EXHIBIT 5

Proposed new language is underlined; proposed deletions are marked by [brackets].

* * * * *

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF NATIONAL STOCK EXCHANGE, INC.

The name of the corporation is National Stock Exchange, Inc. (the "Corporation"). The Corporation was originally incorporated under the name NSX Delaware Merger Sub, Inc., and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on December 12, 2005. The Certificate of Incorporation was restated on June 29, 2006. Pursuant to, and being duly adopted in accordance with, Section 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation hereby amends and restates [and integrates and does not further amend the provisions of the Corporation's] the Restated Certificate of Incorporation in its entirety, and [as theretofore amended or supplemented, and there is no discrepancy between those provisions and the provisions of this restated Certificate of Incorporation, which] reads in its entirety as follows:

Name

FIRST: The name of the Corporation is NATIONAL STOCK EXCHANGE, INC.

Registered Office

SECOND: The address of the initial registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, State of Delaware 19801, County of New Castle, and the name of its initial registered agent at that address is The Corporation Trust Company.

Purpose

THIRD: The purpose or purposes of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

Authorized Stock

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is one thousand (1,000) shares of common stock having a par value of $.01 per share. At all times, all of the outstanding [voting] stock of the Corporation shall be owned by CBOE Stock Exchange, LLC, a Delaware limited liability company [NSX Holdings, Inc., a Delaware corporation].

Board of Directors

FIFTH: (a) *General*. The Corporation shall be managed by the Board of Directors which shall exercise all powers conferred to it by the laws of the State of Delaware. In furtherance of and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt the bylaws and the rules of the Corporation and to amend or repeal any provision thereof subject to such conditions as the bylaws or rules may provide. Directors shall be elected by the stockholders of the Corporation. Elections of directors of the Corporation need not be by written ballot unless the bylaws so provide.

(b) *Removal of Directors*. Except as provided herein, any director [No director or class of directors] may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that an ETP Holder Director, as such term is defined in the bylaws of the Corporation, may only be removed [except] for cause. For purposes of this section, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Duration

SIXTH: The duration of the Corporation shall be perpetual.

Bylaws

SEVENTH: Except as may be expressly provided otherwise in the bylaws of the Corporation, the Board of Directors shall have the power to adopt, amend or repeal bylaws and rules of the Corporation. The bylaws of the Corporation may also be amended or repealed, or new bylaws of the Corporation may be adopted, by action taken by the stockholders of the Corporation. Any change to the bylaws that is required to be approved by or filed with the United States Securities and Exchange Commission (the "Commission") before it may become effective under Section 19 of the Securities Exchange Act of 1934, as amended (the "Act") and the rules promulgated thereunder shall not become effective until the procedures of the Commission necessary to make it effective shall have been satisfied. Before any amendment to, or repeal of, any provision of the bylaws of the Corporation shall be effective, those changes shall be submitted to the Board of Directors of the Corporation and if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes to the bylaws of the Corporation shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

Limitation of Director Liability

EIGHTH: To the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date this Certificate of Incorporation is adopted or as such

law may later be amended, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Corporation that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Action without Meeting

NINTH: Action may be taken by the stockholders of the Corporation, without a meeting, by written consent as and to the extent provided at the time by the General Corporation Law of Delaware, provided that the matter to be acted upon by such written consent previously has been directed by the Board of Directors to be submitted to the stockholders for their action by written consent.

Compromise or Other Arrangement

TENTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as such court directs. If a majority in number representing three fourths in value of the creditors or class of creditors and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors and/or on all the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

Amendment of Certificate of Incorporation

ELEVENTH: The Corporation reserves the right to amend this Certificate of Incorporation, and to change or repeal any provision of the Certificate of Incorporation, in the manner prescribed at the time by statute (provided, however, that any such amendment, change or repeal must be first approved by the Board of Directors), and all rights conferred upon stockholders in this Certificate of Incorporation are granted subject to this reservation. Any change to the Certificate of Incorporation that is required to be approved or filed with the Commission before it may become effective shall not become effective<u>, under Section 19 of the Act and the rules promulgated thereunder,</u> until the procedures of the Commission necessary to make it effective shall have been satisfied. <u>Before any amendment to, or repeal of, any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the</u>

Board of Directors of the Corporation and if such amendment or repeal must be filed with or filed with and approved by the Commission, then the proposed changes to this Certificate of Incorporation shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated [restated] Certificate of Incorporation to be executed this ____ day of _____________, 2011 [2006].

NATIONAL STOCK EXCHANGE, INC.

By: _______________________________

Name: _____________________________

Title: ______________________________

EXHIBIT 5

Proposed new language is <u>underlined</u>; proposed deletions are marked by [brackets].

* * * * *

<u>SECOND</u> AMENDED AND RESTATED BY-LAWS OF NATIONAL STOCK EXCHANGE, INC.

[(Updated through June 22, 2006)]

SECOND AMENDED AND RESTATED BY-LAWS OF NATIONAL STOCK EXCHANGE, INC.

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SECOND AMENDED AND RESTATED BY-LAWS
OF
NATIONAL STOCK EXCHANGE, INC.
(a Delaware corporation)

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. When used in these By-Laws, unless the context otherwise requires:

A.

Act

(1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "affiliate" of, or a person "affiliated" with a specific person, shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

B.

Board

(1) The term "Board" shall mean the Board of Directors of the Exchange.

By-Laws

(2) The term "By-Laws" shall mean the bylaws of the Exchange.

C.

[CBOE

(1) The term "CBOE" shall mean the Chicago Board Options Exchange, Incorporated.

CBOE member(s)

(2) The term "CBOE member(s)" shall mean an individual CBOE member or a CBOE member organization that is a regular member of CBOE as described in the CBOE Constitution or that is a special member of CBOE as described in the CBOE Constitution as such CBOE members may exist from time to time.**]**

Commission

(1) [(3)] The term "Commission" shall mean the United States Securities and Exchange Commission.

D. Reserved

E.

ETP Holder

(1) The term "ETP Holder" shall mean any individual, corporation, partnership, limited liability company or other entity that holds an equity trading permit issued by the Exchange to trade securities on the market operated by the Exchange. An ETP Holder will have the status of a "member" of the Exchange as that term is defined in Section 3 of the Act.

ETP Holder Director

(2) The term "ETP Holder Director" shall mean a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is an ETP Holder.

Exchange

(3) The term "Exchange" shall mean National Stock Exchange, Inc., a Delaware corporation.

F. – H. Reserved

I.

Independent Director

(1) The term "Independent Director" shall mean a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the Board.

Industry Director

(2) The term "Industry Director" shall mean a member of the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the member of the Board or 20 percent or more of the gross revenues received by the member of the Board's firm or partnership; (v) provides professional services to a director, officer, or employee of a

broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the member of the Board or member or 20 percent or more of the gross revenues received by the member of the Board's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

J – [O]M. Reserved

N.

Non-Industry Director

(1) The term "Non-Industry Director" shall mean a member of the Board who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

O. Reserved

P.

Person

(1) The term "person" shall mean a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.

Q. Reserved

R.

Rules

(1) The term "Rules" or "Exchange Rules" shall mean the rules of the Exchange adopted by the Board [Exchange] pursuant to Section 3.1(b) of the By-Laws.

S.

Securities Act

(1) The term "Securities Act" shall mean the Securities Act of 1933, as amended.

(2) The term "Statutory Disqualification" shall have the same meaning as "statutory disqualification" in Section 3(a)(39) of the Act.

[**Subsequent Closing**

(2) The term “Subsequent Closing” shall have the meaning given to it in the Termination of Rights Agreement between CBOE and National Stock Exchange (a predecessor in interest to the Exchange) dated as of September 27, 2004.]

ARTICLE II

REGISTERED OFFICE AND AGENT; OFFICES

Section 2.1 Registered Office and Registered Agent. The Exchange shall maintain a registered office in the State of Delaware at such location as shall from time to time be determined by the Board. The registered agent of the Exchange in the State of Delaware shall be such person or entity as shall from time to time be determined by the Board.

Section 2.2 Other Offices. The Exchange may also have offices at such other locations both within and without the State of Delaware as the Board may from time to time determine or the business or purposes of the Exchange may require.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Powers.

(a) The business and affairs of the Exchange shall be managed by its Board, except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Board pursuant to these By-Laws or the Rules. The Board, acting in accordance with the terms of these By-Laws and the Rules, shall be vested with all powers necessary for the government of the Exchange as an "exchange" within the meaning of the Act, the regulation of the business conduct of the ETP Holders, and the promotion of the welfare, objects and purposes of the Exchange.

(b) The Board shall have the power to adopt, amend or repeal the Rules in accordance with Section 8.2.

(c) The Board shall exercise all such powers of the Exchange and do all such lawful acts and things as are not by law, the Certificate of Incorporation, these By-Laws or the Rules, directed or required to be exercised, done or approved by the stockholders of the Exchange or the ETP Holders.

Section 3.2 General Composition.

(a) Subject to Section 3.2(b) [and Section 3.3], the Board shall consist of not fewer than seven (7) and not more than twenty-five (25) directors. [thirteen (13) directors (at least 50% of whom shall be Independent Directors) and shall be comprised as follows:

(i) The Chief Executive Officer of the Exchange;

(ii) Three (3) ETP Holder Directors;

(iii) Seven (7) Independent Directors (subject to increase under Section 3.3 below); and

(iv) Two (2) executive officers of CBOE, CBOE members or executive officers of CBOE member organizations ("CBOE Directors").]

(b) The Board may, by resolution, add or remove director positions to the Board, provided [that the number of director positions shall not be less than thirteen (13) nor more than twenty (20), and provided further] that that no removal of a director position shall have the effect of shortening the term of any incumbent director. The Board at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors (at least one of whom shall be an Independent Director[s]) and such number of ETP Holder Directors [that equals the greater of (i) three (3) or (ii) such number] as is necessary to comprise at least 20% of the Board. Newly-created director positions pursuant to this Section 3.2(b) shall be filled: *first*, by Non-Industry [Independent] Directors, to the extent necessary for the Board to consist of at least 50% Non-Industry [Independent] Directors, *second*, by ETP Holder Directors, to the extent necessary for the Board to consist of at least 20% ETP Holder Directors, and *third*, by Industry or Non-Industry Directors [persons who do not qualify as Independent Directors ("At-

Large Directors")], for the remainder of any newly-created director positions of the Board that are not filled [with Independent Directors or ETP Holder Directors pursuant to this Section 3.2] pursuant to the *first* and *second* clauses of this sentence. For purposes of calculating the percentage of Non-Industry Directors herein, the Chief Executive Officer of the Exchange shall be excluded.

(c) No two or more directors may be partners, officers or directors of the same person or be affiliated with the same person, unless such affiliation is with a national securities exchange or CBOE Stock Exchange, LLC [NSX Holdings, Inc]. No director need be a stockholder.

(d) A director may not be subject to a Statutory Disqualification.

Section 3.3 Reserved.

[Changes in Composition on the Occurrence of Certain Events. Notwithstanding the provisions of Section 3.2:

(a) On the date of the second Subsequent Closing to occur after January 18, 2005, the number of positions on the Board filled by CBOE Directors shall be reduced from two (2) to one (1), and the vacated position shall thereafter be filled by a director whose qualifications shall be determined by the Board, subject to the limitation that such director shall be an At-Large Director unless an Independent Director is required in order to maintain at least 50% Independent Directors then serving on the Board. Following the second Subsequent Closing, an At-Large Director or an Independent Director, as the case may be, may be either (as determined by the Board) (i) nominated and elected in accordance with Section 3.5, except that the requisite action shall be taken as soon as practical, or (ii) appointed by the Board in accordance with Section 3.7.

(b) On the earliest to occur of (a) the date on which CBOE owns less than five percent (5%) of the outstanding capital stock of NSX Holdings, Inc. or (b) the third anniversary of the fourth Subsequent Closing (the earliest of these to occur being the "CBOE Withdrawal Date"), the number of positions on the Board filled by CBOE Directors shall be reduced from one (1) to zero (0), and the vacated position shall thereafter be filled by an At-Large Director unless an Independent Director is required in order to maintain at least 50% Independent Directors then serving on the Board. The remaining CBOE Director shall be deemed to have resigned from the Board as of the CBOE Withdrawal Date. Following the CBOE Withdrawal Date, an At-Large Director or an Independent Director, as the case may be, may be either (as determined by the Board) (i) nominated and elected in accordance with Section 3.5, except that the requisite action shall be taken as soon as practical, or (ii) appointed by the Board in accordance with Section 3.7.]

