

Exhibit 5C – Third Amended and Restated Trust Agreement

Text of the Proposed Rule Change

Underlining indicates additions; [Brackets] indicate deletions.

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[SECOND] THIRD AMENDED AND RESTATED TRUST AGREEMENT

DATED AS OF

[APRIL 30, 2012] DECEMBER ●, 2014

AMONG

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.,

U.S. EXCHANGE HOLDINGS, INC.,

WILMINGTON TRUST COMPANY, AS DELAWARE TRUSTEE,

SHARON BROWN-HRUSKA, AS TRUSTEE,

ROBERT SCHWARTZ, AS TRUSTEE

AND

HEINZ ZIMMERMANN, AS TRUSTEE

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## **[SECOND] THIRD AMENDED AND RESTATED TRUST AGREEMENT**

This [SECOND] THIRD AMENDED AND RESTATED TRUST AGREEMENT is dated as of [April 30, 2012] December •, 2014 (this “**Agreement**”) among International Securities Exchange Holdings, Inc., a Delaware corporation (“**ISE Holdings**”), U.S. Exchange Holdings, Inc., a Delaware Corporation (the “**Trust Beneficiary**”), Wilmington Trust Company, as Delaware trustee, and Sharon Brown-Hruska, Robert Schwartz and Heinz Zimmermann, as trustees.

### **RECITALS**

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

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

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

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

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

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

WHEREAS, ISE Holdings is a party to that certain Transaction Agreement dated as of August 22, 2008, by and among, among others, ISE Stock Exchange, LLC, a Delaware limited liability company and direct subsidiary of ISE Holdings, Direct Edge Holdings LLC, a Delaware limited liability company (“**Direct Edge**”), and Maple Merger Sub, LLC, a Delaware limited liability company and direct wholly owned subsidiary of Direct Edge (“**Merger Sub**”), pursuant to which ISE Stock Exchange, LLC merged with and into Merger Sub with Merger Sub surviving the merger, and ISE Holdings became a member of Direct Edge and Direct Edge became the sole member of Merger Sub (the “**Transaction**”);

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

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

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

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

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

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

WHEREAS, in connection with a business combination involving Direct Edge, approved by the SEC on January 30, 2014, EDGA Exchange and EDGX Exchange ceased to be “Controlled National Securities Exchanges,” (as such term is defined below).

WHEREAS, the parties hereto desire to amend the terms of and restate the Trust Agreement to eliminate any references to EDGA Exchange and EDGX Exchange as “Controlled National Securities Exchanges”;

WHEREAS, in order to permit the transactions contemplated by a certain [Share Purchase and Transfer Agreement], effective as of •, 2014, under which ISE Holdings will cease to be an indirect subsidiary of: (i) Eurex Global Derivatives AG, a stock corporation organized under the laws of Switzerland; and (ii) Eurex Zürich AG, a stock corporation organized under the laws of Switzerland; and

WHEREAS, the parties hereto desire to amend the terms of and restate the Trust Agreement to eliminate any references to Eurex Global Derivatives AG and Eurex Zürich AG's indirect ownership of the Controlled National Securities Exchanges;

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

## **ARTICLE I DEFINITIONS; CONSTRUCTION**

### **Section 1.1 Definitions.**

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

“**Affected Affiliate**” means any one or more of Eurex Frankfurt AG, [Eurex Zürich AG,] Deutsche Börse AG, [Eurex Global Derivatives AG,] and any Affiliate of the Trust Beneficiary that, at any time, controls a Controlled National Securities Exchange, directly or indirectly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Trust Property**” means all estate, right, title and interest acquired by the Trust pursuant to this Agreement (including any Trust Shares), whether held directly or indirectly (including



through any corporation or other Subsidiary), as the same may be added to or changed from time to time following the acquisition thereof.

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

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

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

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

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

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

#### Section 1.2 **Construction.**

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

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

## **ARTICLE II THE TRUST**

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

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

Section 2.3 **Purposes.**

(a) The purposes of the Trust (the “**Trust Purposes**”) are to:

- (i) accept, hold and dispose of Trust Shares on the terms and subject to the conditions set forth herein,
- (ii) determine whether a Material Compliance Event has occurred or is continuing;
- (iii) determine whether the occurrence and continuation of a Material Compliance Event requires the exercise of the Call Option; and
- (iv) transfer Deposited Shares from the Trust to the Trust Beneficiary as provided in Section 4.2(h) below.

