BSX GROUP LLC

AMENDED AND RESTATED OPERATING AGREEMENT

This AMENDED AND RESTATED OPERATING AGREEMENT is made as of June 6, 2006 (the "Effective Date"), by and among Boston Stock Exchange, Inc., a corporation organized under the laws of Delaware ("BSE"), Citigroup Financial Strategies Inc., a corporation organized under the laws of Delaware ("Citi"), Credit Suisse First Boston Next Fund Inc., a corporation organized under the laws of Delaware ("Credit Suisse"), LB 1 Group, Inc., a corporation organized under the laws of Delaware ("Lehman"), Fidelity Global Brokerage Group, Inc., a corporation organized under the laws of Massachusetts or its designated affiliates ("Fidelity"), Merrill Lynch L.P. Holdings Inc., a corporation organized under the laws of Delaware ("Merrill"), and all other Persons who become a party hereto as Members of BSX Group LLC (the "Company") in accordance with the terms hereof, for the purpose of recording their agreement regarding the affairs of the Company and the conduct of its business.

R E C I T A L S

WHEREAS, on June 4, 2004 the BSE caused the Certificate of Formation (the "Certificate"), attached as of Exhibit 1 hereto, to be filed with the Office of the Secretary of State of the State of Delaware for the purpose of commencing the existence of the Company pursuant to the Act (as defined below);

WHEREAS, the parties formed the Company for the purpose of developing and operating an electronic market as a facility (as defined in Section 3(a)(2) of the Exchange Act) of the BSE for trading U.S. Equities (as defined below), the Boston Equities Exchange ("BeX");

WHEREAS, subsequent to the execution of this Agreement, the Company and the BSE will enter into a Facility Services Agreement pursuant to the principal terms and conditions set forth in Schedule 4 (the "BSE Facility Services Agreement"), whereby the Company will operate the business of BSE related to the trading of U.S. Equities (the "BSE Equities Business"); and

WHEREAS, subsequent to the execution of this Agreement, it is anticipated that the Company will enter into each of the Related Agreements.

NOW, THEREFORE, in order to carry out their intent as expressed above and in consideration of the mutual agreements hereinafter contained, the parties hereby agree as follows:

Article 1

Definitions

1.1 Certain Defined Terms: As used in this Agreement, the following capitalized terms have the following meanings:

"Act" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et. seq., as amended and in effect from time to time, and any successor statute.

"Additional Capital Contribution" means any Capital Contribution effected after completion of the Initial Capital Contributions pursuant to Section 7.3 hereof.

"Advisors" means, with respect to any Person, any of such Person's attorneys, accountants or consultants.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.

"Agreement" means this Amended and Restated Operating Agreement, including all exhibits and schedules hereto, as amended, restated or supplemented from time to time.

"Atos" means Atos Euronext S.A.

"Atos Services Agreement" shall mean the agreement(s) to be entered into by and between Atos and the Company, pursuant to the principal terms and conditions set forth in Schedule 5, as in effect from time to time, relating to Atos providing development, software licenses, maintenance and technical services for the BeX.

"Bankruptcy" has the meaning ascribed thereto in Section 18-304 of the Act.

"Board" has the meaning set forth in Section 4.1 hereof.

"BSE" has the meaning set forth in the preamble.

"BSE Contribution Schedule" shall mean the Contribution Schedule of the BSE set forth in Schedule 3.

"BSE Facility Services Agreement" has the meaning set forth in the recitals hereto.

"BSE Rules" mean the Rules of the Board of Governors of the BSE.

"BeX" has the meaning set forth in the recitals hereto.

"BeX Market Participant" means a firm, or organization that is registered with the BSE pursuant to the BSE Rules for purposes of participating in equities trading on the BeX.

"Capital Account" means a separate account maintained for each Member in the manner described in this paragraph, which is intended to comply and be interpreted and applied consistent with the Treasury Regulations under §704(b) of the Code. There shall be credited to each Member's Capital Account (i) its Capital Contributions; (ii) the share of income and gain of the Company allocated to the Member pursuant to Section 10.1 hereof (including the Member's share of any income and gains of the Company exempt from U.S. federal income tax); (iii) the amount of any liabilities of the Company that are assumed by such Member or that are secured by any property distributed to such Member by the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). There shall be charged against each Member's Capital Account (i) the amount of cash and the fair market value of property distributed to it from the Company; (ii) the share of losses and deductions of the Company allocated to the Member pursuant to Section 10 hereof (including the Member's share of any expenditures of the Company not deductible or properly chargeable to capital accounts for U.S. federal income tax purposes); (iii) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and (iv) any other items required by Treasury Regulations §1.704-1(b)(2)(iv). In connection with the maintenance of Capital Accounts for the Members, the Board may make adjustments consistent with Treasury Regulations §1.704-1(b)(2)(iv)(f) upon the occurrence of any event described in subparagraph (5) of such Regulations. The Members' Capital Accounts shall be further adjusted in accordance with Treasury Regulations §1.704-1(b)(2)(iv)(g) in the event of a revaluation of the Company property pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(f), or if required by Treasury Regulations §1.704-1(b)(2)(iv)(d)(3).

"Capital Contribution" means the amount of cash and the fair market value of all property (net of any liability secured by such property that the Company is considered to assume, or take subject to Section 752 of the Code) and/or services contributed to the Company by a Member in its capacity as such at any point in time, including any Additional Capital Contributions. All such amounts contributed shall be reflected on the books and records of the Company.

"Certificate" has the meaning set forth in the recitals hereto.

"Code" means the United States Internal Revenue Code of 1986, as amended and in effect from time to time.

"Company" has the meaning set forth in the preamble.

"Company Minimum Gain" means partnership minimum gain with respect to the Company, as determined under Treasury Regulations §1.704-2(d).

"Confidential Information" means any confidential or proprietary information of the Company, including any confidential or proprietary information conveyed to the Company pursuant to this Agreement or any Related Agreements.

"DGCL" has the meaning set forth in Section 4.2(b) hereof.

"Directors" has the meaning set forth in Section 4.1(a) hereof. Each Director shall be a "manager" within the meaning of the Act.

"Disclosing Member" has the meaning set forth in Section 16.3 hereof.

"Distributable Cash" has the meaning set forth in Section 9.1 hereof.

"Effective Date" means the date hereof.

"Excess Units" means the Units owned by a Person, either alone or with its Affiliates, in excess of 20% of all Units then issued and outstanding.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder.

"Facility" shall have the meaning set forth in Section 3(a)(2) of the Exchange Act.

"Fiscal Year" has the meaning set forth in Section 12.3 hereof.

"Founding Members" shall mean the BSE, Citi, Credit Suisse, Lehman, Merrill and Fidelity.

"Funding Date" shall mean the date which is thirty (30) days following August 18, 2005.

"Government Authority" means any federal, national, state, municipal, local, foreign, territorial, provincial or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign.

"Indemnitees" has the meaning set forth in Section 14.1 hereof.

"Initial Capital Contributions" has the meaning set forth in Section 7.1.

"Launch Date" shall mean the date on which the BeX begins full processing of U.S. Equities on the ATOS NSC platform.

"Lava" means Lava Trading, Inc.

"Lava Services Agreement" shall mean the agreement(s) to be entered into by and between Lava and the Company, pursuant to the principal terms and conditions set forth in

Schedules 6.1 and 6.2, as in effect from time to time, relating to Lava providing customized application software (e.g., Lava Solutions), market connectivity, hosting, maintenance and technical operations support for the BeX.

"Liquidator" has the meaning set forth in Section 11.1(b) hereof.

"Member" means each Person admitted and named as a Member on Schedule 2 hereto, and any Person admitted to the Company as an additional or substitute member of the Company as provided by this Agreement, in such Person's capacity as a member of the Company. For the avoidance of doubt, a transferee or an assignee (including, without limitation, the personal representatives (as defined in the Act) of a Member) of a limited liability company interest in the Company shall not be a member of the Company, and no transferee or assignee, except as otherwise specifically provided in this Agreement with respect to BSE, other than a duly admitted member of the Company, shall have any right whatsoever to vote or consent to any action with respect to the Company, and shall not be entitled to exercise any rights of Members held by such Members by virtue of their admission to the Company as members of the Company, whether any such rights arise under this Agreement, the Act or other applicable law, unless and until such transferee or assignee is admitted to the Company as a member of the Company in accordance with the provisions of this Agreement.

"Member Entities" has the meaning set forth in Section 5.7 hereof.

"Member Information" has the meaning set forth in Section 16.3 hereof.

"Member Nonrecourse Deductions" means partner nonrecourse deductions with respect to a Member, as determined under Treasury Regulations §1.704-2(i)(2).

"Member Nonrecourse Debt Minimum Gain" means partner nonrecourse debt minimum gain with respect to a Member, within the meaning of Treasury Regulations §1.704-2(i)(2).

"Member Transfer Notice" has the meaning set forth in Section 8.3(a) hereof.

"Nonrecourse Debt" means a liability of the Company as to which no Member bears the economic risk of loss as determined under Treasury Regulations §1.752-2 (including a liability of an entity owned by the Company to the extent such liability is treated as a liability of the Company for U.S. federal income tax purposes and no other owner of such entity bears the economic risk of loss as determined under Treasury Regulations §1.752-2).

"Nonrecourse Deductions" shall have the meaning as set forth in Treasury Regulations §1.704-2(b)(1) and the amount for the partnership year shall be determined in accordance with the rules of Treasury Regulations §1.704-2(c).

"Non-Transferring Founding Member" has the meaning set forth in Section 8.2(a) hereof.

"Ownership Concentration Limit" has the meaning set forth in Section 8.5(a) hereof.

"Percentage Interest" with respect to a Member or Person means the ratio of the number of Units held by the Member or Person to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.

"Person" shall mean an individual, corporation, association, general or limited partnership, organization, business, firm, limited liability company, joint venture, trust, estate, or other entity, association or organization, whether constituting a legal entity or not.

"Regulatory Services Provider" shall initially mean the BSE and thereafter the provider of regulatory services contemplated by the BSE Facility Services Agreement.

"Related Agreements" means the BSE Facility Services Agreement and any other agreement among or between any of the Members and the Company, or to which the Members or the Company are otherwise parties, in all cases necessary for the conduct of the business of the Company.

"SEC" means the United States Securities and Exchange Commission.

"Self-Regulatory Organization" shall have the meaning set forth in the Exchange Act.

"Senior Executive" has the meaning set forth in Section 4.7 hereof.

"Super Major Action" has the meaning set forth in Section 4.4 hereof.

"Tax Amount" of a Member for a fiscal year or other period shall mean the product of (a) the Member's Tax Rate for such fiscal year or other period, and (b) the Member's Tax Amount Base for such fiscal year or other period, and shall be reduced by (c) any United States federal, state or local income tax credits allocated to the Member by the Company for such fiscal year or other period, all as estimated in good faith by the Board.

"Tax Amount Base" of a Member for a fiscal year or other period shall mean the taxable income (for U.S. federal income tax purposes) allocated to the Member by the Company for such fiscal year or other period; provided that such taxable income shall be computed (i) without regard to the application of §704 (c) of the Code with respect to any variation between the fair market value and tax basis of any assets at the time such assets were contributed to the Company and (ii) without regard to any taxable income or loss recognized by a Member (other than through its distributive share of income or gain of the Company) in connection with the dissolution, initial public offering, sale of substantially all equity or assets of the Company or any similar event.

"Tax Rate" of a Member for a fiscal year or other period shall mean the highest effective marginal combined United States federal, state and local income tax rate applicable during such fiscal year to business entities of the same type as the Member that do business exclusively in the Commonwealth of Massachusetts, giving proper effect to the federal deduction for state and local income taxes and taking into account any special tax rates (such as special capital gains tax rates) applicable to any portion or portions of the Member's Tax Amount Base.

"Total Votes" has the meaning set forth in Section 4.4(a) hereof.

"Transfer" has the meaning set forth in Section 8.1(a) hereof.

"Transferee" has the meaning set forth in Section 8.2 hereof.

"Transfer Notice" has the meaning set forth in Section 8.2(a) hereof.

"Transferring Member" has the meaning set forth in Section 8.2 hereof.

"Treasury Regulations" means the regulations promulgated under the Code, as amended and in effect from time to time.

"Units" shall mean equal units of limited liability company interest in the Company, including an interest in the ownership and profits and losses of the Company and the right to receive distributions from the Company as set forth in this Agreement. For the avoidance of doubt, the ownership or possession of Units shall not in and of itself entitle the owner or holder thereof to vote or consent to any action with respect to the Company (which rights, except as otherwise specifically provided in this Agreement with respect to BSE, shall be vested in only duly admitted members of the Company), or to exercise any right of a member of the Company under this Agreement, the Act or other applicable law.

"Unpermitted Deficit" has the meaning set forth in Section 10.3 hereof.