Section 3.4 Terms of Office.

(a) CEO Director. The Board term of the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Exchange.

(b) ETP Holder Directors. The ETP Holder Directors shall serve one-year terms. The term of office for each ETP Holder Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election.

In the case of any new ETP Holder Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. [The ETP Holder Directors shall be divided into three (3) classes, designated Class I, Class II and Class III, each initially composed of no more than one (1) ETP Holder Director. The ETP Holder Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, the ETP Holder Directors in Class I shall initially hold office until the first annual meeting of stockholders of the Exchange, the ETP Holder Director in Class II shall initially hold office until the second annual meeting of stockholders of the Exchange, and the ETP Holder Directors in Class III shall initially hold office until the third annual meeting of stockholders of the Exchange. Commencing with the first annual meeting of stockholders, the term of office for each class of ETP Holder Directors elected at each annual meeting shall be three years from the date of election. Notwithstanding the foregoing, in the case of any new ETP Holder Director as contemplated by Section 3.2(b), such director shall be added to a class, as determined by the Board at the time of such director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such director has been added.] All ETP Holder Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, removal or disqualification.

(c) Non-Industry Directors. The Non-Industry Directors shall serve one-year terms. The term of office for each Non-Industry Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election. In the case of any new Non-Industry Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. All Non-Industry Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification. [The Independent Directors shall be divided into three (3) classes, designated Class I, Class II and Class III, which shall be as nearly equal in number as the total number of Independent Directors then serving on the Board permits. The Independent Directors shall serve staggered three-year terms, with the term of office of one class expiring each year. In order to commence such staggered three-year terms, Independent Directors in Class I shall initially hold office until the first annual meeting of stockholders of the Exchange, Independent Directors in Class II shall initially hold office until the second annual meeting of stockholders of the Exchange, and Independent Directors in Class III shall initially hold office until the third annual meeting of stockholders of the Exchange. Commencing with the first annual meeting of stockholders, the term of office for each class of directors elected at each annual meeting shall be three years from the date of their election. Notwithstanding the foregoing, in the case of any new Independent Director as contemplated by Section 3.2(b) or Section 3.3, such director shall be added to a class, as determined by the Board at the time of such director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such director has been added. All Independent Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.]

(d) Independent Directors. A Non-Industry Director may be an Independent Director. With reference to any Non-Industry Director who is also an Independent Director, such director's term of office shall be determined pursuant to Section 3.4(c) above. [The term of a

CBOE Director shall be one (1) year from the date of such director's election or until a successor is elected and qualified, subject to earlier removal pursuant to these By-Laws.]

(e) Industry Directors. The Industry Directors shall serve one-year terms. The term of office for each Industry Director elected at each annual meeting shall be until the annual meeting of stockholders of the Exchange in the year after the date of election. In the case of any new Industry Director as contemplated by Section 3.2, such director shall have an initial term expiring at the next annual meeting of stockholders of the Exchange. All Industry Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification. [In the case of any At-Large Director as contemplated by Section 3.2(b) or Section 3.3, such director shall be added to a class, as determined by the Board at the time of such At-Large Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such At-Large Director has been added. All At-Large Directors shall continue in office after the expiration of their terms until their successors are elected or appointed and qualified, except in the event of a director's earlier death, retirement, resignation, removal or disqualification.]

Section 3.5 Nomination and Election.

(a) [Subject to subsection (g) of this Section 3.5, candidates] Candidates for election as a director shall be nominated by the Governance and Nominating Committee as follows:

(b) The Governance and Nominating Committee each year shall nominate directors for each director position standing for election at the annual meeting of stockholders that year. For positions requiring persons who qualify as ETP Holder Directors, the Governance and Nominating Committee shall nominate only those persons whose names have been approved and submitted by the ETP Holder Director Nominating Committee and (to the extent required by subsection (e) below) presented to, and approved by, the ETP Holders pursuant to the procedures set forth below in this Section 3.5.

(c) The ETP Holder Director Nominating Committee shall consult with the Governance and Nominating Committee, the Chairman of the Board and the Chief Executive Officer, and shall solicit comments from the ETP Holders for the purpose of approving and submitting names of candidates for election to the position of ETP Holder Director. Not later than seventy-five (75) days prior to the date announced for the annual meeting of stockholders, the ETP Holder Director Nominating Committee shall submit to the Governance and Nominating Committee the initial nominees for ETP Holder Director positions on the Board.

(d) Not later than sixty (60) days prior to the date announced for the annual meeting of stockholders, the Governance and Nominating Committee shall report to the Secretary of the Exchange the initial nominees for ETP Holder Director positions on the Board that have been approved and submitted by the ETP Holder Director Nominating Committee. The Secretary shall promptly notify ETP Holders of those initial nominees. ETP Holders may identify other candidates for the ETP Holder Director positions by delivering to the Secretary, at least thirty-five (35) days before the date announced for the annual meeting of stockholders, a written petition, which shall designate the candidate by name and office and shall be signed by ten percent (10%) or more of the ETP Holders. An ETP Holder may endorse as many candidates as there are ETP Holder Director positions to be filled. No ETP Holder, together

with its affiliates, may account for more than fifty percent (50%) of the signatures endorsing a particular candidate, and any signatures of such ETP Holder, together with its affiliates, in excess of fifty percent (50%) limitation shall be disregarded.

(e) If one or more valid petitions are received, the Secretary shall notify all ETP Holders of record (as of the close of business on the day before the date of such notice) of the names of the initial nominees approved and submitted by the ETP Holder Director Nominating Committee and those additional candidates identified by the ETP Holders, (the "List of Candidates"), as well as of the time and date of an election to be held at least twenty (20) days prior to the annual stockholders' meeting to confirm the ETP Holders' selections of nominees for ETP Holder Directors. In such elections, each ETP Holder shall have one (1) vote with respect to each ETP Holder Director position that is to be filled at the annual stockholders' meeting; provided, however, that any such vote must be cast for a person on the List of Candidates and that no ETP Holder, together with its affiliates, may account for more than twenty percent (20%) of the votes cast for a candidate, and any votes cast by such ETP Holder, together with its affiliates, in excess of such twenty percent (20%) limitation shall be disregarded. No ETP Holder shall have the right to vote cumulatively in the election of any directors. Votes may be cast in person or by proxy. The individuals receiving the largest number of votes shall be the persons approved by the ETP Holders as ETP Holder Director nominees. The Secretary shall notify the Governance and Nominating Committee of the results of the election.

(f) If no valid petitions from the ETP Holders are received by the date that is thirty-five (35) days prior to the date that is announced for the annual meeting of stockholders, the initial nominees approved and submitted by the ETP Holder Director Nominating Committee shall be deemed to be the persons approved by the ETP Holders as the ETP Holder Director nominees, and the Secretary shall so notify the Governance and Nominating Committee.

[(g) Candidates for election as a CBOE Director shall be nominated by the CBOE Board of Directors at their annual meeting or as soon thereafter as possible, but in all cases, at least twenty (20) days prior to the annual stockholders' meeting of the Exchange.]

Section 3.6 Chairman. The Board, acting through a vote of a majority of its directors, shall elect a Chairman of the Board from among the directors of the Exchange. The Chairman may also serve as the Chief Executive Officer and/or President of the Exchange, but may hold no other offices in the Exchange. Unless the Chairman of the Board also serves as the Chief Executive Officer of the Exchange, the Board shall elect the Chairman from among the Non-Industry [Independent] Directors. Unless another director is appointed by the Board for such purpose in the Chairman's absence, the Chairman shall preside at all meetings of the stockholders and the Board. The Chairman shall also have such other duties, authority and obligations as may be given to him or her by these By-Laws or by the Board.

Section 3.7 Vacancies.

(a) (i) Notwithstanding any provision herein to the contrary, any vacancy in the Board, however occurring, including a vacancy resulting from an increase in the number of the directors, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director, provided such new director qualifies for the category in which the vacancy exists. A director elected to fill a vacancy shall hold office until the next

annual meeting of stockholders, subject to the election and qualification of his or her successor and to his or her earlier death, resignation, disqualification or removal.

[Any vacancy that may occur on the Board resulting from the death, retirement, resignation, disqualification or removal of a director, or as a result of (i) a reduction in the number of directors serving on the Board, or (ii) the creation of any new director positions between annual meetings of the stockholders at which directors are elected, shall be filled by the directors then in office, even if less than a quorum, in accordance with the By-Laws, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs in accordance with the By-Laws. Any person chosen to fill a vacancy or newly-created director position must qualify as the type of director associated with the seat on the Board being filled (unless the position is being filled as a result of a reduction in the number of CBOE Directors serving on the Board pursuant to Sections 3.3(a) and (b), in which case the qualifications of the new director shall be determined by the Board pursuant to Sections 3.3(a) and (b)). The person selected to fill a vacancy or newly-created director position shall hold office until the expiration of the term of office of the replaced director or the end of a term for a newly-created director position, as the case may be.]

(ii) If the Board fills a vacancy resulting from a ETP Holder Director position becoming vacant prior to the expiration of such ETP Holder Director's term, or resulting from the creation of an additional ETP Holder Director position required by an increase in the size of the Board, then the Board shall follow the procedures set forth in this Section 3.7(a)(ii). In such an event, the ETP Holder Director Nominating Committee shall either (i) recommend an individual to the Board to be elected to fill such vacancy or (ii) provide a list of recommended individuals to the Board from which the Board shall elect the individual to fill such vacancy. The Board shall elect, pursuant to this Section 3.7(a)(ii), only individuals recommended by the ETP Holder Director Nominating Committee. Any vacancy filled pursuant to this Section 3.7(a)(ii), shall be filled by the vote of a majority of the directors then in office, although less than a quorum.

(b) In the event any director fails to maintain any of the qualifications for such director set forth in these By-Laws or the Certificate of Incorporation of the Exchange, of which failure the Board shall be the sole judge, such director shall, upon determination of the Board that such director is no longer qualified, cease to be a director, such director's office shall be deemed vacant and (effective upon the expiration of any grace period for re-qualification permitted by the Board pursuant to Section 3.7(c) below) the vacancy may be filled by the Board with a person who so qualifies for such director's position in compliance with Section 3.7(a) above.

(c) The Board in its discretion may institute a grace period for a reasonable length of time for re-qualification for a director who ceases to be a director pursuant to Section 3.7(b) above. If any such grace period is instituted, during such period up until the time when the director re-qualifies, the director shall be deemed not to hold office and the director position formerly held by the director shall be deemed to be vacant for all purposes. The Board shall be the sole judge of whether a director has re-qualified.

(d) An ETP Holder Director whose individual status as an ETP Holder has been temporarily suspended, or whose ETP Holder organization has been temporarily suspended as an ETP Holder, shall not be deemed to lose his or her qualification as a director by reason of such suspension during the period of suspension.

Section 3.8 Removal. As set forth in the Certificate of Incorporation of the Exchange, except as provided herein, any [no] director [or class of directors] may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that any ETP Holder Director may only be removed for cause[except for cause]. For purposes of this Section 3.8, "cause" shall mean only (i) a breach of a director's duty of loyalty to the Exchange or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

Section 3.9 Place of Meetings; Mode. Any meeting of the Board may be held at such place, within or without the State of Delaware, as shall be designated in the notice of such meeting, but if no such designation is made, then the meeting will be held at the principal business office of the Exchange. Members of the Board or any committee of the Board may participate in a meeting of the Board or committee by conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.10 Regular Meetings. Regular meetings of the Board may be held, with or without notice, at such time or place as may from time to time be specified in a resolution adopted by the Board.

Section 3.11 Special Meetings.

(a) Special meetings of the Board may be called on a minimum of two (2) days notice to each director by the Chairman of the Board or the Chief Executive Officer, and shall be called by the Secretary upon the written request of three (3) directors then in office.

(b) The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held, and such time and place shall be specified in the notice of such meeting. Notice of any special meeting shall be given to each director at his or her business address or such other address as he or she may have advised the Secretary of the Exchange to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the director to be notified. If mailed, such notice shall be deemed to be given five (5) business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the director to be notified.

Section 3.12 Voting; Quorum and Action by the Board. Each director shall be entitled to one (1) vote. At all meetings of the Board, the presence of a majority of the number of directors then in office shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these By-Laws.