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

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

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

Section 2.6 **Duration.**

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

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

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

### **ARTICLE III TRUSTEES**

Section 3.1 **Authority.** Except as specifically provided in this Agreement, the Trustees shall have exclusive and complete authority to carry out the Trust Purposes, and shall have no duties or powers except as set forth in this Agreement and applicable law. The Delaware Trustee shall have no duties or powers except as set forth in Section 3.3. Any action taken by the Board of Trustees in accordance with the terms of this Agreement shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust shall be entitled to rely conclusively on the power and authority of the Trustees as set forth in this Agreement.

Section 3.2 **Number and Certain Qualifications of Trustees.**

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

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

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

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

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

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

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

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

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

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

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

any Affiliate of ISE Holdings or the Trust Beneficiary, or is affiliated, directly or indirectly, with such a member (or equivalent).

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

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

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

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

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

(11) if the Person is an Executive Officer (or equivalent) of an issuer of securities listed on a U.S. or non-U.S. Exchange that is owned or operated by ISE Holdings, the Trust Beneficiary, or any Affiliate of ISE Holdings or the Trust Beneficiary; and

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

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

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

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

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

### Section 3.3 **Delaware Trustee.**

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

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

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

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

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

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

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

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

(i) Any Person into which the Delaware Trustee may be merged or converted, or any Person resulting from any merger, conversion or consolidation to which the Delaware Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties

hereto (other than the filing of an amendment to the certificate of trust if required by the Delaware Act); *provided*, that such Person shall be otherwise qualified and eligible under this Article.

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

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

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

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

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

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

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

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

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

(e) Any Trustee may be removed at any time by the ISE Holdings Board for Cause by a written notice delivered to the Board of Trustees; *provided, however*, that



ISE Holdings shall provide prior written notice of such removal to the Director of the Division of Trading and Markets of the SEC. In the event that such removal would result in no Trustees being in office, then such removal shall be effective only upon the appointment by the ISE Holdings Board of a successor Trustee, who shall have the authority to act as a Trustee of the Trust as of such appointment and during the pendency of any regulatory approval of such appointment.

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

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

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

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

(a) Any action of the Trustees shall require the approval of a majority of the Trustees then in office acting at a meeting where there is present or represented a quorum. A quorum shall exist where there is present or represented a majority of the Trustees then in office and in no event less than two Trustees; *provided, however*, that, if there shall be only one Trustee then in office, a quorum shall exist where there is present or represented the sole Trustee then in office. Any action of the Board of Trustees shall be evidenced by a written consent, approval or instruction, executed by the required number of Trustees to approve such action. The Trustees may adopt their own rules and procedure subject to the terms of this Agreement, but may not delegate the authority to act on behalf of the Trust or the Trustees to any Person (except to another Trustee to vote on behalf of the first Trustee pursuant to the instructions of such first Trustee at a meeting of the Board of Trustees).

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

### Section 3.6 **Duties of the Trustees.**

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

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

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

(b) The Trustees and the Delaware Trustee need perform only those duties as are specifically set forth in this Agreement and as are contemplated by any other agreement to which the Trustees, the Delaware Trustee or the Trust are a party that was entered into in accordance with the terms of this Agreement, and no others and no implied covenants or obligations shall be read into this Agreement against or for the benefit of the Trustees.

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

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

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

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

#### **ARTICLE IV REMEDIES**

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

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

- Limit; or
  - (i) any Person's Ownership Percentage exceeds an Ownership
  - (ii) any Person's Voting Control Percentage exceeds a Voting Limit;
- and

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

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

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

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

Voting Control Percentage exceeding any of the Ownership Limits or Voting Limits, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) no Material Compliance Event is continuing; or

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

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

(a) Subject to Section 2.3(a) and Section 3.6(a)(ii), the Trustees shall act in a manner designed to enhance and preserve the Trust Property in the best interests of ISE Holdings; *provided, however*, that, notwithstanding anything to the contrary contained herein, the Trustees shall promptly (i) distribute to the Trust Beneficiary all dividends and other distributions paid to the Trust with respect to the Trust Shares, (ii) distribute to the Trust Beneficiary all assets received by the Trust in respect of the Trust Shares, as a result of any liquidation, dissolution or winding up of, or any distribution of the assets of, ISE Holdings, and (iii) upon receipt of written instructions from the Trust Beneficiary to sell the Trust Shares, use their commercially reasonable efforts to sell such Trust Shares to a Person or Persons whose Ownership Percentage or Voting Control Percentage will not violate any of the Ownership Limits or Voting Limits, as applicable, and who is or are not an Affected Affiliate or Affiliates