"U.S. Equities" means equity securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan, and NASD's Over-The-Counter Bulletin Board equity securities.

1.2 Other Definitions

The words "include," "includes," and "including" where used in this agreement are deemed to be followed by the words "without limitation."

Any reference to "Dollars" or "$" in this Agreement refers to U.S. Dollars.

Except as otherwise provided in this Agreement or unless the context otherwise clearly requires, (a) terms used in this Agreement that are defined in the Act will have the meaning set forth in the Act; (b) all references in this Agreement to one gender also include, where appropriate, the other gender; (c) the singular includes the plural and the plural includes the singular; and (d) references in this Agreement to the preamble, Sections, Schedules, and Exhibits shall be deemed to mean the preamble and sections of, and schedules and exhibits to, this Agreement.

Article 2

Organization

2.1 Formation and Continuation of Company. Each of the parties hereto hereby (a) ratifies the formation of the Company as a limited liability company under the Act, the execution of the Certificate and the filing of the Certificate in the Office of the Secretary of State of the State of Delaware and (b) agrees that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein. The name of the Company shall be BSX Group LLC.

2.2 Principal Office; Registered Agent and Office. The principal place of business of the Company shall be located at 100 Franklin Street, Boston, MA 02110. The Board may, at any time, change the name or the principal place of business of the Company and shall give notice thereof to the Members. The registered agent for service of process on the Company in the State of Delaware required to be maintained by §18-104 of the Act shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808 and the registered office of Company in the State of Delaware shall be c/o Corporation Service Company at the same address. The Board may at any time change the registered agent of the Company or the location of such registered office and shall give notice thereof to the Members.

2.3 Term. The legal existence of the Company shall be perpetual, unless the Company is sooner dissolved as a result of an event specified in the Act or pursuant to a provision of this Agreement.

2.4 Interest of Members; Property of Company. Units held by a Member shall be personal property for all purposes. All real and other property owned by the Company shall be deemed the Company's property owned by the Company as an entity, and no Member, individually, shall own any such property. The name and mailing address of each Member and the number and class of Units held by each and the Percentage Interest represented thereby shall be as listed on Schedule 2 attached hereto. The Board shall be required to update said Schedule 2 from time to time as necessary to accurately reflect the information contained therein upon (i) a Member ceasing to be a member of the Company, (ii) the admission of a new Member or (iii) any change in the number or class of Units owned by a Member, in each case pursuant to the terms and conditions specified in this Agreement.

2.5 The Units.

(a) Except as otherwise provided in this Agreement, all Units are identical to each other and accord the holders thereof the same obligations, rights and privileges as are accorded to each other holder thereof. Except as otherwise provided in this Agreement, the Company will not subdivide or combine any Units, or make or pay any distribution on any Units, or accord any other payment, benefit or preference to any Units, except by extending such subdivision, combination, distribution, payment, benefit or preference equally to all Units.

(b) Units have no par value. To the extent that any Units must be cancelled or any Units shall be issued, the amount of such Units shall be rounded to the nearest whole number, to the extent feasible, as determined by the Board.

2.6 Intent. It is the intent of the Members that the Company (a) shall always be operated in a manner consistent with its treatment as a partnership for United States federal income tax purposes (and, to the extent possible, for state income tax purposes within the United States), and (b) to the extent not inconsistent with the foregoing clause (a), shall not be operated or treated as a partnership for purposes of §303 of the Federal Bankruptcy Code (11 U.S.C. §303). Neither the Company nor any Member shall take any action inconsistent with the express intent of the parties hereto as set forth in the immediately preceding sentence.

2.7 Article 8 Opt-In. Each limited liability company interest in the Company (including the Units) shall constitute a "security" within the meaning of (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware (the "Delaware UCC") and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or thereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (each, an "Other State UCC"). For all purposes of Article 8 of the Delaware UCC and any Other State UCC, Delaware law shall constitute the local law of the Company's jurisdiction in the Company's capacity as the issuer of Units.

2.8 Certificates.

(a) All Units shall be represented by one or more certificates (a "Unit Certificate") issued to the registered owner of such Units by the Company. Each such Unit Certificate shall be denominated in terms of the number and class of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company. Within fourteen (14) days of the Funding Date, the Company shall issue to each Person one or more Unit Certificates in the name of such Person to represent the Units owned by such Person as of the date hereof.

(b) Upon the issuance of additional Units in the Company to any Person in accordance with the provisions of this Agreement, the Company shall issue to such Person one or more Unit Certificates in the name of such Person. Each such Unit Certificate shall be denominated in terms of the class and number of Units in the Company evidenced by such Unit Certificate and shall be signed by at least one officer of the Company on behalf of the Company.

(c) The Company shall issue a new Unit Certificate in place of any Unit Certificate previously issued if the registered owner of the Units represented by such Unit Certificate, as reflected on the books and records of the Company:

(i) makes proof by affidavit, in form and substance satisfactory to the Board in its sole discretion, that such previously issued Unit Certificate has been lost, stolen or destroyed;

(ii) requests the issuance of a new Unit Certificate before the Company has notice that such previously issued Unit Certificate has been acquired by a protected purchaser;

(iii) if requested by the Board in its sole discretion, delivers to the Company a bond, in form and substance satisfactory to the Board in its sole discretion, with such surety or sureties as the Board in its sole discretion may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Unit Certificate; and

(iv) satisfies any other reasonable requirements imposed by the Board.

(d) Upon the Transfer in accordance with the provisions of this Agreement by any Person of any or all of its Units represented by a Unit Certificate, such Person shall deliver such Unit Certificate to the Company for cancellation (endorsed thereon or endorsed on a separate document), and any officer of the Company shall thereupon cause to be issued a new Unit Certificate to such Person's permitted transferee or such Person, as applicable, for the class and number of Units being transferred or converted and, if applicable, cause to be issued to such Person a new Unit Certificate for that class and number of Units that were represented by the canceled Unit Certificate and that are not being transferred or converted; provided, however, the Company shall have no duty to register the Transfer unless the requirements of Section 8-401 of the Delaware UCC are satisfied.

(e) Legends.

(i) Each Unit Certificate issued by the Company shall include the following legend:

"THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SET FORTH IN, AND THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO, THE TERMS AND PROVISIONS OF, THE AMENDED AND RESTATED OPERATING AGREEMENT OF BSX GROUP LLC (THE "COMPANY"), DATED AS OF JUNE 6, 2006, AS THE SAME MAY BE AMENDED AND/OR RESTATED FROM TIME TO TIME (THE "AGREEMENT"). THE TRANSFER, SALE, ALIENATION, ASSIGNMENT, EXCHANGE, PARTICIPATION, SUBPARTICIPATION, ENCUMBRANCE, OR DISPOSITION IN ANY MANNER, WHETHER DIRECT OR INDIRECT, VOLUNTARY OR INVOLUNTARY, BY OPERATION OF LAW OR OTHERWISE, OF THIS CERTIFICATE AND THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY ARE RESTRICTED AS DESCRIBED IN THE AGREEMENT.

EACH LIMITED LIABILITY COMPANY INTEREST REPRESENTED HEREBY SHALL CONSTITUTE A "SECURITY" WITHIN THE MEANING OF (I) ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE (INCLUDING SECTION 8-102(A)(15) THEREOF) AS IN EFFECT FROM TIME TO TIME IN THE STATE OF DELAWARE (THE "DELAWARE UCC") AND (II) THE UNIFORM COMMERCIAL CODE OF ANY OTHER APPLICABLE JURISDICTION THAT NOW OR HEREAFTER SUBSTANTIALLY INCLUDES THE 1994 REVISIONS TO ARTICLE 8 THEREOF AS ADOPTED BY THE AMERICAN LAW INSTITUTE AND THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND APPROVED BY THE AMERICAN BAR ASSOCIATION ON FEBRUARY 14, 1995 (EACH, AN "OTHER STATE UCC"). FOR ALL PURPOSES OF ARTICLE 8 OF THE DELAWARE UCC AND ANY OTHER STATE UCC, DELAWARE SHALL CONSTITUTE THE LOCAL LAW OF THE COMPANY'S JURISDICTION IN THE COMPANY'S CAPACITY AS THE ISSUER OF THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY."

(ii) In addition, unless counsel to the Company has advised Company that such legend is no longer needed, each Unit Certificate shall bear a legend in substantially the following form:

"THE LIMITED LIABILITY COMPANY INTERESTS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED."

Article 3

Purpose

3.1 Purpose. The purpose of the Company is to develop, own and operate the BeX and to engage in any and all activities necessary, convenient, desirable or incidental to the foregoing, including, without limitation, acquiring, holding, managing, operating and disposing real and personal property. The Company shall not engage in any other business or activity except as approved in accordance with Section 4.4(b)(ix) hereof.

3.2 Role of BSE. Pursuant to the BSE Facility Services Agreement and the BSE Contribution Schedule, BSE will provide SEC approved Self-Regulatory Organization services and status as the regulatory framework for the BeX. As the Regulatory Services Provider, BSE

will have the sole regulatory responsibility for the activities of the Company and the BeX. BSE will also provide certain administrative services.

Article 4

Governance

4.1 Board of Directors.

(a) The Members shall establish a Board of Directors of the Company (the "Board" or "Directors") to implement this Agreement. The Board shall be comprised of from five (5) to fifteen (15) Directors, and shall initially consist of six (6) Directors. Except as otherwise specifically provided in this Agreement, the Board will manage the development, operations, business and affairs of the Company, without the need for any approval of any Member or other Person.

(b) BSE shall be entitled to designate two (2) Directors. Citi, Credit Suisse, Lehman, Merrill, and Fidelity shall each be entitled to designate one (1) Director. Thereafter, if any Founding Member with its Affiliates maintains a Percentage Interest of 3.00% or greater, it shall have the right to retain/designate one (1) Director. If BSE maintains a Percentage Interest of 6.00% or greater, it shall have the right to retain/designate two (2) Directors. Additionally, as long as the BeX remains a Facility of the BSE, the BSE shall have the right to retain/designate one (1) Director, in the event it is no longer otherwise entitled to designate any Directors pursuant to this Section 4.1(b), whether or not the BSE maintains any Percentage Interest or is admitted to the Company as a Member of the Company.

(c) Each Director shall serve at the pleasure of the Member which designated such Director and may from time to time be replaced by such Member. Any such replacement must be a member of senior management or Board of Directors of the designating party or an Affiliate of such designating party or of its principal owner or owners. Each Member shall notify the other Members in writing of any person designated by it to serve as a Director and any replacement for such person promptly following such designation or replacement. The Board shall terminate a Director: (i) in the event such Director has violated any provision of this Agreement or any federal or state securities law; or (ii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors. A Member whose appointed Director is terminated pursuant to this subsection (c) shall have the right to appoint a replacement.

(d) Subject to Sections 4.4(b)(iv) and 4.4(b)(vi), in the event of the addition of any new Members or the transfer of interest from a Member to a Transferee Member, the Board shall determine the number of Board seats, if any, to be designated by the new or Transferee Member and will determine the disposition of the Board seats designated by any Transferring Member.

(e) The Board may increase the size of the Board and/or provide for Board representation for new or Transferee Members with Percentage Interests equal to or greater than 5.00%.

(f) In the event that a Director has not been designated or is unable to attend or participate in any meeting of the Board or any committee thereof, the Member that designated or has the right to designate such Director may appoint an individual to attend such meetings and to participate in the deliberations of such meetings. Such individual will not be permitted to vote on behalf of the Member, nor will such individual be considered an attendee of any meetings for the purposes of constituting a quorum.

4.2 Authority and Duties of Board; Committees.

(a) Authority and Conduct. The Board shall have the specific authority delegated to it pursuant to this Agreement. Each Director agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the BSE pursuant to their regulatory authority and the provisions of this Agreement. Furthermore, each Director shall take into consideration whether his or her actions as a Director would cause BSX to engage in conduct that fosters and does not interfere with the Company's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

(b) Duties of Board. Without limiting the general duties and authority of the Board as set forth in this Article 4, except as otherwise provided in this Agreement, the Board shall have all of the powers of the Board of Directors of a corporation organized under the General Corporation Law of the State of Delaware, as from time to time in effect (the "DGCL"), including the power and responsibility to manage the business of the Company, select and evaluate the performance of the Senior Executive, and establish and monitor capital and operating budgets.

(c) Executive Committee. There may be an executive committee of the Board consisting of at least one or more Directors designated by each of the Founding Members, as long as such Person is still a Member, such executive committee to be formed by resolution passed by the Board. The act of a majority of the members of such committee shall be the act of the committee. Said committee may meet at stated times or on notice to all members of such committee, and, subject to Section 4.2(e) below, shall have and may exercise all powers of the Board in the management of the business affairs of the Company. Vacancies in the membership of the committee shall be filled by the Board in accordance with this Section 4.2(c) at a regular meeting or at a special meeting of the Board called for that purpose.