Section 3.13 Waiver of Notice. A written waiver of notice, signed by a director entitled to notice of a meeting of the Board, whether before or after the time of the meeting stated in the

notice, shall be deemed equivalent to the giving of such notice to that director. Attendance of a director at a meeting of the Board or of a committee of the Board of which the director is a member shall constitute a waiver of notice of such meeting, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 3.14 Presumption of Assent. A director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the [s]Secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Section 3.15 Action in Lieu of Meeting. Unless otherwise restricted by statute, the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing(s) or electronic transmission(s) are filed with the minutes of proceedings of the Board or the committee.

Section 3.16 Compensation. The directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board and at each meeting of a committee of the Board of which they are members. The Board, irrespective of any personal interest of any of its members, shall have authority to fix compensation of all directors for services to the Exchange as directors, officers or otherwise.

Section 3.17 Interpretation of By-Laws. Subject to the Act, including section 19 thereunder, the [The] Board shall have the power to interpret these By-Laws and any interpretation made by it shall be final and conclusive.

ARTICLE IV

STOCKHOLDERS

Section 4.1 Annual Meeting. The annual meeting of the stockholders shall be held at such place and time as determined by the Board for the purpose of electing directors and for conducting such other business as may properly come before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4.2 Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called by the Chairman, the Board or the Chief Executive Officer, and shall be called by the Secretary at the request in writing of stockholders owning not less than a majority of the then issued and outstanding capital stock of the Exchange entitled to vote. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose(s) stated in the notice of the meeting.

Section 4.3 List of Stockholders. The Secretary of the Exchange, or such other person designated by the Secretary or the Board, shall have charge of the stock ledger of the Exchange and shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

Section 4.4 Quorum and Vote Required for Action.

(a) The holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or these By-Laws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) When a quorum is present at any meeting, the vote of the holders of a majority of the capital stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the Certificate of Incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 4.5 Voting of Shares; Proxies. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, each stockholder of the Exchange shall at every meeting of the stockholders be entitled to one (1) vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period. Any such proxy shall be in writing and shall be filed with the Secretary of the Exchange before or at the time of the meeting.

Section 4.6 Action in Lieu of Meeting. As set forth in the Certificate of Incorporation of the Exchange, any action upon which a vote of stockholders is required or permitted, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding capital stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Exchange in the manner required by law, provided that the matter to be acted upon by such written consent previously has been directed by the Board to be submitted to the stockholders for their action by written consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not so consented in writing.

ARTICLE V

COMMITTEES

Section 5.1 Number of Committees. The committees of the Board shall consist of a Business Conduct Committee, [a Securities Committee,] an Appeals Committee, a Governance and Nominating Committee, an ETP Holder Director Nominating Committee, a Regulatory Oversight Committee, an Executive Compensation Committee, an Executive Committee**,** an Audit Committee, and such other committees as may be from time to time established by the Board. Committees shall have such authority as is vested in them by these By-Laws or the Rules, or as is delegated to them by the Board. All committees are subject to the control and supervision of the Board.

Section 5.2 Appointment; Vacancies; and Removal. The Chairman of the Board, with the approval of the Board, shall appoint, consistent with these By-Laws, the members of all committees of the Board, and the Chairman may, at any time, with or without cause, remove any member of a committee so appointed, with the approval of the Board. Any vacancy occurring in a committee shall be filled by the Chairman of the Board for the remainder of the term, with the approval of the Board. Except as otherwise provided in this Article V, each [Each] committee shall be comprised of at least three (3) people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law. In appointing new members to committees of the Board, the Chairman is responsible for determining that any such committee meets the composition requirements set forth in this Article V.

Section 5.3 Powers and Duties of Committees. To the extent not prohibited by law, all committees shall have such duties and may exercise such authority as may be prescribed for them in these By-Laws, the Rules or by the Board.

Section 5.4 Conduct of Proceedings. Except as otherwise provided in these By-Laws or by the Board, each committee may determine the manner in which its proceedings shall be conducted. Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting if a written consent to the action is signed by all of the members of the committee and the written consent is filed with the minutes of the proceedings of the committee.

Section 5.5 Executive Committee.

(a) The Chairman of the Board, with the approval of the Board, shall appoint an Executive Committee. The Chairman of the Board with the approval of the Board, may also appoint one or more directors as alternate members of the Executive Committee who shall take the place of any absent member or members at any meeting of such committee. The Executive Committee at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors, at least one Independent Director and such number of ETP Holder Directors as is necessary to comprise at least 20% of the Executive Committee.

(b) The Executive Committee shall have and may exercise, so far as may be permitted by law, all the powers of the Board as may be delegated to it by the Board, except that the Executive Committee shall not have the power to change the membership of, or to fill

vacancies in, the Executive Committee. The Board, consistent with Section 5.2, shall have the power at any time to fill vacancies in or change the membership of the Executive Committee.

(c) A majority of the members of the Executive Committee shall constitute a quorum and either (i) the act of a majority of the members of the Executive Committee present at a meeting thereof, or (ii) the act of all members of the Executive Committee evidenced by a writing or writings, shall be the act of the Executive Committee.

(d) All actions of the Executive Committee shall be reported at the meeting of the Board next succeeding such action.

Section 5.6 Regulatory Oversight Committee. The Regulatory Oversight Committee shall be responsible to oversee all of the Exchange's regulatory functions and responsibilities and to advise regularly the Board about the Exchange's regulatory matters. The Regulatory Oversight Committee shall at all times be comprised entirely of Non-Industry Directors.

Section 5.7 ETP Holder Director Nominating Committee. The ETP Holder Director Nominating Committee shall be composed solely of ETP Holder Directors and/or ETP Holder representatives and shall be responsible for approving and submitting names of candidates for election to the position of ETP Holder Director pursuant to, and in accordance with, Section 3.5.

Section 5.8 Executive Compensation Committee. The Executive Compensation Committee shall consider and recommend compensation policies, programs, and practices for officers of the Company. Each member of the Compensation Committee shall be a Non-Industry Director.

Section 5.9 Audit Committee. The Audit Committee shall perform the following functions, as well as such other functions as may be specified in the charter of the Audit Committee: (A) provide oversight over the Exchange's financial reporting process and the financial information that is provided to stockholders and others; (B) provide oversight over the systems of internal controls established by management and the Board and the Exchange's legal and compliance process; and (C) select, evaluate and, where appropriate, replace the Company's independent auditors (or nominate the independent auditors to be proposed for ratification by stockholders). A majority of the Audit Committee members shall be Non-Industry Directors. A Non-Industry Director shall serve as Chairman of the Audit Committee.

Section 5.10 Governance & Nominating Committee. The Governance and Nominating Committee shall nominate candidates for election to the Board at the annual stockholder meeting and all other vacant or new Director positions on the Board. The number of Non-Industry Director members on the Nominating Committee shall equal or exceed the number of Industry Director members on the Nominating Committee.

Section 5.11 Appeals Committee. The Appeals Committee shall preside over all appeals related to disciplinary and adverse action determinations in accordance with the Exchange Rules. The Appeals Committee shall consist of one Independent Director, one Industry Director, and one ETP Holder Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as the replacement.

Section 5.12 Business Conduct Committee. The Business Conduct Committee shall preside over all disciplinary proceedings in accordance with Exchange Rules and as may be specified in the charter of the Business Conduct Committee. The Business Conduct Committee members shall be appointed by the Chairman with the approval of the Board in a composition consistent with applicable regulatory requirements and the Exchange By-Laws and Rules.

ARTICLE VI

OFFICERS

Section 6.1 Officers of the Exchange. The officers of the Exchange shall consist of a Chief Executive Officer, President, Chief Regulatory Officer, Secretary, Treasurer, and such other officers as the Board may determine. Any two or more offices may be held by the same person, except that the Chief Regulatory Officer and the Secretary may not hold either the office of Chief Executive Officer or President.

Section 6.2 Compensation. The compensation of all of the officers of the Exchange shall be fixed from time to time by the Board or a committee thereof designated by the Board.

Section 6.3 Tenure and Appointment. Each officer of the Exchange shall be appointed by the Board and shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, disqualification, resignation, retirement or removal.

Section 6.4 Removal and Vacancies. Any officer of the Exchange may be removed at any time by the Board, with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Vacancies in any office of the Exchange may be filled for the unexpired term by the Board.

Section 6.5 Powers and Duties. Each of the offices of the Exchange shall, unless otherwise ordered by the Board, have such powers and duties as customarily pertain to the respective office, and such further powers and duties as from time to time may be conferred by the Board, or by an officer delegated such authority by the Board.

Section 6.6 Arbitration Director. The Chairman of the Board, subject to the approval of the Board, may designate one of the officers or other employees of the Exchange to serve as the Arbitration Director, and may also designate an employee of the Exchange to serve as the Assistant Arbitration Director, to act in the event of the absence or inability to act of the Arbitration Director. The Arbitration Director, if any, shall be charged with the duty of performing or delegating all ministerial duties in connection with matters submitted for arbitration pursuant to the Rules.

ARTICLE VII

INDEMNIFICATION

Section 7.1 Extent of Indemnification. The Exchange shall, to the maximum extent not prohibited by the General Corporation Law of Delaware or any other applicable laws, as may from time to time be in effect, indemnify and hold harmless any person who was or is made or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Exchange, or is or was serving at the request of the Exchange as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (each, individually an “Indemnified Person”), against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding. The Exchange shall be required to indemnify an Indemnified Person in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board.

As set forth in the Certificate of Incorporation of the Exchange, to the fullest extent not prohibited by the General Corporation Law of the State of Delaware, as it exists on the date that the Certificate of Incorporation of the Exchange is adopted or as such law may later be amended, no director of the Exchange shall be liable to the Exchange or its stockholders or the ETP Holders for monetary damages for any breach of fiduciary duty as a director. No amendment to or repeal of this Article shall adversely affect any right or protection of a director of the Exchange that exists at the time of such amendment or repeal with respect to any actions taken, or inactions, prior thereto.

Section 7.2 Expenses. Expenses (including attorneys’ fees) incurred by an Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding, including appeals, may be paid by the Exchange in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified as authorized by the General Corporation Law of the State of Delaware.

Section 7.3 Contract. The provisions of this Article VII shall be deemed to be a contract between the Exchange and each Indemnified Person at any time while this Article and the relevant provisions of the General Corporation Law of Delaware or other applicable law, if any, are in effect and any repeal or modification of any such law or of this Article VII shall not affect and rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 7.4 Discretionary Indemnification Coverage. Persons not expressly covered by the foregoing provisions of this Article VII, such as those who are or were directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Exchange was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board.

Section 7.5 Continuity of Indemnification and Non-Exclusivity. The indemnification provided or permitted hereunder shall not be deemed exclusive of any other rights to which those indemnified now or hereafter may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent entitled to such indemnification and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 7.6 Insurance. The Exchange may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Exchange, or is or was serving at the request of the Exchange as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person in any such capacity, or arising out of such person's status as such, whether or not the Exchange would have the power to indemnify such person against such liability.

Section 7.7 Exchange Not Liable. The Exchange shall not be liable for any loss or damage sustained by any current or former member or ETP Holder growing out of the use or enjoyment by such member or ETP Holder of the facilities afforded by the Exchange (or any predecessor or successor thereof) or its subsidiaries.

ARTICLE VIII

AMENDMENTS

Section 8.1 By-Laws. As set forth in the Certificate of Incorporation of the Exchange, the Board shall have the power to adopt, amend or repeal the By-Laws. The By-Laws may also be amended or repealed, or new By-Laws of the Exchange may be adopted, by action taken by the stockholders of the Exchange. Notwithstanding the foregoing, neither this sentence nor any provision of Sections 3.1 through 3.8, Section 3.12, or Section 4.5 of these By-Laws may be amended or repealed without action of the stockholders of the Exchange. By-Laws adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act. Before any amendment to, alteration or repeal of any provision of the Bylaws of the Exchange under this Article VIII shall be effective, those changes shall be submitted to the Board and if the same must be filed with or filed with and approved by the Commission, then the proposed changes to the Bylaws of the Exchange shall not become effective until filed with or filed with and approved by the Commission, as the case may be.

Section 8.2 Rules. The Rules may be amended or repealed, or new Rules may be adopted, by the Board. A proposal to adopt, alter or amend any rule shall be presented in writing to the Board by the Chairman of the Board and a record shall be kept thereof. The Board shall pass on the proposed action, which may be adopted by the affirmative vote of a majority of the members of the Board then in office. Rules adopted, altered or amended shall become effective in accordance with the provisions of Section 19(b) of the Act.