with respect to which a Material Compliance Event has occurred and is continuing, in one or more market transactions, public offerings or otherwise, in each case at a time or times and in a manner so as to maximize the return on the sale of such Trust Shares (any such sale, a “**Sale**”). Upon any Sale, the interest of the Trust Beneficiary in the Trust Shares so sold shall terminate and the Trustees shall distribute to the Trust Beneficiary the net proceeds received by the Trust from such Sale. The Trustees shall have the right to vote any Trust Shares held by the Trust. The Trustees are empowered with respect to the Trust Property to exercise from time to time in their discretion and without prior judicial authority all powers granted to them in this Agreement, including all acts necessary to exercise such powers. Persons dealing with the Trust shall not be obligated to look to the application of any moneys or other property paid or delivered to the Trust. All powers and discretions given to the Trustees by this Agreement shall be subject to the provisions of the Delaware Act and of this Agreement, and each exercise thereof in good faith shall be conclusive on all Persons, including Persons unascertained or not born.

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

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

## **ARTICLE V**

### **CONSIDERATIONS OF THE BOARD; OTHER DUTIES OF THE TRUST**

#### **Section 5.1 Regulatory Considerations.**

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

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

(ii) ISE Holdings, each Controlled National Securities Exchange, and the Trust (A) to engage in conduct that fosters and does not interfere with the ability of ISE Holdings, each Controlled National Securities Exchange, as applicable, and the Trust to prevent fraudulent and manipulative acts and practices in the securities markets; (B) to promote just and equitable principles of trade in the securities markets; (C) to foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (D) to

remove impediments to and perfect the mechanisms of a free and open market in securities and a U.S. national securities market system; and (E) in general, to protect investors and the public interest.

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

### Section 5.2 **Compliance with Laws.**

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

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

### Section 5.3 **Other Duties of the Trust.**

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

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

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

## ARTICLE VI CONFIDENTIAL INFORMATION

### Section 6.1 **Limits on Disclosure.**

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

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

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

(a) the rights of the SEC or each Controlled National Securities Exchange, as applicable, to have access to and examine the Confidential Information pursuant to the U.S. federal securities laws and the rules and regulations thereunder; or



(b) the ability of any directors, officers, employees or agents of ISE Holdings or any Trustees, Delaware Trustee, officers, employees or agents of the Trust to disclose the Confidential Information to the SEC or each Controlled National Securities Exchange, as applicable.

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

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

## **ARTICLE VII LIABILITY, INDEMNIFICATION AND EXCULPATION**

### **Section 7.1 Liability.**

(a) Except as expressly set forth in this Agreement, the Trustees and the Delaware Trustee shall not be:

- (i) personally liable for the payment of any amounts owed by the Trust, which payment shall be made solely from the assets of the Trust, if any; or
- (ii) required to pay to the Trust or to any beneficial owner of the Trust any deficit upon dissolution of the Trust or otherwise.

(b) Neither the Delaware Trustee nor any Trustee will have any liability to any Person unless it shall be established in a final and non-appealable judicial determination by clear and convincing evidence that any decision or action of the Delaware Trustee or such Trustee, as applicable, was undertaken by reason of willful misconduct or gross negligence, and, in any event, any liability will be limited to actual, proximate and quantifiable damages.

(c) Neither ISE Holdings, each Controlled National Securities Exchange nor the Trust Beneficiary shall be liable in any capacity (whether as grantor, beneficial owner or otherwise) for any actions of the Trustees pursuant to this Agreement or for any debts, liabilities or other obligations of the Trust or the Trustees. Pursuant to Section 3803(a) of the Delaware Act, as applicable, ISE Holdings and each Controlled National Securities Exchange shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

Section 7.2 **Exculpation.** No Trustee, Delaware Trustee, officer or employee of the Trust shall be liable to the Trust, or any other Person who has an interest in the Trust, for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Trustee, Delaware Trustee, officer or employee of the Trust in good faith on behalf of the Trust

and in a manner reasonably believed to be within the scope of the authority conferred on such Trustee, Delaware Trustee, officer or employee by this Agreement, except that a Trustee, Delaware Trustee, officer or employee of the Trust shall be liable for any such loss, damage or claim incurred by reason of the willful misconduct or gross negligence of such Trustee, Delaware Trustee, officer or employee.