(d) Other Committees. The Board may also designate one or more committees in addition to the executive committee, by resolution or resolutions passed by a majority of the whole Board.

(e) Powers Denied to Committees. Committees of the Board, including the executive committee, shall not, in any event, have any power or authority to transact any Super Major Action.

(f) Substitute Committee Member; Minutes. In the absence or on the disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint, in accordance with the provisions of this Section 4.2, another individual to act at the meeting in the place of such absent or disqualified member. All committees shall keep regular minutes of its proceedings and report the same to the Board as may be required by the Board.

4.3 (a) Meetings. The Board will meet as often as the members thereof deem necessary, but not less frequently than every three (3) months. Meetings may be conducted in person or by telephone or in any other manner agreed to by the Board. Any Director may call a meeting of the Board upon fourteen (14)-calendar days prior written notice. In any case where the convening of a meeting of Directors is a matter of urgency, notice of such meeting may be given not less than forty-eight (48) hours before such meeting is to be held. No notice of a meeting shall be necessary when all members of the Board are present. In the event that the Board consists of less than eight (8) Directors, the attendance of at least four (4) Directors shall constitute a quorum for purposes of any meeting of the Board. In the event that the Board consists of eight (8) or more Directors, the attendance of at least a majority of all the Directors shall constitute a quorum for purposes of any meeting of the Board. Except as may otherwise be provided by this Agreement, each of the Directors will be entitled to vote on any action to be taken by the Board, except that the Senior Executive (if a Director) shall not be entitled to vote on matters relating to his or her powers, compensation or performance.

(b) All quorum and voting requirements shall be adjusted accordingly for the suspension of any Member made pursuant to Sections 5.8 or 8.4(f). Any Director shall be entitled to vote the votes allocated to another Director after having received such Director's proxy in writing. Meetings of the Board may be attended by other representatives of the Members and other persons related to the Company as agreed to from time to time by the Board and as otherwise specified in this Agreement. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting if (i) all members of the Board or committee consent to voting on such action without a meeting, and (ii) written consents, setting forth the action so taken, are executed by the members of the Board or committee, as the case may be, representing the minimum number of votes that would be necessary to authorize or to take such action at a meeting at which all members of the Board or committee, as the case may be, permitted to vote were present and voted. The Board will set up procedures relating to the recording of minutes of its meetings.

(c) Voting Trusts. Members are prohibited from entering into voting trust agreements with respect to their Units.

(d) Standard Voting Requirement. Unless otherwise provided by this Agreement, for purposes of taking any action or voting on any matter coming before the Board,

each Director shall have one (1) vote, and any action to be taken by the Board shall be considered effective only if approved by a majority of the Directors entitled to vote on such action.

4.4 (a) Special Voting Requirements. Notwithstanding Section 4.3(c) and subject to the other provisions of this Agreement, for purposes of voting on any Super Major Action (as defined below), there shall be a total of 100 votes (the "Total Votes") available to be voted on any action to be taken by the Board. Each Director, except as otherwise limited herein, shall be entitled to vote that percentage of the Total Votes equal to the quotient obtained by dividing (i) the quotient of (A) the number of Units held by the Member that designated such Director (if applicable, rounded down to the nearest whole Unit) divided by (B) the aggregate number of Units held by all Members that designated Directors by (ii) the number of Directors designated by such Member.

No action with respect to any:

(i) Super Major Action (as defined in paragraph (c) below), shall be effective unless approved by Directors holding seventy-five percent (75%) of the Total Votes, including the affirmative vote of all of the votes of Directors designated by four (4) of the Founding Members, plus the affirmative vote of all of the votes of Directors designated by the BSE.

In addition, unless approved by the Board as provided above, none of the Members on behalf of the Company shall enter into or permit the Company to enter into any Super Major Action. No other Member votes are required for a Super Major Action.

(b) For purposes of this Agreement, "Super Major Action" means any of the following:

(i) merger or consolidation of the Company with any other entity or the sale by the Company of any material portion of its assets;

(ii) except as otherwise provided in the BSE Facility Services Agreement, operating the BeX utilizing any other Regulatory Services Provider other than BSE or an Affiliate of BSE;

(iii) making any material change in the market structure of the BeX from that contemplated by the Members as of the date hereof;

(iv) subject to the provisions of Section 4.1, appointing (or retaining) Directors to afford representation to Members, other than Founding Members, having a Percentage Interest less than 5.00%;

(v) subject to Article 8, the acquisition of any Units by any Person (other than BSE) that results in such Person, alone or together with any Affiliate

of such Person, newly holding an aggregate Percentage Interest equal to or greater than twenty percent (20%);

(vi) altering the provisions for Board membership for the Founding Members specified in Section 4.1(b);

(vii) entering into, amending, renewing or terminating the Lava Services Agreement and the Atos Services Agreement;

(viii) amending this Section 4.4(b), or entering into, assuming or becoming bound by contract to do any of the foregoing in this Section 4.4(b), either directly or indirectly, including through the adoption, amendment, alteration or repeal of any provision or term of this Agreement.

(ix) entry by the Company into any line of business other than the business described in Article 3;

(x) except as expressly contemplated by this Agreement and the Related Agreements, entering into any agreement, commitment, or transaction with a Member or any of its Affiliates other than transactions or agreements upon commercially reasonable terms that are no less favorable to the Company than the Company would obtain in a comparable transaction or agreement with a third party;

(xi) to the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding-up of the Company

(xii) entering into any partnership, joint venture or other similar joint business undertaking;

4.5 Officers. The Board will appoint such officers and agents of the Company, including a Senior Executive, as it shall from time to time deem necessary. Such officers and agents shall have such terms of employment, shall receive such compensation and shall exercise such powers and perform such duties as the Board shall from time to time determine.

4.6 Duties of the Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Members and at all meetings of the Board. The Chairman of the Board shall have the general powers and duties of management usually vested in the office of Chairman of the Board of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the development of the Company as the Board shall from time to time direct.

4.7 Duties of the Senior Executive. Subject to the supervision and direction of the Board, a senior executive (referred to herein as the "Senior Executive") shall have general

supervision, direction and control of the business and the officers of the Company. The Senior Executive shall have the general powers and duties of management usually vested in the office of Chief Executive Officer of a business corporation organized under the DGCL, and shall have such other duties and responsibilities related to the Company as the Board shall from time to time direct. The Senior Executive shall be responsible for advising the Board on the status of the Company on a regular basis or more frequently as requested by the Board.

4.8 No Management by Members. Except as otherwise expressly provided herein or as requested by the Board, no Member shall take part in the day-to-day management or operation of the business and affairs of the Company. Except and only to the extent expressly provided for in this Agreement and the Related Agreements and as delegated by the Board to committees of the Board or to duly appointed officers or agents of the Company, no Member or other Person other than the Board shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

4.9 Reliance by Third Parties. Any Person dealing with the Company or the Board may rely upon a certificate signed by the Chairman of the Board, or such other officer of the Company designated by the Board, as to:

(a) the identity of the members of the Board or any committee thereof, any officer or agent of the Company or any Member hereof;

(b) the existence or non-existence of any fact or facts which constitute a condition precedent to acts by the Board or in any other manner germane to the affairs of the Company;

(c) the Persons who are authorized to execute and deliver any agreement, instrument or document of or on behalf of the Company; or

(d) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

Article 5

Powers, Duties, and Restrictions of the Company and the Members

5.1 Powers of the Company. In furtherance of the purposes set forth in Article 3, and subject to the provisions of Article 4, the Company, acting through the Board (and the Members hereby delegate such authority to the Board), will possess the power to do anything not prohibited by the Act, by other applicable law, or by this Agreement, including but not limited to the following powers: (i) to undertake any of the activities described in Article 3; (ii) to make, perform, and enter into any contract, commitment, activity, or agreement relating thereto; (iii) to open, maintain, and close bank and money market accounts, to endorse, for deposit to any such account or otherwise, checks payable or belonging to the Company from any other Person, and to draw checks or other orders for the payment of money on any such account; (iv) to hold,

distribute, and exercise all rights (including voting rights), powers, and privileges and other incidents of ownership with respect to assets of the Company; (v) to borrow funds, issue evidences of indebtedness, and refinance any such indebtedness in furtherance of any or all of the purposes of the Company, to guarantee the obligations of others, and to secure any such indebtedness or guarantee by mortgage, security interest, pledge, or other lien on any property or other assets of the Company; (vi) to employ or retain such agents, employees, managers, accountants, attorneys, consultants and other Persons necessary or appropriate to carry out the business and affairs of the Company, and to pay such fees, expenses, salaries, wages and other compensation to such Persons as the Board shall determine; (vii) to bring, defend, and compromise actions, in its own name, at law or in equity; and (viii) to take all actions and do all things necessary or advisable or incident to the carrying out of the purposes of the Company, so far as such powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the Company's business, purpose, or activities.

5.2 Powers of Members. Except as otherwise specifically provided by this Agreement or required by the Act or by the SEC pursuant to the Exchange Act, no Member shall have the power to act for or on behalf of, or to bind, the Company, and unless otherwise determined by the Board, all Members shall constitute one class or group of members of the Company for all purposes of the Act.

5.3 Member Conduct. The Company, and to the extent that it relates to the Company or the BeX, each Member agrees to comply with the federal securities laws and the rules and regulations thereunder and to cooperate with the SEC and the BSE pursuant to their regulatory authority and the provisions of this Agreement; and to engage in conduct that fosters and does not interfere with BSX's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

5.4 Member's Compensation. Except as otherwise specifically provided in this Agreement or in any of the Related Agreements, the Members shall not be entitled to any compensation for their services hereunder.

5.5 Resignation. Except as contemplated by Article 8, no Member shall resign from the Company unless and until such Member's required Initial Capital Contribution has been satisfied or specifically assumed by another Person and such Person has become a Member in accordance with this Agreement.

5.6 Cessation of Status as a Member. A Member will cease to be a member of the Company upon the Bankruptcy or the dissolution of such Member.

5.7 Claims Against or By Members. Subject to Article 13, except as set forth in the Related Agreements or required by the SEC pursuant to the Exchange Act, any and all matters relating to claims: (i) by the Company against a Member or a former Member or any Affiliate of a Member or a former Member (collectively the "Member Entities"); or (ii) by a Member Entity

against the Company shall be controlled by the Directors designated by the Member or Members that are not affiliated with such Member Entity. No Director shall be entitled to vote on (A) whether to initiate a claim by the Company against the Member that appointed such Director or an Affiliate of such Member, (B) any matter concerning a claim initiated by the Company against the Member that appointed such Director or a Member Entity affiliated with such Member, or (C) any matter concerning a claim initiated against the Company by the Member that appointed such Director or a Member Entity affiliated with such Member. Any action to be taken by the Board with respect to any such claim shall be considered effective only if approved by a majority of the Directors (that are not affiliated with such Member Entity).

5.8 Suspension of Voting Privileges and Termination of Membership. After appropriate notice and opportunity for hearing, the Board, by a vote of Directors representing 2/3 of the Total Votes, including the affirmative vote of the BSE and excluding the vote of such Member subject to sanction, may suspend or terminate a Member's voting privileges or membership in the Company, under the Act or this Agreement: (i) in the event such Member is subject to a "statutory disqualification," as defined in Section 3(a)(39) of the Exchange Act; or (ii) in the event such Member has violated any provision of this Agreement, or any federal or state securities law; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

Article 6

Operating Budget

The Company's operating budget for each Fiscal Year must be approved by a majority of the Board. Exhibit 2 hereto sets forth the use of the Company's initial proceeds.

Article 7

Members; Financing Company

7.1 Initial Capital Contributions – Units.

(a) Subject to the BSE Contribution Schedule, the Initial Capital Contribution by, and the date such Initial Capital Contribution was made or shall be made to the Company, as the case may be, by each Member is set forth opposite their respective names on Schedule 1 hereto, as amended from time to time.

(b) The number of Units (and class designation) held by, and Percentage Interest of, each Member is set forth in Schedule 2 hereto, as amended from time to time.

(c) The value assigned to each Initial Capital Contribution is equal to the amount of cash and the fair market value of all other assets, services and/or properties contributed by such Member, determined as set forth on Schedule 1.

(d) In the event of any dispute as to the fair market value of any Capital Contribution made through the provision of services or the contribution of assets or property, the

fair market value of such Capital Contribution shall be finally determined by an independent accounting firm of national prominence that has no current business relationship with any of the disputing Members or the Company or as the Members shall otherwise agree.