ARTICLE IX

CERTIFICATES OF STOCK AND THEIR TRANSFER

Section 9.1 Form and Execution of Certificates. Every holder of stock in the Exchange shall be entitled to have a certificate signed by, or in the name of, the Exchange by the Chairman of the Board, the President or a vice president and by the Secretary or an assistant secretary or the Treasurer or an assistant treasurer of the Exchange, certifying the number of shares owned. Any and all signatures on a certificate may be facsimiles. Such certificates shall be in such form as may be determined by the Board. In case any officer, transfer agent or registrar of the Exchange who has signed, or whose facsimile signature has been placed upon, any such certificate shall have ceased to be such officer, transfer agent or registrar of the Exchange before such certificate is issued by the Exchange, such certificate may nevertheless be issued and delivered by the Exchange with the same effect as if the officer, transfer agent or registrar who signed, or whose facsimile signature was placed upon, such certificate had not ceased to be such officer, transfer agent or registrar.

Section 9.2 Replacement Certificates. The Exchange may direct a new certificate or certificates to be issued in place of any certificate or certificates evidencing shares of stock of the Exchange alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Exchange may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to advertise the same in such manner as it shall require and require such owner to give the Exchange a bond in such sum as it may direct as indemnity against any claim that may be made against the Exchange with respect to the certificate alleged to have been lost, stolen or destroyed. The Exchange may delegate its authority to direct the issuance of replacement stock certificates to the transfer agent or agents of the Exchange.

Section 9.3 Notice on Certificates. Each certificate evidencing shares of stock of the Exchange shall include a clear and conspicuous notice of the restrictions and limitations on the transfer of the shares evidenced by such certificate, in form and substance similar to the following:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS, AND MAY BE TRANSFERRED ONLY PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION FROM REGISTRATION THEREUNDER AND OTHERWISE IN ACCORDANCE WITH THE BY-LAWS OF THE CORPORATION."

Section 9.4 Conditions to Transfer. No sale, transfer or other disposition of stock of the Exchange shall be effected except (a) (i) pursuant to an effective registration statement under the Securities Act and in accordance with all applicable state securities laws or (ii) upon delivery to the Exchange of an opinion of counsel satisfactory to the counsel for the Exchange that such sale, transfer or disposition may be effected pursuant to a valid exemption from the registration requirements of the Securities Act and all applicable state securities laws and (b) upon delivery to the Exchange of such certificates or other documentation as counsel to the Exchange shall deem necessary or appropriate in order to ensure that such sale, transfer or other disposition complies with the Securities Act and all applicable state securities laws.

Section 9.5 Transfers of Stock. Upon surrender to the Exchange or the transfer agent of the Exchange of a certificate for shares of stock of the Exchange duly endorsed or accompanied by proper evidence of succession, assignment or other authority to transfer, it shall be the duty of the Exchange to issue a new certificate to the person entitled to the new certificate, cancel the old certificate and record the transaction upon its books, provided the Exchange or a transfer agent of the Exchange shall not have received a notification of adverse interest and that the conditions of Section 8-401 of Title 6 of the Delaware Code have been met.

Section 9.6 Registered Stockholders. The Exchange shall be entitled to treat the holder of record (according to the books of the Exchange) of any share or shares of its stock as the holder in fact of those shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other party whether or not the Exchange shall have express or other notice of that claim or interest, except as expressly provided by the laws of the State of Delaware.

ARTICLE X

SELF-REGULATORY FUNCTION OF THE EXCHANGE

Section 10.1 Management of the Exchange.

(a) In connection with managing the business and affairs of the Exchange, the Board shall consider applicable requirements for registration as a national securities exchange under Section 6(b) of the Act, including, without limitation, the requirements that (a) the Rules shall be designed to protect investors and the public interest and (b) the Exchange shall be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its "members," as that term is defined in Section 3 of the Act (such statutory members being referred to in these By-Laws as "ETP Holders") and persons associated with ETP Holders, with the provisions of the Act, the rules and regulations under the Act, and the Rules of the Exchange.

(b) For so long as CBSX controls NSX, NSX shall promptly inform the CBOE Stock Exchange. LLC board of directors, in writing, in the event that NSX has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if NSX does not have or is not appropriately allocating such financial, technological, technical and personnel resources as may be necessary or appropriate for NSX to meet its obligations under the Act.

Section 10.2 Participation in Board and Committee Meetings. All meetings of the Board (and any committees of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters) shall be closed to all persons other than members of the Board and officers, staff, counsel or other advisors whose participation is necessary or appropriate to the proper discharge of such regulatory functions and any representatives of the Commission. In no event shall members of the Board of Directors of CBOE Stock Exchange, LLC [NSX Holdings, Inc.] who are not also members of the Board, or any officers, staff, counsel or advisors of CBOE Stock Exchange, LLC [NSX Holdings, Inc.] who are not also officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), be allowed to participate in any meetings of the Board (or any committee of the Exchange) pertaining to the self-regulatory function of the Exchange (including disciplinary matters).

Section 10.3 Books and Records; Confidentiality of Information and Records Relating to SRO Function. The books and records of the Exchange shall be maintained at a location within the United States. All books and records of the Exchange reflecting confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) shall be retained in confidence by the Exchange and its personnel and will not be used by the Exchange for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any ETP Holder) other than to personnel of the Commission, and those personnel of the Exchange, members of committees of the Exchange, members of the Board, hearing officers and other agents of the Exchange to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange. Nothing in this Section 10.3 shall be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of the Exchange to disclose such confidential information to the Commission.

Section 10.4 Regulatory Fees and Penalties. Any revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used to pay dividends and shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Fiscal Year. The fiscal year of the Exchange shall be as determined from time to time by the Board.

Section 11.2 Dividends. Subject to any provisions of any applicable statute or the Certificate of Incorporation, dividends may be declared upon the capital stock of the Exchange by, and in the absolute discretion of, the Board; and any such dividends may be paid in cash, property or shares of stock of the Exchange, as determined by the Board, and shall be declared and paid on such dates and in such amounts as are determined by the Board.

Section 11.3 Reserves. Before payment of any dividends, there may be set aside out of any funds of the Exchange available for dividends such sum or sums as the Board from time to time, in its absolute discretion, determines to be proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Exchange, or for such other purpose as the Board shall determine to be conducive to the interests of the Exchange, and the Board may modify or abolish any such reserve in the manner in which it was created.

Section 11.4 Subsidiaries. The Board may constitute any officer of the Exchange its proxy, with power of substitution, to vote the equity interests of any subsidiary of the Exchange and to exercise, on behalf of the Exchange, any and all rights and powers incident to the ownership of those equity interests, including the authority to execute and deliver proxies, waivers and consents.

Section 11.5 Power to Vote Stock. Unless otherwise instructed by the Board, the Chief Executive Officer of the Exchange shall have the power and authority on behalf of the Exchange to attend and to vote at any meeting of stockholders, partners or equity holders of any corporation, partnership or any other entity in which the Exchange may hold stock, partnership or other equity interests, as the case may be, and may exercise on behalf of the Exchange any and all of the rights and powers incident to the ownership of such stock, partnership or other equity interest at such meeting, and shall have the power and authority to execute and deliver proxies, waivers and consents on behalf of the Exchange in connection with the exercise by the Exchange of the rights and powers incident to the ownership of such stock, partnership or other equity interest. The Board and the Chief Executive Officer may from time to time confer like powers upon any other person or persons.

Section 11.6 Severability. If any provision of these By-Laws, or the application of any provision of these By-Laws to any person or circumstances, is held invalid, the remainder of these By-Laws and the application of such provision to other persons or circumstances shall not be affected.

EXHIBIT 5

New language is underlined; proposed deletions are marked by [brackets].

* * * * *

The Shares issued pursuant to this Agreement have not been registered under the Securities Act of 1933, as amended (the "Act"), or any applicable state securities laws, and may not be sold, pledged or otherwise transferred unless the same have been registered and qualified in accordance with the Act and applicable state securities laws, or in the opinion of counsel reasonably satisfactory to the Company, such registration and qualification is not required. Additionally, any sale or other transfer of the Shares is subject to further restrictions that are set forth in this Agreement.

[SECOND]THIRD AMENDED AND RESTATED OPERATING AGREEMENT

OF

CBOE STOCK EXCHANGE, LLC

Dated as of [June 15, 2009]XXXXXXX, 2011

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CBOE STOCK EXCHANGE, LLC

[SECOND]THIRD AMENDED AND RESTATED OPERATING AGREEMENT

THIS [SECOND]THIRD AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and entered into as of the [15]XXth day of [June, 2009]XXXXXXXX, 2011, by and among the [Initial]current Owners (as defined herein)[and any Indirect Controlling Parties described in Section 15.16 below].

W I T N E S S E T H:

WHEREAS, CBOE Stock Exchange, LLC, a Delaware limited liability company (the "Company"), was formed on July 31, 2006, pursuant to the provisions of the Delaware Limited Liability Company Act (the "Act");

WHEREAS, the Initial Owners entered into a First Amended and Restated Operating Agreement dated as of March 2, 2007 (the "First Amended Operating Agreement"), which constitutes a "limited liability company agreement" as defined in §18-101(7) of the Act, to set forth their initial agreements as to the governance and operations of the Company, and which was intended to supers[c]ede, in its entirety, that certain Operating Agreement of CBOE Stock Exchange, LLC dated as of December 18, 2006;

WHEREAS, the then-current Owners entered into a Second Amended and Restated Operating Agreement dated as of June 15, 2009 (the "Second Amended Operating Agreement"), which constitutes a "limited liability company agreement" as defined in §18-101(7) of the Act, to set forth their revised agreements as to the governance and operations of the Company, and which was intended to supersede, in its entirety, the First Amended Operating Agreement; and

WHEREAS, the [Initial]current Owners [and Lime Brokerage LLC, a Delaware limited liability company that has subsequently become an Owner, collectively being all of the current Owners,] have determined to enter into this [Second]Third Amended and Restated Operating Agreement, which constitutes a "limited liability company agreement" as defined in §18-101(7) of the Act, to set forth their revised agreements as to the governance and operations of the Company in connection with the Company's acquisition of National Stock Exchange, Inc., a Delaware corporation and registered national securities exchange ("NSX"), and which is intended to supers[c]ede, in [their]its entirety, the [operating provisions of that First]Second Amended Operating Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
ORGANIZATIONAL MATTERS

1.1 Continuation. The Company, which was formed on July 31, 2006, pursuant to the provisions of the Act, shall be continued pursuant to the provisions of this Agreement.

1.2 Limited Liability Company Agreement; Other Agreements. The Owners hereby execute this Agreement for the purpose of establishing and providing for the affairs of the Company and the conduct of its business in accordance with the provisions of the Act. During the term of the Company as set forth in Section 1.8, the rights and obligations of the Owners with respect to the Company will be determined in accordance with (a) the terms and conditions of this Agreement, as it may be amended in accordance with its terms from time to time, (b) the Act, except where the Act provides that such rights and obligations specified in the Act shall apply "unless otherwise provided in a limited liability company agreement" or words of similar effect, and such rights or obligations are set forth in this Agreement, and (c) other agreements entered into between the Company and any Owner (including any employment agreements). In the event of any inconsistencies or conflicts between the provisions of this Agreement and the provisions of such other agreements, the terms of such other agreements shall control, provided that to the extent any such other agreements amend or modify any of the provisions of this Agreement, such other agreements must be approved in the manner and subject to the limitations set forth in Article XIV. For ease of use, Exhibits A, A-1, B and C to the First and Second Amended Operating Agreements, as they may have been subsequently amended, have been removed from this Agreement, but are intended to remain, unchanged, as part of the historical record of the Company, and continue to constitute part of its "other agreements," and those Exhibits and their terms are incorporated herein by this reference. Those Exhibits are identified herein by the designation as "Prior Exhibits". The Company shall maintain such other agreements at its principal place of business and make such agreements available for inspection and copying by any Owner or such Owner's agents at reasonable times.

1.3 Name. The name of the Company shall be CBOE Stock Exchange, LLC. The name of the Company may be changed as the Board may determine to be appropriate.

1.4 Principal Place of Business. The Company shall have its principal place of business at such location in Chicago, Illinois, as the Board may from time to time determine.

1.5 Registered Office and Agent. The Company shall maintain a registered office and a registered agent in the State of Delaware. The registered office of the Company shall be the office of the initial registered agent named in the Certificate of Formation of the Company, or such other office as the Board may designate from time to time pursuant to the Act. The registered agent of the Company shall be the initial registered agent named in the Certificate of Formation of the Company or such other person or persons as the Board may designate from time to time pursuant to the Act. The Company also will maintain such additional registered agents and registered offices in any other jurisdictions in which, in the judgment of the Board, it is necessary or advisable to do so.