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

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

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

## **ARTICLE VIII MISCELLANEOUS**

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

**Section 8.2 Amendments.** Except as otherwise provided in this Agreement, and subject to the approval of the SEC as and to the extent required under the Exchange Act, this Agreement may only be amended by a written instrument signed by (a) ISE Holdings, (b) the Trust Beneficiary, (c) the Trust and (d) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee or the Trustees, the Delaware Trustee and the Trustees, as applicable. Notwithstanding the forgoing, for so long as ISE Holdings or the Trust shall control, directly or indirectly, a Controlled National Securities Exchange, before any amendment or repeal of any provision of this Agreement shall be effective, such amendment or repeal shall be submitted to the board of directors of each Controlled National Securities Exchange, as applicable, and if such amendment or repeal must be filed with or filed with and approved by the SEC under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal

shall not be effectuated until filed with or filed with and approved by the SEC, as the case may be. Any amendment adopted in accordance with the foregoing shall be binding upon the parties to this Agreement.

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

**Section 8.4 Jurisdiction; Waiver of Jury Trial.**

(a) The parties hereby (i) irrevocably submit to the exclusive (except as set forth in Section 5.4) jurisdiction of the courts of the State of Delaware (the “**Delaware Courts**”) and the Federal Courts of the United States of America located in the State of Delaware (the “**Federal Courts**”) in respect of any claim, dispute or controversy relating to or arising out of the negotiation, interpretation or enforcement of this Agreement or any of the documents referred to in this Agreement (except where any such document specifically provides otherwise) or the transactions contemplated hereby or thereby (any such claim being a “**Covered Claim**”); (ii) irrevocably agree to request that the Delaware or Federal Courts adjudicate any Covered Claim on an expedited basis and to cooperate with each other to assure that an expedited resolution of any such dispute is achieved; (iii) waive, and agree not to assert, as a defense in any action, suit or proceeding raising a Covered Claim that any of the parties hereto is not subject to the personal jurisdiction of the Delaware or Federal Courts or that such action, suit or proceeding may not be brought or is not maintainable in such Courts or that the venue thereof may be inappropriate or inconvenient or that this Agreement or any such document may not be enforced in or by such Courts; and (iv) irrevocably agree to abide by the rules of procedure applied by the Delaware or Federal Court (as the case may be), including, without limitation, procedures for expedited pre-trial discovery, and waive any objection to any such procedure on the ground that such procedure would not be permitted in the courts of some other jurisdiction or would be contrary to the laws of some other jurisdiction. The parties further agree that any Covered Claim has a significant connection with the State of Delaware and with the United States, and will not

contend otherwise in any proceeding in any court of any other jurisdiction. Each party represents that it has agreed to the jurisdiction of the Delaware and Federal Courts in respect of Covered Claims after being fully and adequately advised by legal counsel of its own choice concerning the procedures and law applied in the Delaware and Federal Courts and has not relied on any representation by any other party or its Affiliates, representatives or advisors as to the content, scope, or effect of such procedures and law, and will not contend otherwise in any proceeding in any court of any jurisdiction.

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

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

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

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

**Section 8.7 Third Parties.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor or employee of ISE Holdings, a Controlled National Securities Exchange, the Trust, the Delaware Trustee or the Trustees, or any stockholder or customer of ISE Holdings, a Controlled National Securities Exchange, or the Delaware Trustee. Nothing in this Agreement shall be deemed to create any right in any Person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person. No Person not a party hereto shall have any right to compel performance by ISE Holdings, a Controlled National Securities Exchange, the Trust, the Trustees or the Delaware Trustee of its obligations hereunder.

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

Notices to the Trust shall be addressed to:

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

with a copy to:

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

Notices to the Delaware Trustee shall be addressed to:

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

with a copy to:

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

Notices to the Trustees shall be addressed to:

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

Dr. Robert Schwartz

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

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

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

Notices to ISE Holdings shall be addressed to:

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

with a copy to:

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

Notices to the Trust Beneficiary shall be addressed to:

U.S. Exchange Holdings, Inc.  
233 South Wacker Drive  
Chicago, Illinois 60606-6398  
Attention.: General Counsel

Facsimile No.: +49 (0)69 211 13801

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

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

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

[and

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

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section, upon delivery, (x) if delivered by facsimile transmission as provided in this Section, upon confirmed receipt, (y) if delivered by mail as provided in this Section, upon the earlier of the fifth Business Day following mailing and receipt, and (z) if delivered by overnight courier as provided in this Section, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section). Any party hereto may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

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

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

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

[Signature page follows.]



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

INTERNATIONAL SECURITIES EXCHANGE HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

U.S. EXCHANGE HOLDINGS, INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST COMPANY,  
as Delaware Trustee

By: \_\_\_\_\_  
Name:  
Title:

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

\_\_\_\_\_  
Robert Schwartz, as Trustee and not in his  
individual capacity

\_\_\_\_\_  
Heinz Zimmermann, as Trustee and not in his  
individual capacity