7.2 Members; Capital. The Capital Contributions of the Members shall be set forth on the books and records of the Company. No interest shall be paid on any Capital Contribution to the Company. No Member shall have any personal liability for the repayment of the Capital Contribution of any Member, and no Member shall have any obligation to fund any deficit in its Capital Account. Each Member hereby waives, for the term of the Company, any right to partition the property of the Company or to commence an action seeking dissolution of the Company under the Act.

7.3 Additional Capital Contributions.

(a) The Board shall, at its sole discretion, determine the capital needs of the Company. If at any time or from time to time after the Effective Date the Board shall determine that additional capital is required in the interests of the Company, additional working capital shall be raised in such manner as determined by the Board, including but not limited to the following: (i) the issuance of new Units to third parties; (ii) the issuance of convertible debt; (iii) borrowing funds from new sources; (iv) borrowing funds from existing Members or deferring payment for services performed by then-existing Members; and (v) the issuance of additional Units to then-existing Members. In all cases, the Board shall pursue those financing alternatives deemed non-dilutive to the existing Members before all other financing alternatives.

(b) In the event that the Board determines by majority vote to issue additional Units, such Units shall first be offered to the then-existing Members in the proportion that the number of Units they own then represent to all Units then issued and outstanding (such Member's "Ratable Purchase Interest"). If one or more Members do not offer to purchase all Units offered to them within fifteen (15) days of their receipt of such offer, then the unpurchased Units shall be offered for sale as follows:

(i) If one or more of the non-purchasing Members is a Founding Member, the Company shall deliver to each Founding Member (other than any non-purchasing Member) a written notice stating that such Founding Member (other than any non-purchasing Member) shall have the irrevocable and exclusive option to purchase up to that portion of the unsold units as equals the product of (A) the number of Units not purchased by the Founding Members multiplied by (B) a fraction, the numerator of which shall be the Ratable Purchase Interest of such Founding Member and the denominator of which shall be the aggregate Ratable Purchase Interests of all Founding Members (other than any non-purchasing Founding Members) (the "First Option Proportionate Share"). Within fifteen (15) days of delivery of the Company's notice, each Founding Member (other than any non-purchasing Founding Member) shall deliver to the Company a written notice stating whether it elects to exercise its option under this subparagraph (i) and the maximum number of Units not purchased by the Founding Members that it is willing to purchase.

(ii) If, after complying with subparagraph (i) above, any offered Units remain unsold, the Company shall deliver to each Member other than the Founding Members (each, an "Offeree") a written notice stating that such Offeree shall have the irrevocable and exclusive option to purchase such remaining Units as equals the product of (A) the remaining unsold Units multiplied by (B) a fraction, the numerator of which shall be the number of Units then owned by such Offeree and the denominator of which shall be the aggregate number of Units then held by all Offerees (the "Second Option Proportionate Share"). Within fifteen (15) days of delivery of the Company's notice, each Offeree shall deliver to the Company a written notice stating whether it elects to exercise its option under this subparagraph (ii) and the maximum number of Units (up to all such Offeree's Second Option Proportionate Share) that it is willing to purchase.

(iii) In the event that, after taking the actions set forth in subparagraphs (i) and (ii), any Units remain unsold, the Board, by majority vote, subject to Section 4.4(b)(v), may sell such Units to such parties on such terms as it shall determine in its sole discretion.

7.4 Borrowings and Loans. If any Member shall lend any monies to the Company, the amount of any such loan shall not constitute an increase in the amount of such Member's Capital Contribution unless specifically agreed to by the Board and such Member. The terms of such loans and the interest rate(s) thereon shall be commercially reasonable terms and rates, as determined by the Board in accordance with Article 4.

7.5 General. Except as otherwise provided in this Agreement, any Member and its Affiliate may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Company and, subject to applicable law, shall have the same rights and obligations with respect thereto as a Person who is not a Member in the Company. Any such transactions with a Member or an Affiliate of a Member shall be on the terms approved by all of the members of the Board from time to time or, if such transaction is contemplated by this Agreement, or any other Related Agreement, on the terms provided for in this Agreement or such Related Agreement.

7.6 Liability of the Members and Directors. Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, will be solely the debts, obligations and liabilities of the Company and not that of any Member or Director.

Article 8

Transferability of Units

8.1 Restrictions on Transfer.

(a) Subject to Section 4.4(b)(v), except for (i) transfers among Members or (ii) transfers to Affiliates of a Member, including employees and their immediate family members of a Member or such Member's Affiliates, no Person shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, transfer, dispose of, sell, lend, pledge, hypothecate, encumber, assign, exchange, participate, subparticipate, or otherwise transfer in any manner (each, a "Transfer") all or any portion of its Units, or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement unless prior to such Transfer the transferee is approved by the Board. To be eligible for such Board approval, the proposed transferee must (i) have sufficient financial assets to support such Transfer, (ii) be able to carry out its duties as a Member hereunder, if admitted as such, and (iii) be under no regulatory or governmental bar or disqualification. Notwithstanding the foregoing, registration as a broker-dealer or Self-Regulatory Organization is not required to be eligible for such Board approval.

(b) In addition to the foregoing requirements, and notwithstanding anything to the contrary contained in this Agreement, a Person (other than an Affiliate of an existing Member) shall be admitted to the Company as an additional or substitute member of the Company only upon (i) such Person's execution of a counterpart of this Agreement to evidence its written acceptance of the terms and provisions of this Agreement, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (ii) if such Person is a transferee, its agreement in writing to its assumption of the obligations hereunder of its assignor, and acceptance thereof by resolution of the Board, which acceptance may be given or withheld in the sole discretion of the Board, (iii) if such Person is a transferee, confirmation by the Board that the Transfer was permitted by this Agreement, and (iv) approval of the Board. Whether or not a transferee who acquired any Units has accepted in writing the terms and provisions of this Agreement and assumed in writing the obligations hereunder of its predecessor in interest, such transferee shall be deemed, by the acquisition of such Units, to have agreed to be subject to and bound by all the obligations of this Agreement with the same effect and to the same extent as any predecessor in interest of such transferee.

(c) All costs incurred by the Company in connection with the admission to the Company of a substituted Member pursuant to this Article 8 shall be borne by the transferor Member (and if not timely paid, by the substituted Member), including, without limitation, costs of any necessary amendment hereof, filing fees, if any, and reasonable attorneys' fees.

8.2 Initial Right of First Refusal. In the event that a Member (the "Transferring Member") desires to, directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, Transfer (other than a transfer from a Member to its Affiliate, which is expressly excluded from this Section 8.2) all or any portion of the Units owned, directly or indirectly, by such Member, and obtains a bona fide offer therefor either from a third party or another Member (each, in such case, a "Transferee"), the Transferring Member shall first offer such Units (the "Transfer Units") to the Company in the following manner:

(a) The Transferring Member shall promptly deliver a written notice (the "Transfer Notice") to the Company and the other non-transferring Founding Members (the "Non-Transferring Founding Members") specifying in reasonable detail the proposed price,

terms and conditions of such proposed Transfer and the identity of the proposed Transferee (the "Transfer Offer"). The Transfer Notice shall constitute an irrevocable offer by the Transferring Member to sell the Transfer Units to the Company (and in the event the Company does not purchase the Transfer Units, the Non-Transferring Founding Members) (in the manner set forth herein) at a price equal to the price contained in the Transfer Offer and upon substantially the same terms as contained in the Transfer Offer.

(b) Upon receipt of such Transfer Notice, the Company shall be entitled, subject to Section 8.4 hereof, and by written notice to the Transferring Member and the Non-Transferring Founding Members within 10 days after receipt of the Transfer Notice, to elect to purchase all but not less than all of the Transfer Units at the price and on the terms and conditions specified in the Transfer Notice.

8.3 Secondary Right of First Refusal and Closing Mechanics. Subject to Section 8.1 and 8.2 hereof, in the event that the Company does not elect to purchase all of the Transfer Units pursuant to Section 8.2 above, the Transferring Member shall then offer the Transfer Units to the Non-Transferring Founding Members in the following manner:

(a) The Transferring Member shall promptly deliver a written notice (the "Member Transfer Notice") to the Non-Transferring Founding Members that the Company has not purchased the Transfer Units, and shall specify in reasonable detail the proposed price, terms and conditions of such proposed transfer and the identity of the proposed Transferee.

(b) Upon receipt of such Member Transfer Notice, each of the Non-Transferring Founding Members shall be entitled, subject to Section 8.4 hereof, and the other provisions of this Article 8 (except for Section 8.2), and by notice to the Transferring Member and the Company within 20 days after receipt of the Member Transfer Notice, to collectively elect to purchase (or cause its Affiliate to purchase) all but not less than all (unless otherwise mutually agreed by the Non-Transferring Founding Members and the Transferring Member) of the Transfer Units at the price and on the terms and conditions specified in the Member Transfer Notice. The Company shall promptly provide copies of each such notice to the Transferring Member and the other Non-Transferring Founding Members.

(c) If the aggregate number of Transfer Units as to which notices of election to purchase are provided by Non-Transferring Founding Members exceeds the number of Transfer Units, the right to purchase the Transfer Units shall be allocated among the Non-Transferring Founding Members (with rounding to avoid fractional shares) in proportion to (A) the number of Transfer Units elected to be purchased by each Non-Transferring Founding Member, relative to (B) the aggregate number of Transfer Units (on a cumulative basis) that all Non-Transferring Founding Members elect to purchase pursuant to this Section 8.3.

(d) If the Company or one or more Non-Transferring Founding Members elect to purchase all the Transfer Units, the Transferring Member shall, subject to the provisions of this Article 8, complete such sale to the Company or such Non-Transferring Founding Members within 30 days after receipt of the Transfer Notice or Member Transfer Notice, as applicable, at a price and on terms and conditions specified in the Transfer Notice or Member Transfer Notice,

as applicable, except that the closing date may be delayed by the Company for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals, to the extent such delay is required by law. At such closing, the Company or such Non-Transferring Founding Member(s) shall deliver the consideration for the purchase in the appropriate amount to the Transferring Member against delivery of certificates representing the Transfer Units so purchased, duly endorsed for transfer.

(e) If no Non-Transferring Founding Member elects to purchase the Transfer Units, the Transferring Member may, subject to the provisions of this Article 8, complete the sale described in the Member Transfer Notice within 60 days after receipt of the Transfer Notice at a price and on terms and conditions no more favorable to the Transferee than those specified in the Member Transfer Notice, except that the closing date may be delayed for up to 90 additional days pending completion of all regulatory filings, expiration of all waiting periods and receipt of all required regulatory approvals, to the extent such delay is required by law. In the event the Transferring Member does not complete such sale to the Transferee within such 60-day period (as extended, if applicable), any subsequent proposed sale of any Transfer Units shall be once again subject to the provisions of Section 8.2 and this Section 8.3.

8.4 Additional Restrictions. Anything contained in the foregoing provisions of this Article 8 expressed or implied to the contrary notwithstanding:

(a) In no event shall a Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement take place if such Transfer: (i) in the opinion of tax counsel to the Company, could cause a termination of the Company within the meaning of Section 708 of the Code or, (ii) in the opinion of the Board, based on advice of tax counsel, could cause a termination of the Company's status as a partnership or cause the Company to be treated as a publicly traded partnership for federal income tax purposes, (iii) is prohibited by any state, federal or provincial securities laws, or (iv) is prohibited by this Agreement.

(b) The Board may, in addition to any other requirement that it may impose, require as a condition of any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, of any Units that the Transferring Member furnish to the Company an opinion of counsel satisfactory (both as to such opinion and as to such counsel) to counsel to the Company that such Transfer, whether direct or indirect, voluntary or involuntary, by operation or law or otherwise, complies with applicable federal and state securities laws.

(c) Notwithstanding anything to the contrary contained in this Agreement, any Transfer, whether direct or indirect, voluntary or involuntary, by operation of law or otherwise, in contravention of any of the provisions of this Article 8 shall be void ab initio, and ineffectual and shall not bind or be recognized by the Company.

(d) Beginning after SEC approval of this Agreement, the Company shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition that results in a Member's Percentage Interest, alone or together with any Affiliate of such Member,

meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%.

(e) Beginning after SEC approval of this Agreement, in addition to the notice requirement in subsection (f), the parties agree that the following Transfers are subject to the rule filing process pursuant to Section 19 of the Exchange Act: (i) any Transfer that results in the acquisition and holding by any Person, alone or together with any Affiliate of such Person, of an aggregate Percentage Interest level which meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (i.e., 25%, 30%, etc.); or (ii) any Transfer that results in a reduction of the BSE's aggregate Percentage Interest to below the 20% threshold. Additionally, SEC approval will be required to permit any Person, alone or together with any Affiliate of such Person, to control greater than 20% of the Total Votes, regardless of Percentage Interest.