1.6 Purpose and Scope of the Company. The [sole purpose of the]Company's sole purposes (and any other lawful purposes attendant thereto) shall be to (a) act as a trading market for securities other than options as a facility of a registered national securities exchange; and (b)

act as a holding company of NSX[and any other lawful purposes attendant thereto]. The Board may further authorize the Company and its subsidiaries to act as a market in other securities products if such products are regulated under substantially the same regulatory structure as equity and debt securities. For purposes of clarity, the parties acknowledge that CBOE would be unwilling to enter into this Agreement if the [Company's]activities of the Company and its subsidiaries were to extend to the operation of a market for the trading of securities options, commodity futures or securities futures, and accordingly CBOE retains sole discretion, through operation of Section 9.15 herein, to approve or decline to approve any such extension of the scope of the [Company's]business or purpose of the Company and its subsidiaries.

1.7 Regulatory Status. The [Company] CBSX trading platform for securities other than options (the "Facility") shall be a facility of CBOE, a registered national securities exchange pursuant to the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "Exchange Act"), subject to self-regulation by CBOE and oversight by the U.S. Securities and Exchange Commission (the "SEC")[SEC]. CBOE is the self-regulatory organization for the Facility[market to be developed and operated by the Company], and will be the Regulatory Services Provider for the Facility[Company]. As the self-regulatory organization, CBOE will have the regulatory responsibility for the activities of the F[f]acility, but, subject to the Services Agreement, may enter into arrangements with other self-regulatory organizations to perform some of its regulatory functions. CBOE will also provide certain administrative, operational and technical services to the Company pursuant to the Services Agreement.

1.8 Authority of CBOE. Notwithstanding anything contained in this Agreement to the contrary, so long as the Facility[Company] is a facility of CBOE, in the event that CBOE, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of CBOE's regulatory functions, its responsibilities under the Exchange Act or as specifically required by the SEC (collectively, "Regulatory Requirements"), (i) CBOE's affirmative vote will be required to be included in order to constitute a "Super Majority Vote of the Owners," (ii) without CBOE's affirmative vote no such action, transaction or aspect of an action or transaction shall be authorized, undertaken or effective, and (iii) CBOE shall have the sole and exclusive right to direct that any such required, necessary or appropriate act, as it may determine in its sole discretion, to be taken or transaction be undertaken by or on behalf of the Company without regard to the vote, act or failure to vote or act by any other party in any capacity.

1.9 Term. The term of the Company shall be perpetual unless it is sooner terminated pursuant to the terms of this Agreement or by operation of law.

ARTICLE II
DEFINITIONS

2.1 Definitions.

(a) As used throughout this Agreement:

(1) "Affiliate" means, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is 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.

(2) "Board" means the Board of Directors of the Company determined as provided in Article IX.

(3) "Capital Call" means the delivery of a Capital Notice pursuant to Section 3.1(c), and the elections to purchase thereunder.

(4) "CBOE" means Chicago Board Options Exchange, Incorporated.

(5) "CBOE License" means the license, in the form attached as Prior Exhibit C, from CBOE to the Company, of the right to use (i) the name "CBOE Stock Exchange" and the acronym "CBSX" in connection with the designation and conduct of the business of the Company, (ii) the software and related intellectual property constituting CBOE's trade engine designated as "*CBOEdirect,*" and (iii) the business plan and operations manual developed by CBOE for the conduct of the Company's business.

(6) "Confidential Information" means (A) information relating to the terms of any contract, agreement or other relationship between the Company and a third party, an Owner, an Affiliate of the Company or an Owner, or any other person, (B) information relating to the terms of this Agreement or any other agreement between or among the Company, and an Owner, an Affiliate of the Company or an Owner, or any other person (C) financial information about the Company, an Owner, an Affiliate of the Company or an Owner, (D) any process, system or procedure with which or whereby the Company or any Owner or Affiliate of an Owner does business, (E) any trade secrets, confidential know-how or designs, formulae, plans, devices, business information, software, systems, technology, financial data or material (whether or not patented or patentable) of the Company, or an Owner or Affiliate of the Company or an Owner, and (F) any confidential member or user or customer lists of the Company, or an Owner or Affiliate of the Company or an Owner, in each case to which a party hereto becomes privy or learns of by reason of this Agreement, discussions or negotiations relating to this Agreement or the relationship of the parties contemplated hereby.

(7) "Director" means a limited liability company manager, as that term is defined in §18-101(10) of the Act, who is designated pursuant to Section 9.2 to serve on the Board and who is vested with the duties and responsibilities assigned to Directors pursuant to Article IX.

(8) "Electing Owner" means, as the case may be, a Voting Owner (but not a Management Owner) who (A) elects to purchase its additional Shares pursuant to Section 3.1(c) and not some lesser amount or (B) elects to acquire its full share of the Tendered Interest pursuant to Section 6.3(b). A "Non-Electing Owner" means an Owner who in either of the foregoing cases declines to make such an election.

(9) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(A) The initial Gross Asset Value of an asset contributed by an Owner to the Company shall be the gross fair market value of the asset on the date of contribution, as determined by the contributing Owner and the Board;

(B) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Board, as of the following times: (i) the acquisition of additional Shares by any new or existing Owner in exchange for more than a de minimus capital contribution; (ii) the distribution by the Company to an Owner of more than a de minimus amount of property as consideration for Shares; and (iii) the liquidation of the Company within the meaning of Regulations §1.704-1(b)(2)(ii)(g); and (iv) the issuance of Shares for services rendered to the Company; provided, however, that adjustments pursuant to subclauses (i), (ii) and (iv) of this clause shall be made only if the Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Owners; and

(C) The Gross Asset Value of a Company asset distributed to any Owner shall be the gross fair market value of the asset on the date of distribution.

(10) "Incremental Tax Liability" of an Owner shall mean an amount equal to the hypothetical cumulative federal, state and local income tax liabilities of such Owner resulting solely from the pass-through of the Profits, Losses and credits of the Company. Prior and current Losses (including items of deduction or loss) and credits allocable to an Owner shall be taken into account and netted against prior and current Profits (including items of income and gain) for these purposes. In determining the Incremental Tax Liability of the Owners for any taxable year, it shall be assumed that (A) each Owner is a taxpayer incurring combined federal, state and local income tax liability at a rate equal to 41% (taking into account the deductibility of state and local income taxes for federal income tax purposes), and (B) each Owner has no actual items of income, gain, loss, deductions or credits from any other source other than from the Company.

(11) "Initial Owner(s)" means any of the parties identified on Prior Exhibit A to the First Amended Operating Agreement.

(12) "Majority In Interest of the Owners" means the affirmative vote of more than fifty percent (50%) of the Voting Shares held solely by the Voting Owners.

(13) "Management Owner" means a natural person who as of the date hereof is identified on Prior Exhibit A as a Management Owner, who subsequently becomes a Management Owner pursuant to the provisions of Section 3.2(c), or who is a transferee or assignee of Non-Voting Restricted Shares (other than a Voting Owner).

(14) "Net Cash Flow" means (on the cash receipts and disbursements basis of accounting) the net receipts (i.e., the excess, if any, of revenues over expenses and repayment of loans) of the Company, including distributions from entities owned by the Company; cash from operations or investments; and proceeds from the sale, exchange, or other disposition of Company assets in the ordinary course of the Company's business; but excluding capital contributions of the Owners; proceeds of any loans made to the Company (including available cash from a refinancing); proceeds from the sale, exchange or other disposition of

Company assets outside of the ordinary course of the Company's business; funds that the Board, in the Board's sole discretion, elects to reinvest on behalf of the Company; and reserves deemed reasonably sufficient, in the sole discretion of the Board, for (A) the working capital needs of the Company, (B) the payment of liabilities incurred (including any loans to the Company made by any Owners) or arising in the reasonably foreseeable future in connection with the operations of the Company, and (C) capital expenditures or contributions incurred or arising in the reasonably foreseeable future.

(15) "Non-Voting Restricted Share" means a Share held by a Management Owner containing the voting limitations and other restrictions described in this Agreement.

(16) "Owner" means a limited liability company "member" as that term is defined in §18-101(11) of the Act, and shall include each Voting Owner and each Management Owner, but only so long as such person is shown on the Company's books and records as the owner of at least one (1) Share (or fraction of one (1) Share). "Owner" shall include a "Substituted Owner" as defined in Section 6.5(a), but only upon compliance with all of the requirements of Sections 6.4 and 6.5 hereof. For purposes of clarity, no person shall become an "Owner" as to any Shares, if the acquisition of those Shares will require a change of ownership notice to the SEC, or will constitute a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Exchange Act, until all of the requirements of such notice or rule filing process have been accomplished and, if necessary, approved by the SEC.

(17) "Percentage Interest" with respect to an Owner means a fraction (expressed as a percentage) determined from time to time, the numerator of which is the number of all Shares held by such Owner and the denominator of which is the sum of all Shares held by all Owners.

(18) The term "person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

(19) The term "proceeds," when used in connection with a sale, exchange, or other disposition of property, or a refinancing, means net proceeds after the deduction of all related expenses.

(20) "Profits" or "Losses" means, for each taxable year or other period, an amount equal to the Company's taxable income or loss, respectively, for such year or period, determined in accordance with Code §703(a) (and for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code §703(a)(1) shall be included in such taxable income or loss), with the following adjustments:

(A) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this subparagraph shall be added to such taxable income or subtracted from such taxable loss;

(B) Any expenditures of the Company described in Code §705(a)(2)(B), or treated as Code §705(a)(2)(B) expenditures pursuant to Regulations §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this subparagraph, shall be subtracted from such taxable income or added to such taxable loss;

(C) In the event that the Gross Asset Value of any Company asset is adjusted pursuant to clause (B) or (C) of subparagraph (12) of this paragraph, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset;

(D) Gain or loss resulting from any disposition of a Company asset with respect to which gain or loss is recognized for federal income tax purposes, and depreciation or amortization with respect to a Company asset, shall be computed by reference to the Gross Asset Value (as adjusted for depreciation or amortization) of such asset, notwithstanding that the adjusted tax basis of the asset differs from its Gross Asset Value; and

(E) Notwithstanding any other provision of this subparagraph, any items that are specially allocated pursuant to Section 4.3 of this Agreement shall not be taken into account.

(21) "Regulations" means the specific temporary or final Treasury Regulations promulgated in respect of the Code, and any successor provision or provisions thereto.

(22) "Regulatory Services Provider" means CBOE for the term of the regulatory services to be provided under the Services Agreement.

(23) "Related Person" means (A) with respect to any person, all "affiliates" (as such term is defined in Rule 12b-2 under the Exchange Act); (B) any person associated with a member (as the phrase "person associated with a member" is defined under Section 3(a)(21) of the Exchange Act); (C) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Shares of the Company; (D) in the case of a person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 of the Exchange Act) or director of such person and, in the case of a person that is a partnership or a limited liability company, any general partner, managing member or manager of such person, as applicable; (E) in the case of a person that is a natural person, any relative or spouse of such natural person, or any relative of such spouse who has the same home as such natural person or who is a director or officer of the Company or any of the Company's Owners or subsidiaries; (F) in the case of a person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (G) in the case of a person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.

([23]24) "Services Agreement" means the Services Agreement in the form attached as Prior Exhibit B and as subsequently amended pursuant to which CBOE will provide specified hosting, development, regulatory and administrative services to the Company.

([24]25) "Share" means a unit of ownership of the Company representing the right to receive distributions and allocations pursuant to Article IV or upon the dissolution and winding up of the Company, and such other rights, obligations and, with respect to Series C Non-Voting Restricted Shares, restrictions, as are further set forth in this Agreement.

([25]26) "Super Majority of the Owners" means, subject to the provisions of Section 1.8 as to Regulatory Requirements, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) [any two (2) of the Initial] Owners of Series B Voting Shares who then retain ownership of Series B Voting Shares and represent at least a twenty (20%) Percentage Interest in the Company.

([26]27) "Voting Owner(s)" means the Initial Owners, and any person or entity that subsequently becomes an owner of Voting Shares by transfer pursuant to the provisions of Article VI or by purchase of Voting Shares from the Company.

([27]28) "Voting Shares" means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners.

