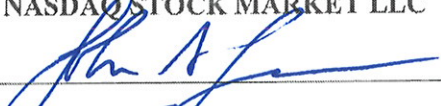
MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: 


Name: Edward Deitzel

Title: EVP, CRO


THE NASDAQ STOCK MARKET LLC

By: 
Name: John A. Zecca
Title: SVP

NASDAQ BX, INC.

By: 
Name: John A. Zecca
Title: SVP

NASDAQ PHLX LLC

By: 
Name: Joseph P. Cusick
Title: V.P. & CRO

NATIONAL STOCK EXCHANGE, INC.

By: 

Name: James G. Buckley

Title: Chief Regulatory Officer

NYSE ARCA, INC.

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel and Corporate Secretary

NEW YORK STOCK EXCHANGE LLC

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel and Corporate Secretary

NYSE MKT LLC

By: Elizabeth K. King

Name: Elizabeth K. King

Title: General Counsel and Corporate Secretary