(f) For purposes of this subsection (f): (i) a "controlling interest" shall mean the ownership by any Person, alone or together with any Affiliate of such Person, of a 25% or greater interest in a Member; and (ii) an "Acquirer" shall mean a Person who, alone or together with any Affiliate of such Person, acquires a controlling interest in a Member. An Acquirer shall be required to execute, and the relevant Member shall take such action as is necessary to ensure that an Acquirer executes, an amendment to this Agreement upon establishing a controlling interest in any Member who, alone or together with any Affiliate of such Member, holds a Percentage Interest in the Company equal to or greater than 20%. In such amendment the Acquirer shall agree, and the relevant Member shall take such action as is necessary to ensure that the Acquirer agrees, to become a new party to this Agreement and shall agree, and the relevant Member shall take such action as is necessary to ensure that the Acquirer agrees, to abide by all the provisions of this Agreement. Beginning after SEC approval of this Agreement, any amendment to this Agreement executed pursuant to this subsection (f) is subject to the rule filing process pursuant to Section 19 of the Exchange Act. The rights and privileges, including all voting rights, of the Member in whom a controlling interest is acquired under this Agreement and the Act shall be suspended until such time as the amendment executed pursuant to this subsection (f) has become effective pursuant to Section 19 of the Exchange Act or the Acquirer no longer holds a controlling interest in the Member.

(g) No Member shall directly or indirectly, whether voluntarily, involuntarily, by operation of law or otherwise, Transfer (except to an Affiliate) in any manner all or any portion of its Units or any rights arising under, out of or in respect of this Agreement, including, without limitation, any right to damages for breach of this Agreement prior to the second anniversary of the Launch Date (the "Lock-up Period"). The Board may waive such restriction by a majority vote.

8.5 Ownership Concentration Limit.

(a) No Person, either alone or with its Affiliates, who is a BeX Participant, shall be permitted at any time to own in the aggregate more than 20% of the outstanding Units of the Company (the "Ownership Concentration Limit").

(b) In the event that a Person that is not a BeX Participant, either alone or together with its Affiliates, exceeds the Ownership Concentration Limit and subsequently becomes a BeX Participant, then that Person shall, within 180 days of the date that he/she became a BeX Participant, transfer sufficient ownership interest so that the Person that is now also a BeX Participant does not exceed the Ownership Concentration Limit.

8.6 Voting Limitation. In the event that a Member, or any Affiliate of such Member, is approved by the BSE as a BeX Participant and such Member owns more than 20% of the Units, alone or together with any Affiliates of such Member, the Member and its designated Directors shall have no voting rights whatsoever with respect to any action relating to the Company nor shall the Member or its designated Directors, if any, be entitled to give any proxy in relation to a vote of the Members, in each case solely with respect to the Excess Units held by such Member; provided, however, that whether or not such Member or its designated Directors, if any, otherwise participates in a meeting in person or by proxy, such Member's Excess Units shall be counted for quorum purposes and shall be voted by the person presiding over quorum and vote matters in the same proportion as the Units held by the other Members are voted (including any abstentions from voting).

8.7 Rights of Inclusion.

(a) If at any time, Members collectively holding more than 50% of the Units (the "Majority Transferors") propose to sell, in one or more related transactions, 20% or more of their Units to any third party, such disposition shall not be permitted unless such Majority Transferors shall offer (the "Majority Offer") by written notice (the "Majority Notice") to the other Members (individually, a "Minority Offeree" and collectively, the "Minority Offerees") the right to elect to include, at the option of each Minority Offeree, in the sale to the third party, some or all of the Units owned by such Minority Offeree, subject to the provisions of Section 8.7(b). The Majority Notice shall describe the proposed transaction and shall include the sale consideration and other material terms thereof and shall be accompanied by copies of the documents pursuant to which such disposition is to be effected. At any time within 15 days after the delivery of the Majority Notice, each of the Minority Offerees may accept the offer included in the Majority Notice for up to such number of Units determined in accordance with the provisions of Section 8.7(b) by furnishing written notice of such acceptance to the Majority Transferors.

(b) Each Minority Offeree shall have the right to sell, pursuant to the Majority Offer, up to the same percentage of such Minority Offeree's Units as the percentage of Units to be disposed of by the Majority Transferors then bears to the total number of Units then owned by the Majority Transferors; provided, that if the Majority Offer is for a maximum number of Units and such number is less than the number that would be disposed of by application of the foregoing, then the right to sell Units shall be allocated on a pro rata basis among the Majority Transferors and the Minority Offerees electing to accept the Majority Offer in proportion to (i) the number of Units offered to be sold by such Member, as compared with (ii) the aggregate number of Units offered to be disposed of in the aggregate by the Majority Transferors and such Minority Offerees.

(c) The disposition by the Minority Offerees pursuant to Section 8.7(b) shall be on the same terms and conditions as are received by the Majority Transferors and as stated in the Majority Notice.

(d) At the closing of the sale of Units of the Majority Transferors and the Minority Offerees to the third party pursuant to the Majority Offer, each Minority Offeree that has elected to sell its Units pursuant to the Majority Offer shall execute such documents as are to be executed by all Members pursuant to the Majority Offer against payment to such Minority Offeree of the total price for the Units and shall furnish such other evidence of the completion and time of completion of the sale and the terms thereof as may be reasonably requested.

(e) If within 15 days after the delivery of the Majority Notice, any Minority Offeree fails to accept the offer contained in the Majority Notice, such Minority Offeree will be deemed to have waived any and all of its rights with respect to the sale or other disposition of Transfer Units described in the Majority Notice and the Majority Transferors shall have 60 days in which to enter into an agreement to dispose of not more than the amount described in the Majority Notice on terms not more favorable to the Majority Transferors than were set forth in the Majority Notice. If, at the end of 75 days following the delivery of the Majority Notice, the Majority Transferors have not completed the sale or other disposition of Units of the Majority Transferor in accordance with the terms of the third party's offer, all the restrictions on disposition contained in this Agreement with respect to Units owned by the Majority Transferor shall again be in effect.

8.8 Continuation of LLC. The liquidation, dissolution, bankruptcy, insolvency, death, or incompetency of any Member shall not terminate the business of the Company or, in and of itself, dissolve the Company, which shall continue to be conducted upon the terms of this Agreement by the other Members and by the personal representatives and successors in interest of such Member.

8.9 No Retroactive Effect. No new Members shall be entitled to any retroactive allocation of losses, income or expense deductions incurred by the Company. The Board may, at the time an additional Member is admitted, close the Company books (as though the Company's Fiscal Year has ended) or make pro-rata allocations of loss, income and expense deductions to an additional Member for that portion of the Company's Fiscal Year in which an additional Member was admitted in accordance with the provisions of §706(d) of the Code.

Article 9

Distributions

9.1 Current Distributions. If at any time and from time to time the Board determines that the Company has cash that is not required for the operations of the Company, the payment of liabilities or expenses of the Company, or the setting aside of reserves to meet the anticipated cash needs of the Company ("Distributable Cash"), then:

(a) Within 10 days after the end of each fiscal quarter, the Company shall make distributions ("Tax Distributions") to the Members of their respective Tax Amounts for such fiscal quarter (or, in the event that Distributable Cash is less than the total of all such Tax Amounts, the Company shall distribute the Distributable Cash in proportion to such Tax Amounts). If after the end of any fiscal year it is determined that a Member's Tax Amount for the fiscal year exceeds the sum of the Tax Distributions made to the Member hereunder and the distributions made to such member under Section 9.1(b) for such fiscal year (any such excess, a "Shortfall Amount"), then the Company shall, on or before the 75th day of the next fiscal year, make an additional Tax Distribution to the members of their respective Shortfall Amounts (or, in the event that Distributable Cash is less than the total of all such Shortfall Amounts, the Company shall distribute the Distributable Cash in proportion to such Shortfall Amounts). If the aggregate Tax Distributions to any Member pursuant to this subsection for a fiscal year exceed the Member's Tax Amount for such fiscal year, such excess shall be deducted from the Member's Tax Amount when calculating the Tax Distributions to be made to such Member for each subsequent fiscal year until the excess has been fully accounted for. All Tax Distributions to a Member shall be treated as advances against any subsequent distributions to be made to such Member under Section 9.1(b) or Section 11.2. Subsequent distributions made to the Member pursuant to Sections 9.1(b) and 11.2 shall be adjusted so that when aggregated with all prior distributions to the Member pursuant to those provisions, and with all prior Tax Distributions to the Member, the amount distributed shall be equal, as nearly as possible, to the aggregate amount that would have been distributable to such member pursuant to Section 9.1(b) and Section 11.2 if this Agreement contained no provision for Tax Distributions.

(b) After making the Tax Distributions described in subsection (a) hereof, the Board may distribute all or any portion of remaining Distributable Cash to the Members in proportion to their Percentage Interests, unless the distribution is a liquidating distribution, which shall be made in the manner set out in Section 11.1(b).

9.2 Limitation. The Company, and the Board on behalf of the Company, shall not make a distribution to any Member on account of its interest in the Company if and to the extent such distribution would violate the Act or other applicable law.

9.3 Withholdings Treated as Distributions. Any amount that the Company is required to withhold and pay over to any governmental authority on behalf of a Member shall be treated as a distribution made to such Member pursuant to Section 9.1(a), 9.1(b) or 11.2, and shall be deducted from the amounts next distributable to such Member pursuant to any of those provisions until the withholding has been fully accounted for. To the extent that such an amount is treated, pursuant to the previous sentence, as a distribution under Section 9.1(a), it shall also be treated as a Tax Distribution, with the consequences described in Section 9.1(a).

Article 10

Allocations of Profits and Losses

10.1 Allocations of Profits; General. Except as provided in Sections 10.3 through 10.9 below, all profits and credits of the Company (for both accounting and tax purposes) for each

fiscal year shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of losses under Section 10.2 not previously taken into account pursuant to this clause first, to the extent of such losses, and second, in proportion to their Percentage Interest.

10.2 Allocations of Losses; General. (a) Except as provided in Sections 10.3 through 10.9 below, all net losses of the Company for each fiscal year (for both accounting and tax purposes), and all Nonrecourse Deductions, shall be allocated to the Members from time to time (but no less often than once annually and before making any distribution to the Members) first, in proportion to any prior allocations of profits under Section 10.1 not previously taken into account pursuant to this clause first, to the extent of such profits, second, in proportion to the Members' Capital Contributions, to the extent thereof, and third, in proportion to their Percentage Interest.

(b) Allocations of Nonrecourse Deductions shall be made pursuant to Treasury Regulation Section 1.752-3(a).

10.3 Limitation. Notwithstanding anything otherwise provided in Section 10.2, no Member will be allocated any losses not attributable to Nonrecourse Debt to the extent such allocation (without regard to any allocations based on Nonrecourse Debt), and after taking into account any reductions to the Member's Capital Account required by Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*), or (*6*) results in a deficit in such Member's Capital Account in excess of such Member's actual or deemed obligation, if any, to restore deficits on the dissolution of the Company (any such excess, an "Unpermitted Deficit"). Any losses not allocable to a Member under this sentence shall be allocated to the other Members. In the event any Member's Capital Account is adjusted (by way of distribution, allocation or otherwise) to create an Unpermitted Deficit, the Company shall allocate to such Member, as soon as possible thereafter, items of income or gain sufficient to eliminate the Unpermitted Deficit. In the event that upon liquidation of the Company or the liquidation of a Member's interest, such Member's Capital Account has an Unpermitted Deficit, the Member must make a Capital Contribution to such Member's Capital Account so as to cure the Unpermitted Deficit.

10.4 Qualified Income Offset. In the event any Member unexpectedly receives adjustments, allocations, or distributions described in Treasury Regulations §1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*), items of income and gain of the Company shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balance in such Member's Capital Account created by such adjustments, allocations or distributions as promptly as possible. The preceding sentence is intended to comply with the "qualified income offset" requirement in Treasury Regulations §1.704-1(b)(2)(ii)(d), and shall be interpreted consistently therewith.

10.5 Nonrecourse Debt and Chargebacks. If at the end of any fiscal year of the Company, after taking into account all distributions made and to be made in respect of such year but prior to any allocation of profits and losses for such year except the allocations required by Section 10.3, any Member shall have a negative Capital Account by reason (and to the extent) of allocations of items of loss or deduction attributable in whole or part to Nonrecourse Debt

secured by any of the assets of the Company, such Member shall be allocated (or if more than one Member has such a negative Capital Account, all such Members shall be allocated ratably among them in accordance with the respective proportions of such negative balances as are attributable to such deductions or losses) that portion of any items of income and gain for such year as may be equal to the amount by which the negative balance of such Member's Capital Account exceeds the sum of (A) such Member's allocable share of the aggregate Minimum Gain with respect to all of the Company's assets securing such Nonrecourse Debt plus (B) such Member's allocable share of aggregate Company debt which is not Nonrecourse Debt, such allocable share to be determined in accordance with the provisions of Section 752 of the Code and the Treasury Regulations thereunder. In addition, if there is a net decrease in the Company's aggregate Minimum Gain with respect to all of its assets for a taxable year, each Member shall be allocated items of income and gain ratably in an amount equal to that Member's share of such net decrease in the manner and to the extent required by Treasury Regulations Section 1.704-2(f) or any successor regulation. The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations §1.704-2(f), and shall be interpreted and applied in a manner consistent therewith.