(b) The following table indicates the location in this Agreement of the other terms defined herein:

Defined Term	**Location**
5% Owner	9.2(d)
Act	Recitals
Agreement	Recitals
assign	6.1
Bankruptcy	5.5(a)
Bona Fide Offer	6.3(c)
Capital Account	3.5
Capital Notice	3.1(b)
CBOE Holdings	6.12(a)
Company	Recitals
Company Minimum Gain	4.3(c)
controlling interest	15.16
Default Events	7.1
Defaulting Owner	7.2(a)
Disability	5.5(a)
Dissolving Event	12.1
Excess Shares	8.10
Exchange Act	1.7
Facility	1.7
First Amended Operating Agreement	Recitals
for cause	9.13(b)
Included Amount	6.9(a)
Indirect Controlling Party	15.16
Minority Owner	6.9(a)
Nonrecourse Deductions	4.3(a)
Non-Transferring Owner	6.3(e)

Term	Section
NSX	Recitals
Offer Notice	6.3(a)
Owner-Appointed Director	9.3(a)
Owner Action	8.7(b)
Owner Funded Debt	4.3(b)(1)
Owner Funded Deductions	4.3(b)(2)
Owner Minimum Gain	4.3(d)
Permitted Transferee	6.2(c)
Prime Rate	6.3(e)
Prior Exhibit	1.2
Private Sale	6.9(a)
Purchase Agreement	Recitals
Regulatory Allocations	4.3(f)
Regulatory Requirements	1.8
Sale Procedure Election	6.3(e)
SEC	1.7
SEC Approval	6.13[1]
Second Amended Operating Agreement	Recitals
Selling Group	6.9(a)
Substituted Owner	6.5(a)
Tag-Along Right	6.9(b)
Take Along Group	6.8(a)
tax matters partner	13.8
Tendered Interest	6.3(a)
transfer	6.1
Transferring Owner	6.3(a)
Unallocated Shares	3.1(b)
Unrelated Third Party	6.3(c)
Valuation Date	6.3(c)
Vote	8.9

ARTICLE III
CAPITAL CONTRIBUTIONS AND ADVANCES

3.1 Capital Contributions.

(a) Each Owner named on Prior Exhibit A of this Agreement agreed to contribute the amounts of cash and/or property set forth on Prior Exhibit A to the capital of the Company in exchange for the Shares specified thereon.

(b) The Board may from time to time determine that it is necessary or desirable for additional capital to be raised by the Company through the offer and sale of additional Shares. If the Board so determines, the Board shall notify the Voting Owners in writing (a "Capital Notice") of (1) the aggregate amount of additional capital to be raised and (2) the good faith determination of the issue price for each Share to be issued. Upon approval of such proposed action by the Voting Owners pursuant to Section 9.15(a), each Voting Owner then shall have 60 calendar days after the giving of the Capital Notice to elect to acquire its additional

Shares, which shall be in an amount equal to that Owner's Percentage Interest immediately prior to the Capital Notice as a proportion of the then Percentage Interests of all Voting Owners, multiplied by the total amount of additional Shares specified in the Capital Notice, or a lesser amount of additional Shares as that Owner may determine. The Shares that the Voting Owners initially do not elect to purchase pursuant to the Capital Notice are referred to herein as the "Unallocated Shares."

(c) The Electing Owners shall be able to exercise the right to purchase Unallocated Shares within 10 calendar days after the Company notifies each Electing Owner that the Voting Owners elected to purchase less than all of the Shares, upon the earlier of (1) the expiration of the 60-day period or (2) the waiver of the exercise by the last Non-Electing Owner not exercising an option to purchase Shares. Any Electing Owner that desires to purchase such remaining Unallocated Shares shall give the Company written notice of election to purchase a specified percentage of such Shares. If such elections to purchase by the Electing Owners aggregate to more than the remaining Unallocated Shares available to the Electing Owners, the Company shall allocate such Shares among such Electing Owners as follows: each Electing Owner shall be allocated such proportion of the remaining Unallocated Shares as the Percentage Interest then owned by such Electing Owner bears to the total Percentage Interest owned by all Electing Owners who elected to purchase any of the remaining Unallocated Shares, up to the percentage of such Unallocated Shares specified in such Electing Owner's election. Any remaining Unallocated Shares not so allocated shall be allocated as aforesaid in one or more successive allocations to each Electing Owner whose election specified a percentage of such Shares greater than the percentage which had then been allocated to such Electing Owner, until all of the remaining Unallocated Shares have been allocated. Thereupon, the Company shall give each such Electing Owner notice of the Shares so allocated to such Electing Owner. Notwithstanding the foregoing, the Electing Owners may determine, by unanimous written agreement among themselves, the proportions in which they purchase the remaining Unallocated Shares.

(d) If the Voting Owners do not elect to purchase all of the additional Shares offered by the Company pursuant to Section 3.1(b), the Company shall have 120 calendar days to sell the remaining additional Shares to any person(s) without complying with any additional voting requirement of Section 6.10, so long as the sale is at a price not less than the per Share price offered to the Voting Owners. Thereafter, the Company must re-offer to all Voting Owners in accordance with the provisions set forth in this Section 3.1 any remaining additional Shares to be sold subsequent to such 120-day period.

(e) No Owner shall be required, upon dissolution and liquidation of the Company or at any other time, to contribute capital to the Company because of the loss of some or all of the capital contributed by any other Owner.

(f) No previous decisions, actions or failures to take action by the Board with respect to a Capital Notice shall be deemed to create a precedent for any future action.

3.2 Shares.

(a) Shares shall be issued as either Series A Voting Shares, Series B Voting Shares or Series C Non-Voting Restricted Shares. A Management Owner shall be entitled to

hold only Series C Non-Voting Restricted Shares. The number of Shares (and designation as to Series A Voting Shares, Series B Voting Shares or Series C Non-Voting Restricted Shares) representing the Percentage Interests held by each Owner upon execution of this Agreement is set forth on Exhibit A. Except as set forth in such designations or otherwise expressly provided in this Agreement, Series A Voting Shares, Series B Voting Shares and Series C Non-Voting Restricted Shares shall be identical in all rights and obligations.

(b) The Series A Voting Shares are issued to CBOE and it is the intention of the Owners that no other members of the Company (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the SEC as provided for in Article VI, including Section 6.14, or any other provision hereof, or any rights to be acquired by a transferee of those Shares as provided herein.

(c) The Board shall have the authority to authorize the Company to issue or sell, without further approval under Section 9.15(a) hereof, and not subject to the preemptive purchase rights granted to Owners under Section 3.1(b) hereof, up to:

(1) 50,000,000 Series A Voting Shares;

(2) 100,200,000 Series B Voting Shares; and

(3) The number of Series C Non-Voting Restricted Shares provided for in clause (e) below.

(d) For purposes of clarity, the current [50]49.96% Percentage Interest of CBOE is represented by [50]25,000,000 authorized, issued and outstanding Series A Voting Shares standing in its name on the records of the Company. The current aggregate 50.04% Percentage Interest of the other current Owners is represented by [50,000,000]25,040,000 authorized, issued and outstanding Series B Voting Shares standing in their respective names on the records of the Company.

Of the additional [50,200,000]75,160,000 authorized but unissued Series B Voting Shares, [50]75,000,000 are reserved for issuance as provided for in section (f) below, and [20]160,000 are reserved for issuance to new Owners determined to be admitted by the Board in its sole discretion, limiting issuance to any such new Owners to not more than a one one-hundredth percent (0.01%) Percentage Interest each.

(e) The Board shall have the authority to authorize the Company to issue or sell Series C Non-Voting Restricted Shares (or options, rights or warrants to acquire Series C Non-Voting Restricted Shares) from time to time to employees, consultants or officers of the Company, or to any other person (each of whom shall, upon receipt of such Series C Non-Voting Restricted Shares, become a “Management Owner” hereunder), provided that:

(1) such issuance or sale of Series C Non-Voting Restricted Shares does not cause the total number of Series C Non-Voting Restricted Shares outstanding to exceed

in the aggregate the number of Shares that corresponds to a 5% Percentage Interest of the Company at the time of issuance or sale; and

(2) each recipient or purchaser of such Series C Non-Voting Restricted Shares (or options to acquire Series C Non-Voting Restricted Shares) executes a counterpart original of this Agreement as a Management Owner and complies with such other conditions as the Board reasonably may impose.

(f) The Board shall also have the authority to authorize the Company to issue units, to be designated as EPE Units, representing rights to acquire up to the additional number of Series B Voting Shares, and the Series B Voting Shares themselves, issuable pursuant to the terms of the Company's Equity Participation Entitlement Program, which [has been]was adopted by the Company simultaneously [here]with the Second Amended Operating Agreement and subject to this authorization, and to designate Participants in such Program.

(g) The Board shall also have the authority to offer phantom stock or other forms of cash compensation tied to the value of the equity of the Company to employees or consultants of the Company, with such forms of compensation having no effect on any Owners' Percentage Interest.

3.3 Advances by Owners to the Company. To the extent that the Company requires additional funds, in lieu of issuing additional Shares pursuant to Section 3.1(b) or borrowing amounts from persons other than Owners as authorized under this Agreement, the Board may, but need not, allow the Voting Owners to advance such additional funds as loans to the Company, at an interest rate and on such other terms as are mutually agreeable to the Board and each lending Voting Owner, and each such lending Voting Owner shall be repaid when due, as a priority to other distributions otherwise payable to Owners, out of the next available Company funds. Each Voting Owner shall, at the same time and on the same terms, be allowed to loan an amount of such total additional funds in proportion to the Percentage Interests of all Voting Owners electing to participate in such loan. If more than one set of loans are made pursuant to this Section, the earlier in time shall be repaid first.

3.4 Interest on and Return of Capital Contributions. No Owner shall receive any interest on its capital contribution to the Company or on its Capital Account, notwithstanding any disproportion therein as between the Owners. No Owner shall be liable for the return of the capital contribution of any other Owner or for the return of any Company asset. A negative balance in any Owner's Capital Account shall not be deemed to be an asset of the Company. Notwithstanding any contrary provision of law, no Owner shall be entitled to resign or obtain a return of all or any part of its capital contribution other than as expressly provided in this Agreement. The Owners intend that unless expressly stated otherwise in a writing furnished to all Owners by the Board, no distribution (or part of any distribution) made to an Owner pursuant to this Agreement shall be deemed a return or withdrawal of capital, even if such distribution represents (in full or in part) a distribution of depreciation or any other non-cash item accounted for as a loss or deduction from, or offset to, income. The Owners further intend that no Owner shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that notwithstanding the provisions of this Agreement, a distribution to an Owner represents, in whole or in part, a return of the Owner's capital contribution, then any obligation to return the distribution to the Company

or pay it to a creditor of the Company shall be the obligation of such Owner, not of any other Owner or the Company, and the liability to meet such obligation shall continue in full force and effect pursuant to the provisions of §18-607 of the Act.

3.5 Capital Accounts. The Company shall maintain a separate Capital Account for each Owner. "Capital Account" means, with respect to any Owner, the amount of cash and the Gross Asset Value of property contributed by such Owner to the Company (reduced by any liabilities assumed by the Company and liabilities to which such contributed property is subject), adjusted as follows:

(a) Reduced to the extent required under Code § 704(b)(2) by:

(1) All Losses (including all items of deduction or loss)[,] allocated to such Owner under Sections 4.2 and 4.3 of this Agreement; and

(2) All distributions of cash and the Gross Asset Value of property distributed to such Owner by the Company (reduced by any liabilities assumed by such Owner and liabilities to which such distributed property is subject); and

(b) Increased to the extent required under Code § 704(b)(2) by all Profits (including all items of income or gain)[,] allocated to such Owner under Sections 4.2 and 4.3 of this Agreement.

The Capital Account with respect to any transferee or Substituted Owner shall reflect all prior adjustments to the Capital Account of the transferring Owner. The Capital Accounts shall be maintained in strict accordance with Code § 704(b)(2) and the Regulations promulgated thereunder. In addition, the Company shall maintain such other separate and additional accounts for each Owner as shall be necessary to reflect accurately the rights and interests of the respective Owners.

ARTICLE IV
DISTRIBUTIONS AND PAYMENTS TO OWNERS; ALLOCATIONS OF PROFITS AND LOSSES

4.1 Distributions.

(a) Except as provided in Section 12.2(a) of this Agreement, distributions of Net Cash Flow and other assets shall be made to the Owners as follows:

(1) First, to the extent allowable by law and consistent with the cash flow needs of the Company, an amount equal to each Owner's Incremental Tax Liability, pro rata, in proportion to the Incremental Tax Liability of all Owners; and

(2) Remaining Net Cash Flow shall be distributed to the Owners in proportion to their Percentage Interests, determined as of the date of the distribution in question, at such time or times as the Board may determine in its sole discretion.