10.6 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member that (in its capacity, directly or indirectly, as lender, guarantor, or otherwise) bears the economic risk of loss with respect to the loan to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i). If, during any fiscal year or other period, there is a net decrease in Member Nonrecourse Debt Minimum Gain, that decrease shall be charged back among the Members in accordance with Treasury Regulations §1.704-2(i)(4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations §1.704-2(i)(4), and shall be interpreted and applied in a manner consistent therewith.

10.7 Calculation of Profits and Losses. Net Profit and Net Loss shall be computed for each Fiscal Year as an amount equal to the Company's taxable income or loss for such Fiscal Year determined in accordance with Code Section 703(a), including pursuant to Code Section 703(a)(1), all items of income, gain loss or deduction required to be stated separately and with adjustments as follows: (a) In computing Net Profit or Net Loss pursuant to this Section, there shall be added any income of the Company exempt from federal income tax and not otherwise taken into account in computing the Company's taxable income or loss; (b) Any expenditure of the Company, that was not otherwise taken into account in computing Net Profit or Net Loss, which is described in Code Section 705(a)(2)(B) or that pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) is treated as an expenditure that is described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or loss; (c) To the extent that the net book value of any asset of the Company is adjusted to equal such asset's fair market value or to the extent that the net book value of any asset of the Company is adjusted as a result of a distribution in kind to any Member, where such distribution equals to the fair market value of such asset on the date of distribution, then such adjustment shall be taken into account as gain or loss from the disposition of such asset for the purposes of computing Net Profit or Net Loss; (d) To the extent that any gain or loss is recognized for federal income tax purposes as a result of the disposition of any asset of the Company, such gain or loss for the purposes of this Section, such gain or loss will be

computed by reference to the net book value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its net book value; and (e) Any items allocated pursuant to Section 10.2(b) Allocations of Nonrecourse Deductions, or Section 10.3 Limitation, or Section 10.4 Qualified Income Offset, or Section 10.5 Nonrecourse Debt and Chargebacks shall not be taken into account in computing Net Profit or Net Loss.

10.8 Section 704(c) and Capital Account Revaluation Allocations. The Members agree that to the fullest extent possible with respect to the allocation of depreciation and gain for U.S. federal income tax purposes, Section 704(c) of the Code shall apply with respect to non-cash property contributed to the Company by any Member. For purposes hereof, any allocation of income, loss, gain or any item thereof to a Member pursuant to Section 704(c) of the Code shall affect only its tax basis in its Percentage Interest and shall not affect its Capital Account. In addition to the foregoing, if the Company's assets are reflected in the Capital Accounts of the Members at a book value that differs from the adjusted tax basis of the assets (e.g., because of a revaluation of the Members' Capital Accounts under Treasury Regulations §1.704-1(b)(2)(iv)(*f*)), allocations of depreciation, amortization, income, gain or loss with respect to such property shall be made among the Members in a manner consistent with the principles of Section 704(c) of the Code and this Section 10.8.

10.9 Offset of Regulatory Allocations. The allocations required by Sections 10.3 through 10.6 and Section 10.8 are intended to comply with certain requirements of the Treasury Regulations. The Board may, in its discretion and to the extent not inconsistent with Section 704 of the Code, offset any or all such regulatory allocations either with other regulatory allocations or with special allocations of income, gain, loss or deductions pursuant to this section in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the regulatory allocations were not part of this Agreement.

10.10 Terminating and Special Allocations. Notwithstanding the foregoing allocation provisions, any profits or losses resulting from a liquidation, merger or consolidation of the Company, the sale of substantially all the assets of the Company in one or a series of related transactions, or any similar event (and, if necessary, specific items of gross income, gain, loss, or deduction incurred by the Company in the fiscal year of such transaction(s)) shall be allocated among the Members so that after such allocations and the allocations required by Section 11.3, and immediately before the making of any liquidating distributions to the Members under Section 11.2, the Members' Capital Accounts equal, as nearly as possible, the amounts of the respective distributions to which they are entitled under Section 11.2.

Article 11

Dissolution and Winding Up

11.1 (a) The Company shall be dissolved and its affairs shall be wound up upon:

(i) the election to dissolve the Company made by the Board pursuant to Section 4.4(b)(xi); or

(ii) the entry of a decree of judicial dissolution under § 18-802 of the Act; or

(iii) the resignation, expulsion, Bankruptcy or dissolution of the last remaining Member, or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company, unless the business of the Company is continued without dissolution in accordance with the Act; or

(iv) the occurrence of any other event that causes the dissolution of a limited liability company under the Act unless the Company is continued without dissolution in accordance with the Act.

The legal representatives, if any, of any Member shall succeed as assignee to such Member's interest in the Company upon the Bankruptcy, or dissolution of such Member, but shall be admitted as a substitute Member, subject to Article 8, only with the written consent of the Board (such consent to be in the Board's sole discretion); unless and until such consent is given, any Percentage Interest in the Company held by such legal representatives of a Member shall not be included in calculating the Percentage Interests of the Members required to take any action under this Agreement.

(b) Upon dissolution of the Company, the business of the Company shall continue for the sole purpose of winding up its affairs. The winding up process shall be carried out by all of the Members unless the dissolution is caused by the sole remaining Member's ceasing to be a member of the Company, in which case a liquidating trustee may be appointed for the Company by vote of a majority of the Directors (the Members or such liquidating trustee is referred to herein as the "Liquidator"). In winding up the Company's affairs, every effort shall then be made to dispose of the assets of the Company in an orderly manner, having regard to the liquidity, divisibility and marketability of the Company's assets. If the Liquidator determines that it would be imprudent to dispose of any non-cash assets of the Company, such assets may be distributed in kind to the Members, in lieu of cash, proportionately to their rights to receive cash distributions hereunder; provided, that the Liquidator shall in its sole discretion determine the relative shares of the Members of each kind of those assets that are to be distributed in kind. The Liquidator shall not be entitled to be paid by the Company any fee for services rendered in connection with the liquidation of the Company, but the Liquidator (whether one or more Members or a liquidating trustee) shall be reimbursed by the Company for all third-party costs and expenses incurred by it in connection therewith and shall be indemnified by the Company with respect to any action brought against it in connection therewith by applying, *mutatis mutandis,* the provisions of Article 14.

11.2 Application and Distribution of Assets.

(a) Pre-Launch. The assets of the Company in winding up at any time prior to the Launch Date shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members for the return, to the extent possible, of their respective Capital Contributions, in a manner such that those assets contributed by the Members that are not divisible or saleable are first applied and distributed to the Member which contributed such asset and then, such that all remaining liquid or other assets are distributed to the Members in proportion to the sum of (i) the amount of cash contributed and (ii) the fair market value of the out-of-pocket expenses, services and/or other properties, contributed by each such Member.

(b) Post-Launch. The assets of the Company in winding up at any time following the Launch Date shall be applied or distributed as follows: first, to creditors of the Company, including Members who are creditors, to the extent otherwise permitted by law, whether by payment or the making of reasonable provision for the payment thereof, and including any contingent, conditional and unmatured liabilities of the Company, taking into account the relative priorities thereof; second, to the Members and former Members in satisfaction of liabilities under the Act for distributions to such Members and former Members; and third, to the Members, first, for the return of their Capital Contributions, and second, in proportion to their respective Percentage Interests.

(c) Reserve. A reasonable reserve for contingent, conditional and unmatured liabilities in connection with the winding up of the business of the Company shall be retained by the Company until such winding up is completed or such reserve is otherwise deemed no longer necessary by the Liquidator.

11.3 Capital Account Adjustments. For purposes of determining a Member's Capital Account, if, on liquidation and dissolution, some or all of the assets of the Company are distributed in kind, the Company profits (or losses) shall be increased by the profits (or losses) that would have been realized had such assets been sold for their fair market value on the date of dissolution of the Company, as determined by the Liquidator. Such increase shall: (i) be allocated to the Members in accordance with Article 10 hereof and (ii) increase (or decrease) the Members' Capital Account balances accordingly, it being the general intent that the adjustments contemplated by this subsection shall have the effect, as nearly as possible, of causing the Members' Capital Account balances to be in proportion to their Percentage Interests.

11.4 Termination of the LLC.

Subject to Section 18.1 of this Agreement, the separate legal existence of the Company shall terminate when all assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Members in the manner provided for in this Article 11, and a Certificate of Cancellation shall have been filed in the manner required by Section 18-203 of the Act.

Article 12

Books, Records and Accounting

12.1 Books of Account. The Board shall cause to be entered in appropriate books, kept at the Company's principal place of business, which must be in the United States, all transactions of or relating to the Company. Each Member shall have access to and the right, at such Member's sole cost and expense, to inspect and copy such books and all other the Company records during normal business hours; provided that the inspecting Member shall be responsible for any out-of-pocket costs or expenses incurred by the Company in making such books and records available for inspection. Notwithstanding the foregoing, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and the SEC at no additional cost to the BSE or the SEC. The books, records, premises, officers, directors, agents, and employees of the Company shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act. The Board shall not have the right to keep confidential from the Members any information that the Board would otherwise be permitted to keep confidential pursuant to §18-305(c) of the Act.

12.2 Deposits of Funds. All funds of the Company shall be deposited in its name in such checking, money market, or other account or accounts as the Board may from time to time designate; withdrawals shall be made therefrom on such signature or signatures as the Board shall determine.

12.3 Fiscal Year. The fiscal year of the Company shall begin on October 1st and end on September 30th (the "Fiscal Year").

12.4 Financial Statements; Reports to Members. The Company, at its cost and expense, shall prepare and furnish to each of the Members, within ninety (90) days after the close of each taxable year, financial statements of the Company, and all other information necessary to enable such Member to prepare its tax returns, including without limitation a statement showing the balance in such Member's Capital Account.

12.5 Tax Elections. The Members may, by unanimous agreement and in their absolute discretion, make all tax elections (including, but not limited to, elections relating to depreciation and elections pursuant to Section 754 of the Code) as they deem appropriate. Notwithstanding anything contained in Article 10 of this Agreement, any adjustments made pursuant to Section 754 of the Code shall affect only the successor in interest to the transferring Member. Each Member will furnish the Company with all information necessary to give effect to any such election and will pay the costs of any election applicable as to it.

12.6 Tax Matters Member. BSE shall be the tax matters Member of the Company for purposes of the Code, and shall be entitled to take such actions on behalf of the Company in any and all proceedings with the Internal Revenue Service as it, in its absolute discretion, deems appropriate without regard to whether such actions result in a settlement of tax matters favorable to some Members and adverse to other Members. Notwithstanding the foregoing, BSE shall (a)

promptly deliver to the other Members copies of any notices, letters or other documents received by BSE as the tax matters Member of the Company, (b) keep the other Members informed with respect to all matters involving BSE as the tax matters Member of the Company, and (c) consult with the other Members and obtain the approval of the other Members prior to taking any actions as the tax matters Member of the Company. The tax matters Member shall not be entitled to be paid by the Company any fee for services rendered in connection with any tax proceeding, but shall be reimbursed by the Company for all costs and expenses incurred by it in connection with any such proceeding and shall be indemnified by the Company with respect to any action brought against it in connection with the settlement of any such proceeding by applying, *mutatis mutandis,* the provisions of Article 14.