(b) Distributions of proceeds available from a sale, exchange or disposition (in a single transaction or a series of related transactions), including transactions of the nature

contemplated by Sections 6.8 and 6.9, in which the purchaser or purchasers acquire (i) a majority of the then outstanding Voting Shares by direct sale or transfer of Shares constituting such a majority by the Owner or Owners thereof, (ii) all or any substantial portion of the assets or business operations of the Company, or (iii) excess proceeds available from financing or refinancing of any of the assets of the Company, shall be made among all holders of Shares in accordance with the distribution provisions and priorities of Section 12.2, whether or not the sale constitutes a Dissolving Event thereunder, and without regard to the dissolution or liquidation of the Company; provided that it is understood that a change in corporate form or ownership of any Owner (whether accomplished by sale of equity interests, merger, consolidation, reorganization, recapitalization or other transaction affecting the Owner) shall not, in and of itself, constitute a sale, exchange or disposition of Voting Shares contemplated by this provision or any other provision of this Agreement. Anything contained in this Agreement to the contrary notwithstanding, all Owners agree that the aggregate of any and all proceeds from any sale described in clause (i) above that are otherwise payable directly to an Owner from the purchaser shall be distributed among all Owners as if such aggregate proceeds were distributable by the Company in accordance with Section 12.2. In the event that the distribution provisions of Section 12.2 are applied more than once during the term of the Company, e.g., at the time of a sale of a majority interest in the Company, and again on sale of the remaining balance of the Owners' Shares, prior distributions will be deemed to satisfy, on a dollar for dollar basis, the priorities set out in Sections 12.2(a)(1) and (2), so that those priorities need not then again be followed, to the extent that they have been previously satisfied.

(c) Any distributions of other assets shall be made in accordance with the Owners' Percentage Interests on the date of distribution at such time or times as the Board may determine.

(d) Notwithstanding the provisions of either 4.1(a), (b), or (c), no distribution may be made to an Owner to the extent that at the time of the distribution, after giving effect to the distribution, the aggregate liabilities of the Company (other than (1) liabilities to Owners on account of their ownership interests and (2) liabilities for which the recourse of creditors is limited to specified property of the Company) exceed the aggregate fair market value of the Company's assets as determined in a reasonable and effective manner as approved by the Board, which need not be a formal audit; provided, however, that the fair market value of an asset that is subject to a liability for which the recourse of creditors is limited to such asset shall be included in the aggregate fair market value of the Company's assets only to the extent that the fair market value of the asset exceeds such liability.

(e) For all purposes of this Agreement, amounts withheld pursuant to the Code, or a provision of any foreign, state or local tax law, with respect to a payment or distribution to the Company or to an Owner shall be treated as amounts distributed to the Owners. The Board may allocate such amounts among the Owners in any manner that accords with applicable law.

4.2 General Allocation Rules.

(a) Except as provided in Section 4.3 of this Article, the Profits, Losses, and credits of the Company, for purposes of maintaining the Owners' Capital Accounts, shall be allocated as of the end of each taxable year, as follows:

(1) Profits shall be allocated as follows:

(A) First, to the Owners that previously were allocated Losses pursuant to Section 4.2(a)(2)(A), pro rata in accordance with such allocations until the cumulative amount of Profits allocated to such Owners pursuant to this Section 4.2(a)(1)(A) equals the cumulative amounts of Losses previously allocated to them; and

(B) Thereafter, in accordance with the Owners' Percentage Interests determined as of the end of the taxable year in question; and

(2) Losses shall be allocated as follows:

(A) First, to the Owners that contributed cash to the Company in the proportions that each such Owner's cash contribution(s) bear to the total cash contributions made by Owners, until the cumulative amount of Losses allocated pursuant to this Section 4.2(a)(2)(A) equals the cumulative amount of cash contributions made to the Company; and

(B) Thereafter, in accordance with the Owners' Percentage Interests determined as of the end of the taxable year in question.

(b) In the event that the Owners' Percentage Interests vary during a taxable year, then the Profits and Losses (and items thereof), and credits, under this Section and Section 4.3 shall be allocated among the Owners whose Percentage Interests changed during the taxable year based upon the length of time during such year that each Owner held a particular Percentage Interest, as if the items were incurred or received (as the case may be) ratably throughout the entire taxable year; provided, however, that if the assets of the Company are sold, exchanged, or otherwise disposed of after a change in Percentage Interests, but during the taxable year in which the change occurs, all taxable income or loss attributable to such sale, exchange, or other disposition shall be allocated, under this Section and Section 4.3, among the Owners in accordance with their Percentage Interests on the date of the sale, exchange, or other disposition.

4.3 Special Allocation Rules. The following special allocations shall be made in the following order:

(a) Nonrecourse Deductions. Nonrecourse Deductions of the Company shall be allocated to the Owners in accordance with their Percentage Interests, determined as of the end of the fiscal year in question. "Nonrecourse Deductions" has the meaning set forth in Regulations §1.704-2(b)(1).

(b) Owner Funded Deductions. Owner Funded Deductions for any taxable year or other period shall be specially allocated to the Owner who bears the economic risk of loss

with respect to the Owner Funded Debt to which such Owner Funded Deductions are attributable in accordance with Regulations §1.704-2(i). For all purposes of this Article:

(1) "Owner Funded Debt" has the meaning ascribed to "partner nonrecourse debt" as set forth in Regulations §1.704-2(b)(4); and

(2) "Owner Funded Deductions" has the meaning ascribed to "partner nonrecourse deductions" as set forth in Regulations §1.704-2(i)(2).

(c) Company Minimum Gain Chargeback. Notwithstanding any other provision of this Article, if there is a net decrease in Company Minimum Gain during any Company taxable year, each Owner shall be specially allocated items of Company gross income and gain for such year (and if necessary, subsequent years) in accordance with the provisions of Regulations §1.704-2(f). "Company Minimum Gain" has the meaning ascribed to "partnership minimum gain" as set forth in Regulations §1.704-2(d).

(d) Owner Minimum Gain Chargeback. Notwithstanding any other provision of this Article (except paragraph (c) of this Section), if there is a net decrease in Owner Minimum Gain in respect of Owner Funded Debt during any Company fiscal year, each Owner who has a share of the Owner Minimum Gain attributable to such Owner Funded Debt, determined in accordance with Regulations §1.704-2(i)(5), shall be specially allocated items of Company gross income and gain for such year (and if necessary, subsequent years) in accordance with the provisions of Regulations §1.704-2(i)(4). "Owner Minimum Gain" has the meaning ascribed to "partner nonrecourse debt minimum gain" as set forth in Regulations §1.704-2(i)(2).

(e) Loss Limitations. Losses (including items of deduction or loss) shall not be allocated to any Owner to the extent that such allocation would cause the Owner's Capital Account balance to have a negative balance (or continue to have a negative balance) in excess of such Owner's aggregate share of Company Minimum Gain and Owner Minimum Gain, if any, after taking into account all future reasonably expected adjustments, allocations and distributions described in Regulations §1.704-1(b)(2)(ii)(d)(4) through (d)(6). In the event that any Owner unexpectedly receives any adjustment, allocation, or distribution described in Regulations §1.704-1(b)(2)(ii)(d)(4) through (d)(6), items of Company income and gain shall be specially allocated to each such Owner in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the negative Capital Account balance of such Owner in excess of such Owner's aggregate share of Company Minimum Gain and Owner Minimum Gain, if any, as quickly as possible; provided, however, that an allocation pursuant to this paragraph shall be made if and only to the extent that such Owner would have such a negative Capital Account balance after all other allocations provided for in this Agreement have been tentatively made as if this paragraph were not in the Agreement. This provision is intended to comply with the qualified income offset requirement contained in Regulations §1.704-1(b)(2)(ii)(d)(3) and shall be construed in accordance with the provisions thereof.

(f) Curative Allocations. The allocations set forth in subsections (a) through (e) of this Section (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations promulgated under Code §704(b)(2). Notwithstanding any provision of Section 4.2 or this Section 4.3 (other than the Regulatory Allocations), all remaining

Profits or Losses (including items of income, gain, loss, and deduction), shall be allocated among the Owners so that, when combined with the Regulatory Allocations, the net allocations of Profits or Losses (including items of income, gain, loss, and deduction), to the greatest extent possible, equal the net allocations that would have been made pursuant to Section 4.2 and to this Section 4.3 had no such Regulatory Allocations been required. Notwithstanding the preceding sentence, the special allocation of Owner Funded Deductions pursuant to subsection (b) of this Section shall be taken into account only to the extent that there is a net decrease in Owner Minimum Gain.

(g) Disallowed Deductions. Any amount paid or payable to any Owner or Affiliate that the Company deducted or intended to deduct, but that is disallowed or no longer is allowable as a deduction for federal income tax purposes, shall be allocated to the Owner who received the payment (or whose Affiliate received the payment) as income. Notwithstanding any contrary provision of this Agreement, the balance of the re-determined Profits and Losses of the Company for the taxable year in question shall, to the extent permitted by law, be allocated among the Owners to obtain the same allocation of Profits and Losses (after giving effect to the income allocation under the first sentence of this paragraph) as would have been obtained for such taxable year if the amounts thus disallowed or no longer allowable had been proper deductions by the Company. In particular, but not by way of limitation, this paragraph shall apply to any fees and interest payable by the Company to an Owner or an Affiliate of an Owner, all of which the Owners intend to be expenses of the Company rather than direct or indirect distributions to the Owners.

(h) Forfeiture Allocations.

(1) In the event that any Non-Voting Restricted Shares for which a Code § 83(b) election and the “Safe Harbor Election” as described in Section 13.9 have been made, are later forfeited, in whole or in part, the Company shall allocate to the Owner of such Shares gross income and gain or gross deduction and loss (consisting of a pro rata portion of each, and to the extent such items are available) for the taxable year of the forfeiture in a positive or negative amount equal to (i) the excess (not less than zero) of (a) the amount of the distributions (including deemed distributions under Code § 752(b) and the adjusted tax basis of any property so distributed) to the Owner with respect to the forfeited Shares (to the extent such distributions are not taxable under Code § 731), over (b) the amounts paid for such Shares and the adjusted basis of property contributed by the Owner (including deemed contributions under Code § 752(a)) to the Company with respect to the forfeited Shares, minus (ii) the cumulative net income (or loss) allocated to the Owner with respect to such Shares.

(2) Authority to Amend. Each Owner authorizes the Board to amend this Section 4.3(i) to the extent necessary to comply with the provisions of Prop. Treas. Reg. § 1.704-1(b)(4)(xii) in its final form, provided that such amendment is not materially adverse to any Owner who forfeits any portion of the Owner’s Shares as compared with the after-tax consequences that would result if the provisions of the current form of Prop. Treas. Reg. § 1.704-1(b)(4)(xii) applied instead in connection with the forfeiture of the Shares in question.

4.4 Tax Allocations: Code Section 704(c).

(a) Except as provided below, the income, gains, losses, deductions and expenses of the Company shall be allocated each taxable year, for federal, state and local income tax purposes, among the Owners in accordance with the allocation of Profits and Losses among the Owners for purposes of computing their Capital Accounts, except that if any such allocation is not permitted by the Code or other applicable law, the Company's subsequent income, gains, losses, deductions and expenses shall be allocated among the Owners for tax purposes to the extent permitted by the Code and other applicable law, so as to reflect as nearly as possible the allocation set forth herein in computing their Capital Accounts.

(b) In accordance with Code §704(c) and the Regulations thereunder, but solely for income tax purposes, all allocations of income, gain, loss and deduction for income tax purposes with respect to an asset contributed to the capital of the Company shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value using the traditional method set forth in Regulations §1.704-3(b). The Board shall have discretion to choose among the alternatives set forth in the Regulations issued under Code §704(c) for handling any such pre-contribution gain or loss.

(c) In the event that the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.1(a)(12)(B) of this Agreement, subsequent allocations of income, gain, loss, and deduction for income tax purposes with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the manner required under Code §704(c) and the Regulations thereunder; provided, however, that the Board shall have discretion to choose among the alternatives set forth in the applicable Regulations.

(d) Allocations of tax credit, tax credit recapture, and any items related thereto shall be allocated to the Owners according to their interests in such items as determined by the Board, taking into account the principles of Regulation § 1.704-1(b)(4)(ii).

Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations pursuant to this Section 4.4(d) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Owner's Capital Account or share of Profits, Losses or distributions pursuant to any other provisions of this Agreement.