Article 13

Arbitration

13.1 (a) All disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be (x) settled by arbitration before a panel of three neutral arbitrators (the "Neutral Arbitrators") appointed in accordance with the Commercial Arbitration Rules of the American Arbitration Association, each having experience with and knowledge of the general field related to the dispute, claim or controversy (with at least one being an attorney), and (y) administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules as in effect at the time a request for arbitration is made. For the purposes of this Section 13.1, the following persons shall be deemed not to be a Neutral Arbitrator: (i) a director, officer, employee, agent, partner or shareholder of any party to the dispute or of the Company; (ii) a consultant to the Company or of any party to the dispute; (iii) a person with a direct or indirect financial interest in any contract with any party to the dispute; (iv) a director, officer or key employee of a company at a time when such company was party to a contract with any party to the dispute; or (v) a relative of any person referred to in clauses (i), (ii), (iii) or (iv) above. Arbitration may be commenced at any time by any party to the dispute by giving written notice to the other party or parties to the dispute that such dispute has been referred to arbitration under this Section 13.1. Any determination or award rendered by the Neutral Arbitrators shall be conclusive and binding upon the parties to such dispute and judgment on the award rendered by the Neutral Arbitrators may be entered and enforced in any court having jurisdiction thereof; provided, however, that any such determination or award shall be accompanied by a reasoned award of the Neutral Arbitrators giving the reasons for the determination or award. The parties hereby consent to the non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts or to any federal court located within the Commonwealth of Massachusetts for any action (i) to compel arbitration, (ii) to enforce the award of the Neutral Arbitrators or (iii) prior to the appointment and confirmation of the Neutral Arbitrators, for temporary, interim or provisional equitable remedies, and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law. Any provisional or equitable remedy, which would be available from a court of law, shall be available from the arbitrators to the parties. In making any determination or award, the Neutral Arbitrators shall be authorized to award interest on any amount awarded. This provision for arbitration shall be specifically

enforceable by the parties to the disputes and the determination or award of the Neutral Arbitrators in accordance herewith shall be final and binding and there shall be no right of appeal therefrom. Each of the parties to the dispute shall pay its own expenses of arbitration and the expenses of the Neutral Arbitrators shall be equally shared; provided, however, that if in the opinion of the Neutral Arbitrators any claim was frivolous or in bad faith, the Neutral Arbitrators may assess, as part of the determination or award, all or any part of the arbitration expenses of the other party or parties (including reasonable attorneys' fees) and of the Neutral Arbitrators against any party so acting in bad faith or raising such frivolous claim.

(b) The place of arbitration shall be Boston, Massachusetts and the language of the arbitral proceedings shall be English.

Article 14

Exculpation and Indemnification

14.1 Members Generally. Except as set forth in the second sentence of this Section 14.1, no Member, nor any Affiliate of a Member, nor any of Member or Affiliate's respective shareholders, directors, employees, Advisors or other agents, nor any Directors, officers, agents, Advisors or employees of the Company (collectively, the "Indemnitees"), shall have any liability to the Company, to any other Member, or to any third party for any loss suffered by the Company, such other Member or such third party that arises out of any action or inaction of such Member (or any other Indemnitee), (a) with respect to its activities under this Agreement or the Related Agreements, unless otherwise specified in the Related Agreements or (b) otherwise in its capacity as a Member, if such Member or such other Indemnitee, in good faith, determined that such course of conduct was in the best interests of the Company or not inconsistent with the best interests of the Company and such course of conduct did not constitute gross negligence or willful misconduct of such Member (or other Indemnitees) or a material breach by such Member of this Agreement. To the fullest extent permitted by law, each Member (and such other Indemnitees) shall be indemnified by the Company against any losses, judgments, liabilities, expenses (including, without limitation, reasonable attorneys' fees and court costs) and amounts paid in settlement of any claims sustained by it arising out of any action or inaction of such Member (or any other Indeminitee), (a) with respect to its activities under this Agreement or the Related Agreements, unless otherwise specified in the Related Agreements or (b) otherwise in its capacity as a Member, provided that the same were not the result of gross negligence or willful misconduct of such Member (or such other Indemnitee) or a breach by such Member of this Agreement or any Related Agreement. Any Person claiming reimbursement of expenses under this Article 14 shall be paid amounts to which he or it would be entitled hereunder as such expenses are incurred upon presentation of appropriate documentation to the Company, subject to providing a written undertaking to repay any such amounts to which such Person ultimately turns out not to be entitled under the standards herein set forth. The indemnification and advancement of expenses provided by this Article shall continue as to an Indemnitee who has ceased to be a Member (or otherwise an Indemnitee), and shall inure to the benefit of the heirs, executors, administrators, and successors of such Member (and the other Indemnitees). Any indemnification pursuant to this Section 14.1 shall be solely out of the assets of the Company and shall not be a personal obligation of any Member.

14.2 Duties of Indemnitee. To the extent that, at law or in equity, an Indemnitee has duties (including fiduciary duties) and liabilities relating thereto to the Company or to the Members, the Members and any other Indemnitee acting in connection with the Company's business or affairs shall not be liable to the Company or to any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of an Indemnitee otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Indemnitee.

14.3 Company Market Participant Indemnity. The rules and regulations of the BeX shall contain procedures whereby the Company shall require all BeX Participants to execute an agreement prior to using the BeX concerning such Person's participation in the BeX, which agreement shall include, among other things, the agreement of such Person to waive liability of the Company, its Members and their respective Affiliates with respect to such Person's participation in the BeX.

Article 15

Maintenance of Separate Business

The Company shall at all times: (a) to the extent that any of the Company's offices are located in the offices of an Affiliate, pay fair market rent for its office space located therein; (b) maintain the Company's books, financial statements, accounting records and other limited liability company documents and records separate from those of any Affiliate or any other Person; (c) not commingle the Company's assets with those of any Affiliate or any other Person; (d) maintain the Company's books of account, bank accounts and payroll separate from those of any Affiliate; (e) act solely in its name and through its own authorized agents, and in all respects hold itself out as a legal entity separate and distinct from any other Person; (f) make investments directly or by brokers engaged and paid by the Company or its agents (provided that if any agent is an Affiliate of the Company it shall be compensated at a fair market rate for its services); (g) manage the Company's liabilities separately from those of any Affiliate and pay its own liabilities, including all administrative expenses and compensation to employees, consultants or agents, and all operating expenses, from its own separate assets, except that an Affiliate may pay the organizational expenses of the Company; and (h) pay from the Company's assets all obligations and indebtedness of any kind incurred by the Company. Notwithstanding the foregoing, the books, records, premises, officers, directors, agents and employees of the Company shall be deemed to be those of the BSE and its Affiliates for the purpose of and subject to oversight pursuant to the Exchange Act, as amended. In addition, the books and records of the Company shall be subject at all times to inspection and copying by the BSE and its Affiliates and the SEC without charge to such Persons. The Company shall abide by all Act formalities, including the maintenance of current records of the Company affairs, and the Company shall cause its financial statements to be prepared in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Company. The Company shall (i) pay all its liabilities, (ii) not assume the liabilities of any Affiliate unless approved by unanimous consent of the Board and (iii) not guarantee the liabilities of any Affiliate unless approved by unanimous consent of the Board. The Board shall make decisions with respect to

the business and daily operations of the Company independent of and not dictated by any Affiliate.

Article 16

Confidentiality and Related Matters

16.1 Disclosure and Publicity. The parties hereto agree that the initial public disclosures concerning the transactions contemplated by this Agreement and the Related Agreements shall require prior approval of all Members; provided that the parties shall be entitled to make such public disclosures as are required pursuant to applicable law or the rules of any applicable Government Authority.

16.2 Confidentiality Obligations of Members.

(a) Each Member agrees that it will use the Confidential Information only in connection with the activities contemplated by this Agreement and the Related Agreements, and it will not disclose any Confidential Information to any Person except as expressly permitted by this Agreement and the Related Agreements.

(b) The Members may disclose Confidential Information:

(i) to its directors, officers and employees who have a reasonable need to know the contents thereof;

(ii) on a confidential basis to those Advisors of the Member who have a reasonable need to know the contents thereof, so long as such disclosure is made pursuant to the procedures referred to in Section 16.4(b);

(iii) to the extent required by applicable statute, rule or regulation promulgated under the Exchange Act, the U.S. federal securities laws and rules thereunder; or in response to a valid request from the SEC pursuant to the Exchange Act and the rules thereunder, the BSE (or through a subsidiary of BSE through delegated authority), or any other applicable self-regulatory organization (including the NASD);

(iv) to the extent required by applicable statute, rule or regulation (other than the U.S. federal securities laws and the rules thereunder); or any court of competent jurisdiction, provided that the Company is given notice and an adequate opportunity to contest such disclosure or to use any means available to minimize such disclosure; and

(v) to the extent that such Confidential Information has become generally available publicly through no fault of the Member or its directors, officers, employees or Advisors.

16.3 Member Information Confidentiality Obligation. Each Member shall hold, and shall cause its respective Affiliates and their directors, officers, employees, agents, consultants and Advisors to hold, in strict confidence, unless disclosure to an applicable regulatory authority is necessary or appropriate or unless compelled to disclose by judicial or administrative process or, in the written opinion of its counsel, by other requirement of law or the applicable requirements of any regulatory agency or relevant stock exchange, all non-public records, books, contracts, reports, instruments, computer data and other data and information (collectively, "Member Information") concerning the other Members (or, if required under a contract with a third party, such third party) furnished it by such other Member or its representatives pursuant to this Agreement or any other Related Agreement, except to the extent that such Member Information can be shown to have been: (a) previously known by such Member on a non-confidential basis; (b) available to such Member on a non-confidential basis from a source other than the disclosing Member; (c) in the public domain through no fault of such Members; or (d) later lawfully acquired from other sources by the Member to which it was furnished, and none of the Members shall release or disclose such Member Information to any other person, except such Member's or its Affiliates respective auditors, attorneys, financial advisors, bankers, other consultants and Advisors and, to the extent permitted above, to regulatory authorities. In the event that a Member becomes compelled to disclose any Member Information in connection with any necessary regulatory approval or by judicial or administrative process, such party shall provide the Member who provided such Member Information (the "Disclosing Member") with prompt prior written notice of such requirement so that the Disclosing Member may seek a protective order or other appropriate remedy and/or waive the terms of any applicable confidentiality arrangements. In the event that such protective order, other remedy or waiver is not obtained, only that portion of the Member Information which is legally required to be disclosed shall be so disclosed.

16.4 Ongoing Confidentiality Program.

(a) In order to ensure that the parties hereto comply with their obligations in Article 16, representatives designated by the Members and the Company shall meet from time to time as required to discuss issues relating to confidentiality and disclosure and other matters addressed by this Article 16.

(b) With respect to any disclosure by any of the parties hereto to any of their Advisors pursuant to Article 16, the representatives referred to in paragraph (a) above will institute procedures designed to maintain the confidentiality of the Confidential Information while facilitating the business activities contemplated by this Agreement and the Related Agreements.

16.5 SEC's Right to Access. Nothing in this Agreement shall be interpreted as to limit or impede the rights of the SEC or BSE, to access and examine the Confidential Information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of a Member, officer, director, agent or employee of Member to disclose the Confidential Information to the SEC or BSE.

16.6 Business Opportunity. No Member, Director or any of their respective stockholders, directors, officers, members, agents or employees, shall have any obligation to bring any business opportunity to the attention of the Company.

Article 17

Intellectual Property

Except as provided otherwise in the Related Agreements, each of the Members shall retain all rights, title, and interests to all of its intellectual property.

Article 18

General

18.1 Entire Agreement; Integration, Amendments. This Agreement and the Related Agreements contain the sole and entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter. In the case of any conflict between the provisions of this Agreement and the provisions of the Related Agreements, the provisions of this Agreement shall govern. Subject to Section 4.4 hereof, this Agreement may only be changed, amended or supplemented by an agreement in writing that is approved by a majority of the Directors without the consent of any Member or other Person. Each of the Members further acknowledges and agrees that, in entering into this Agreement, such Member has not in any way relied upon any oral or written agreements, statements, promises, information, arrangements, understandings, representations or warranties, express or implied, not specifically set forth in this Agreement or the exhibits and schedules hereto.

18.2 Binding Agreement. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective representatives, successors in interest and permitted assigns.

18.3 Notices. Any and all notices contemplated by this Agreement shall be deemed adequately given if in writing and delivered in hand, or upon receipt when sent by telecopy confirmed by one of the other methods for providing notice set forth herein, or one (1) business day after being sent, postage prepaid, by nationally recognized overnight courier (e.g., Federal Express), or five (5) days after being sent by certified or registered mail, return receipt requested, postage prepaid, to the party or parties for whom such notices are intended. All such notices to Members shall be addressed to the last address of record on the books of the Company; all such notices to the Company shall be addressed to the Company at the address set forth in Section 2.1 or at such other address as the Company may have designated by notice given in accordance with the terms of this subsection.

18.4 Captions. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this agreement or the intent of any provisions hereof.

18.5 Governing Law, Etc. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, all rights and remedies being governed by such laws, without regard to its conflict of laws rules. Except for any matters governed by Article 18.6(b) herein, all disputes, claims, or controversies between Members or between the Company and any Member(s) arising under or in any way relating to this Agreement shall be settled pursuant to Article 13 hereof.

18.6 Member Books, Records, and Jurisdiction.

(a) The Members acknowledge that to the extent they are related to the Company's activities, the books, records, premises, officers, directors, agents, and employees of Members shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the BSE for the purpose of and subject to oversight pursuant to the Exchange Act.

(b) The Company and its Members, officers, directors, agents, and employees, as well as the officers, directors, agents and employees of Members irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the BSE, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, the Company's activities or Article 18.6(a) (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of the Company), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

(c) With respect to this Section 18.6, the Boston Stock Exchange and each Member shall take such action as is necessary to insure that such Member's officers, directors, agents, and employees consent in writing to the applicability of this provision with respect to the Company related activities. Consent in writing to this provision 18.6(c) extends to the confidentiality provisions of Article 16 herein.

18.7. Matters Relating to Initial Public Offering. If the Board determines that conditions may be favorable for the Company to make an initial public offering ("IPO"), the Company may be reorganized as a Delaware corporation (whether pursuant to a plan of conversion, merger, consolidation, transfer of assets or otherwise and subject to Section 4.4(b)(i)), in connection therewith, the Units may be reclassified as shares of stock in such corporation on such terms and conditions as are approved by at least four (4) of the Founding Members without the consent of any Member or other Person. Prior to any IPO, the Company and each Member shall enter into a registration rights agreement (the "Registration Rights Agreement"). The Registration Rights Agreement shall provide, among other things, that the Members will have piggyback registration rights. The Registered Rights Agreement will contain other customary terms and conditions, including provisions concerning cutbacks, black-out periods, market standoff, assignment of registration rights and indemnification. If the Company is reorganized as a corporation, the Board shall use its best efforts to ensure that, for purposes of Rule 144(d), the holding period for Members tacks to the date on which the Units are issued.

18.8. Waiver of Certain Damages. EACH OF THE MEMBERS, TO THE FULLEST EXTENT PERMITTED BY LAW, IRREVOCABLY WAIVES ANY RIGHTS THAT THEY MAY HAVE TO PUNITIVE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES IN RESPECT OF ANY LITIGATION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT OR ANY RELATED AGREEMENT OR ANY COURSE OF CONDUCT,COURSE OF DEALING, STATEMENTS OR ACTIONS OF ANY OF THEM RELATING THERETO.

18.9. Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

18.10. Severability. The invalidity or unenforceability of any particular provision of this Agreement or any Related Agreement shall not affect the other provisions hereof or thereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

18.11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.12. Survival. The provisions of Articles 13, 14, 16, 17, and 18 shall survive the termination of this Agreement for any reason. All other rights and obligations of the Members shall cease upon the termination of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of June 6, 2006.

BOSTON STOCK EXCHANGE, INC.,
an authorized person

By: _____
Name: Michael J. Curran
Title: Chairman & CEO

CITIGROUP FINANCIAL STRATEGIES INC.,
an authorized person

By: _____
Name:
Title:

CREDIT SUISSE FIRST BOSTON NEXT FUND INC.,
an authorized person

By: _____
Name:
Title:

LB 1 GROUP, INC.,
an authorized person

By: _____
Name:
Title:

FIDELITY GLOBAL BROKERAGE GROUP, INC.,
an authorized person

By: _____
Name:
Title:

MERRILL LYNCH L.P. HOLDINGS INC.,
an authorized person

By:
Name:
Title:

EXHIBIT 1

Certificate of Formation

See Attached.

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BSX GROUP LLC", FILED IN THIS OFFICE ON THE FOURTH DAY OF JUNE, A.D. 2004, AT 8 O'CLOCK P.M.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3912413 8100

040418699

AUTHENTICATION: 3154368

DATE: 06-07-04

SCHEDULE 2

Name and Address of Members, Number of Units, Percentage Interests on Funding Date, and Number of Directors

Name and Address of Member	Number of Units	Percentage Interest	Number of Directors
Boston Stock Exchange, Inc. 100 Franklin Street Boston, Massachusetts 02110	[Business Confidential]	58.33%	2
Citigroup Financial Strategies, Inc. 388 Greenwich Street New York, NY 10013	[Business Confidential]	8.33%	1
Credit Suisse First Boston Next Fund, Inc. Eleven Madison Avenue New York, NY 10010	[Business Confidential]	8.33%	1
LB 1 Group, Inc. 745 7th Avenue New York, NY 10019	[Business Confidential]	8.33%	1
Fidelity Global Brokerage Group, Inc. 82 Devonshire Street Boston, MA 02109	[Business Confidential]	8.33%	1
Merrill Lynch L.P. Holdings Inc. 4 World Financial Center New York, NY 10080	[Business Confidential	8.33%	1
Total:	109,090	100%	7

SCHEDULE 3

BSE CONTRIBUTION SCHEDULE

1. CONTRIBUTION.

1.1. Contribution. Pursuant to the terms and conditions contained herein, the BSE shall assign, transfer and convey to the Company as a contribution to capital (the valuation of $35,000,000 includes items (a) – (d):

(a) BSE's existing book of business and customer base related to the BSE Equities Business (the "Book of Business").

(b) All assets and liabilities related to the BSE Equities Business, excluding BOX Units, and assets and liabilities related to the BSE's SRO and regulatory function ("Contributed BSE Equities Business Items").

(c) All goodwill, contract rights and intangible property (including any intellectual property rights that the BSE may have in its BEACON System) related to the BSE Equities Business, excluding items related to the BSE's SRO and regulatory function ("Contributed Intangibles").

(d) The exclusive right to operate a Facility for the trading of equity securities at the BSE pursuant to the terms and conditions contained in the BSE Facility Services Agreement (the "Exclusive Facility Right").

(e) Pursuant to the terms and conditions contained in the BSE Facility Services Agreement, commencing on the Funding Date and extending for the duration of the BSE Facility Services Agreement, the BSE agrees to transfer to the Company (i) all revenue streams resulting directly from the BSE's participation in the CTA Plan, the CQS Plan, the Nasdaq UTP Plan, the ITS Plan or any other national market plan related to the BSE Equities Business or BeX Market from time to time to the extent that they relate to any equity securities, and (ii) all other revenue streams and other benefits or items of value generated by or through the BSE Equities Business (excluding items related to the BSE's SRO and regulatory function) (the "Transferred Revenue Streams").

2. REPRENSENTATIONS AND WARRANTIES OF BSE.

2.1. Corporate Organization and Qualification. The BSE is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation, has all requisite power and authority to carry on its business as presently conducted and is in good standing in each jurisdiction where the properties owned, leased or operated, or the business conducted, by it require such qualification, except for any

failure to be so organized, existing, in good standing or to have such power and authority or to so qualify, that, when taken together with all such other failures, is not reasonably likely, individually or in the aggregate, (a) to have a material adverse effect (i) on the business, properties, operations or results of operations, condition (financial or otherwise) or prospects of the BSE and its subsidiaries taken as a whole, (ii) on the BSE Equities Business, (iii) on the BeX Market or (iv) on the authority of the BSE to continue as a national securities exchange and self-regulatory organization (as registered under Section 6 and as defined in Section 3(a)(26), respectively, of the Exchange Act) or (b) to prevent or to limit or restrict in any material respect the BSE from performing their respective obligations under this Agreement or any of the Related Agreements or consummating any of the transactions contemplated hereunder and thereunder (any such material adverse effect, prevention, limitation or restriction, a " BSE Material Adverse Effect").

2.2. Authorization and Validity of Agreements. The BSE has the requisite power and authority and has taken or will use best efforts to promptly take all corporate action necessary in order to authorize, execute and deliver this Agreement and the Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby and to perform the acts contemplated on its part hereunder and thereunder.

2.3. Regulatory Approval. The BSE will use best efforts to promptly obtain all authorizations, consents, approvals, orders, permits, notices, reports, filings, registrations, qualifications, exemptions of, with or from, or other actions required to be made by the BSE or any of its subsidiaries, or obtained by the BSE or any of its subsidiaries from, the SEC, any Governmental Authority or any third party required to effect the restructuring of the BSE's equities trading business as described and contemplated herein, including, without limitation, the transfer of the equities trading business of the BSE to the Company.

2.4. No Conflict. Neither the execution and delivery by the BSE of this Agreement or the BSE Facility Services Agreement, the compliance by it with all of the provisions of and the performance by it of its obligations under this Agreement and the BSE Facility Services Agreement nor the consummation of the transactions herein or therein contemplated will conflict with or result in a breach or violation of, or otherwise constitute a default under, any provision of any contract to which it is a party or by which it or any of its assets are bound.

2.5. Litigation and Liabilities. Except as set forth in the BSE Disclosure Letter, there are no (a) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending or, to the knowledge of BSE, threatened against the BSE or any of its subsidiaries, with respect to activities on the trading floor of the BSE or any of its subsidiaries, (b) orders, judgments, decrees, injunctions or rules of any Governmental Authority to which the BSE or any of its subsidiaries is subject, or (c) except as set forth in the BSE Financial Statements (including the notes thereto), obligations or liabilities, whether or not accrued, contingent or otherwise, or, to the knowledge of BSE any other facts or circumstances that could result in any claims

against or obligations or liabilities of the BSE or any of its subsidiaries, that, individually or in the aggregate, are reasonably likely to have a BSE Material Adverse Effect.

2.6. Compliance. Neither the BSE nor any of its subsidiaries is in conflict with, or in default or violation of, (a) any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, writ, franchise, variance, exemption, approval, license or permit of any Governmental Authority or Self-Regulatory Organization applicable to the BSE or any of its subsidiaries or by which its or any of their respective properties is bound or affected, or (b) any agreement to which the BSE or any of its subsidiaries is a party or by which the BSE or any of its subsidiaries or its or any of their respective properties is bound or affected, except for any such conflicts, defaults or violations that, individually or in the aggregate, are not reasonably likely to have a BSE Material Adverse Effect. To the best knowledge of the BSE, the BSE Disclosure Letter lists all current and material investigations, proceedings, or inquiries by the SEC and any other Governmental Authority in connection with the BSE Equities Business.

2.7. Contributed BSE Equities Business Items and Contributed Intangibles. (a) Each of the Contributed BSE Equities Business Items and Contributed Intangibles are legally owned by the BSE free and clear of all liens. The BSE will be assigning, transferring and conveying to the Company good and valid title to the Contributed BSE Equities Business Items and Contributed Intangibles free and clear of all liens.

(b) There are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending, (ii) orders, judgments, decrees, injunctions or rules of any Governmental Authority, or (iii) obligations or liabilities, whether or not accrued, contingent or otherwise, or, to the knowledge of BSE any other facts or circumstances that could result in any claims against or obligations or liabilities of the BSE or any of its subsidiaries, to which the Contributed Intangibles or Contributed BSE Equities Business Items are subject.

2.8. Transferred Revenue Streams. (a) The transfer of the Transferred Revenue Streams by the BSE to the Company will not (i) conflict with or result in a breach or violation of, or result in any acceleration of any rights or obligations under or other encumbrance on assets pursuant to, or permit any other party any improvement in rights with respect to or permit it to exercise, or otherwise constitute a default under, any provision of any agreement or result in any change in the rights or obligations of any party under any agreement, or (ii) result in any breach or violation, or a default under, the provisions of the organizational documents of the BSE or any of its subsidiaries or any law, order, judgment, decree, ordinance, award, governmental or non-governmental permit or license, rule or regulation or subject the Company, the BSE or any of its subsidiaries to any penalty or sanction.

(b) There are no (i) civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending, (ii) orders, judgments, decrees, injunctions or rules of any Governmental Authority, or (iii) obligations or liabilities,

whether or not accrued, contingent or otherwise, or, to the knowledge of the BSE any other facts or circumstances that could result in any claims against or obligations or liabilities of the BSE or any of its subsidiaries, to which the Transferred Revenue Streams are subject.

3. COVENANTS.

3.1. Transfer of Other Items. From and after the date hereof, BSE shall use its best efforts to obtain all necessary consents and approvals for the assignment, transfer and conveyance of the contributions set forth in Sections 1.1(a) – (c), and (e). The transfer shall be made on the Funding Date.

* * * * *

SCHEDULE 4

MATERIAL TERMS & CONDITIONS
BSE FACILITY SERVICES AGREEMENT

1. The Company shall have the exclusive right to operate a Facility for the trading of equity securities at the BSE for so long as the BSE owns five percent (5%) or more of the outstanding Units of the Company (the "Exclusive Facility Right"). Notwithstanding the foregoing, the Exclusive Facility Right shall be effective for a minimum of five (5) years after the Launch Date.

2. The BSE shall provide the Company with SRO services for a 5-year term with 5-year auto-renewals. The fees throughout the initial term shall be for cost plus a markup which will be negotiated on an annual basis. Fees for any subsequent terms shall be negotiated and comparable to prevailing market rates.

3. During the term of the Facility Services Agreement, the BSE shall not provide SRO services to any Competitor of the Company. "Competitor" shall mean any securities market that derives 25% or more of its revenue from the trading of U.S. Equities. Notwithstanding the foregoing, in the event that the BeX's share in U.S. Equities does not reach 5% by the date which is 2 years after Launch Date, the foregoing restriction shall no longer apply.

4. During the term of the Facility Services Agreement, the BSE Board of Governors and the BSE Regulatory Oversight Committee shall at all times have overriding regulatory responsibility for the BeX Market.

* * * * *