ARTICLE V
STATUS OF OWNERS

5.1 **<u>Liability</u>.** No Owner shall be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company beyond the amount contributed by each such Owner to the capital of the Company pursuant to this Agreement, and except as otherwise provided in this Agreement, no Owner shall be responsible for losses sustained by any other Owner.

5.2 **<u>Status of Shares</u>.** The Shares owned by the Voting Owners shall be fully paid and non-assessable. The Series C Non-Voting Restricted Shares owned by the Management Owners may be subject to vesting schedules as determined by the Board and set forth in an agreement between the Company and the Management Owner, the terms of which may vary among Management Owners. No Owner shall have the right to reduce its contribution to the

capital of the Company, except as otherwise expressly provided in this Agreement. Furthermore, other than as specifically provided herein, no Owner shall have the right to demand or receive property other than cash in return for its contribution, or as to Profits, Losses, or distributions.

5.3 Management Owners. Notwithstanding the provisions in Article VIII of this Agreement regarding owner meetings and voting, no Management Owner shall be entitled to receive notice of any meetings of the Owners, nor attend any annual or special meeting of the Owners, nor vote their Series C Non-Voting Restricted Shares on any matter that may be submitted to the Owners, except as may be required under Section 14.1 of this Agreement regarding its amendment.

5.4 Resignation of an Owner. No Owner may resign as an Owner prior to the dissolution and winding up of the Company.

5.5 Death, Bankruptcy or Dissolution of an Owner.

(a) Unless otherwise agreed to in writing by the Company, including without limitation in any employment agreement between the Company and an individual Owner, upon the death, Bankruptcy or Disability of an individual Owner, such individual no longer shall be an Owner. The legally authorized personal representative of that individual shall not become a Substituted Owner in the individual Owner's place and stead, but, subject to the right of first refusal granted in Section 6.3, shall have the same rights as that individual Owner previously possessed (1) to receive distributions (including a return of capital upon the dissolution and winding up of the Company to the extent provided in Article XII), and allocations of Profits and Losses, for the purpose of settling or managing the estate of that individual; and (2) to make an assignment of Shares, and to join with the assignee in making application to substitute that assignee as a Substituted Owner, in accordance with Article VI. For all purposes of this Agreement, the term "Bankruptcy" includes any event described in §18-304 of the Act, and the term "Disability" means, as to any individual Owner rendering services to or for the benefit of the Company, the inability to render such services for a period of at least 90 consecutive days due to a physical or psychological illness or condition.

(b) Upon the Bankruptcy, dissolution or other cessation to exist as a legal entity of any Owner that is not an individual, such entity no longer shall be an Owner. The legally authorized representative of that entity shall not become a Substituted Owner in the entity's place and stead, but, subject to the right of first refusal granted in Section 6.3, shall have the same rights as that entity previously possessed (1) to receive distributions (including a return of capital upon the dissolution and winding up of the Company to the extent provided in Article XII), and allocations of Profits and Losses, for the purpose of effecting the orderly winding up and disposition of the business of that entity; and (2) to make an assignment of Shares, and to join with the assignee in making application to substitute that assignee as a Substituted Owner, in accordance with Article VI.

5.6 Powers of Owners. Except as otherwise specifically provided by this Agreement or required by the Act or by the SEC pursuant to the Exchange Act, no Owner shall have the power to act for or on behalf of, or to bind, the Company.

5.7 Owner Conduct.

(a) The Company, and to the extent that it relates to the Company, each Owner, agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the SEC and CBOE pursuant to their regulatory authority and the provisions of this Agreement; and to engage in conduct that fosters and does not interfere with the Company's and CBOE's ability to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In furtherance of the foregoing, after appropriate notice and opportunity for hearing, the Board, with the approving vote of both CBOE, in exercise of its authority under Section 1.8, and a majority vote of the Owners, excluding the vote of the Owner subject to sanction, may suspend or terminate an Owner's voting privileges or membership in the Company under this Agreement: (i) in the event such Owner is subject to a "statutory disqualification," as defined in Section 3(a)(39) of the Exchange Act; or (ii) in the event such Owner has violated any provision of this Agreement implicating 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.

(b) For so long as the Company shall control NSX, and only to the extent related to the activities of NSX, the Owners, Board of Directors, officers, and employees of the Company shall give due regard to the preservation of the independence of the self-regulatory function of NSX and to its obligations to investors and the general public and shall not take actions that such person knows or reasonably should have known would interfere with the effectuation of decisions by the NSX board of directors relating to its regulatory functions (including disciplinary matters) or which would interfere with NSX's ability to carry out its responsibilities under the Exchange Act. The Company shall comply with the federal securities laws and the rules and regulations promulgated thereunder and shall cooperate with the SEC and NSX pursuant to and to the extent of their regulatory authority, as applicable, to the extent related to NSX's self-regulatory functions. The officers, directors, employees, and agents of the Company, by their virtue of their acceptance of such position, shall be deemed to agree to cooperate with the SEC and NSX in respect of the SEC's oversight responsibilities regarding NSX and the self-regulatory functions and responsibilities of NSX, and the Company shall take reasonable steps necessary to cause its officers, directors, employees, and agents to so cooperate. No present or past Owner, employee, beneficiary, agent, customer, creditor, regulatory authority (or member thereof), or other person shall have any rights against the Company or any director, officer, employee or agent of the Company under this Section 5.7(b).

ARTICLE VI
TRANSFER OF SHARES

6.1 Assignment or Other Transfers. Subject to the requirements of this Article, an Owner shall have the right to assign Shares only by a written assignment, the terms of which do not contravene any provision of this Agreement, and which has been duly executed by the assignor and assignee, received by the Board, and recorded on the books of the Company. For all purposes of this Agreement, the terms "transfer" and "assign," and all derivatives or variants of those terms, include any transfer, disposition, sale, gift, bequest, pledge, encumbrance,

hypothecation, exchange or other act whether voluntary or involuntary, by operation of law or otherwise, whereby an Owner's ownership, interest, or rights in any Shares are disposed of, impaired, or in any way affected.

6.2 Transfer Restrictions.

(a) No Owner shall voluntarily transfer all or any portion of its Shares except in compliance with this Agreement; provided, however, that subject to the requirements of this Article VI, an Owner shall have the right to assign at any time any portion of its Shares to a Permitted Transferee.

(b) Notwithstanding any contrary provision of this Agreement, the Company shall be entitled to treat the assignor of Shares as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to it, until such time as the written assignment has been received by the Company and recorded on the books thereof.

(c) For all purposes of this Agreement, a "Permitted Transferee" means (i) as to any Owner, an Affiliate of such Owner, and not the Affiliate of any other Owner, (ii) as to VDM Chicago, LLC during the period from the date hereof through seven (7) months after trading commences on the Company's trading market, Mill Bridge IV, LLC or CBONP, LLC, or (iii) as to any Owner that is an individual (A) such Owner's estate, heirs or beneficiaries, (B) any guardian or conservator appointed for such Owner's estate, or (C) any trust for the benefit of such Owner or such Owner's immediate family members, or to any limited partnership or limited liability company in which the non-controlling partners or members, as the case may be, are members of such Owner's immediate family, and so long as the Owner is the sole trustee, general partner or manager of such trust, limited partnership or limited liability company, as the case may be. A Permitted Transferee shall become a Substituted Owner only if and as provided in Sections 6.4 and 6.5.

(d) Notwithstanding anything in this Agreement to the contrary, if at any time Non-Voting Restricted Shares are transferred, such Shares shall remain Non-Voting Restricted Shares unless such transfer is to an existing Voting Owner, in which event such Non-Voting Restricted Shares shall be deemed to automatically convert to Voting Shares of the same series as then held by the Voting Owner.

(e) Upon transfer to other than a Permitted Transferee of less than all of the Series A Voting Shares then owned either by CBOE or by a Permitted Transferee of CBOE, and if the [Company]Facility, immediately following such transfer, continues to be a facility of CBOE, the Shares so transferred shall automatically upon the effectiveness of such transfer be converted, without further action, into the same number of Series B Voting Shares, and the Series A Voting Shares remaining owned by CBOE or a Permitted Transferee of CBOE shall retain all of the rights and privileges associated with ownership of Series A Voting Shares (other than diminution of the number and Percentage Interest attributable to the transferred Shares). Upon the transfer to other than a Permitted Transferee of all, but not less than all, of the Series A Voting Shares then owned by CBOE and all Permitted Transferees of CBOE then owning Series A Voting Shares, unless otherwise agreed by a Super Majority of the Owners, the Shares so transferred shall automatically upon the effectiveness of such transfer be converted, without

further action, into the same number of Series B Voting Shares, and all of the former Series A Voting Shares and the rights and privileges attributable thereto shall thereupon be extinguished.

(f) If an Owner wishes to engage in serious discussions with another party regarding the transfer or sale of that Owner's Shares, then the Owner may share with the potential purchaser Confidential Information regarding the Company that the Owner has received or has access to in its capacity as an Owner, notwithstanding the requirements of Section 15.2, provided that the Owner provides the Company with (1) a written indication of interest (with or without a price range) from the potential purchaser, and (2) a confidentiality agreement executed by and among the potential purchaser, the Owner (if the Company deems this necessary or desirable) and the Company that provides to the Company's reasonable satisfaction that the potential purchaser will use any Confidential Information received from the Owner only for purposes of evaluating the potential sale or transfer, will not disclose the Confidential Information to any other party (except its attorneys and tax advisors, who will also be bound by the confidentiality obligation), and will return all Confidential Information to the Owner if the transaction is not completed.

6.3 Right of First Refusal.

(a) Subject to the restrictions and conditions of the balance of this Article VI, no Owner may sell, assign, give, pledge, or otherwise voluntarily transfer, or involuntarily transfer by Bankruptcy, death or Disability, Shares to a person other than a Permitted Transferee, and no Shares shall be transferred on the books of the Company other than a transfer to a Permitted Transferee, unless prior to that transfer, an Owner, or, in the case of an involuntary transfer, the legal representative or successor in interest of an Owner (the "Transferring Owner"), first notifies the Company and all Voting Owners (but not Management Owners) in writing (the "Offer Notice") of the number of Shares that the Transferring Owner proposes to transfer (the "Tendered Interest") pursuant to a Bona Fide Offer received by the Transferring Owner. In addition, the Offer Notice shall set forth (1) the identities of the transferor and transferee; (2) the consideration, if any, to be received for the transfer; (3) the other material terms of transfer; and (4) a copy of the written offer setting forth such terms. The Company then shall have 30 calendar days after receipt of the Offer Notice to elect to acquire any or all of the Tendered Interest, at the price set forth in subsection (c) of this Section, and under the other terms and conditions set forth in subsection (d) of this Section.

(b) To the extent that the Company does not elect to purchase all of the Shares of a Transferring Owner pursuant to Section 6.3(a), each Voting Owner other than the Transferring Owner (or all Voting Owners if the Transferring Owner is a Management Owner) shall have the right, at their election, which election may be made at any time within 60 days following the expiration of the 30-day period specified in Section 6.3(a), to purchase part or all of its share of the Tendered Interest, which share shall be in an amount equal to that Voting Owner's Percentage Interest, divided by the sum of the Percentage Interests of all Voting Owners other than the Transferring Owner (or of all Voting Owners if the Transferring Owner is a Management Owner), at the price and under the terms and conditions set forth in Sections 6.3(c) and (d) below. If some, but not all, of the Voting Owners other than the Transferring Owner (if the Transferring Owner is a Voting Owner) elect to purchase their full share of the Tendered Interest, those Electing Owners shall have the right to purchase some or all of the Tendered Interest that was not elected to be acquired by the Non-Electing Owners. The Electing

Owners shall be able to exercise such right within 10 calendar days after the Company notifies each Electing Owner that the Voting Owners elected to purchase less than all of the Tendered Interests, upon the earlier of (x) the expiration of the 60-day period and (y) the waiver of the exercise of the option by the last Non-Electing Owner not exercising an option to purchase its share of the Tendered Interest. Any Electing Owner that desires to acquire any such remaining Tendered Interest shall give the Company written notice of election to purchase a specified percentage of such Tendered Interest. If such elections to purchase by such Electing Owners aggregate to more than the remaining Tendered Interest available, the Company shall allocate such Tendered Interest among such Electing Owners as follows: each such Electing Owner shall be allocated such proportion of the remaining Tendered Interest as the Percentage Interest then owned by such Electing Owner bears to the total Percentage Interest owned by all Electing Owners who elected to purchase any of the remaining Tendered Interest, up to the percentage of the Tendered Interest specified in such Electing Owner's election. Any Tendered Interest not so allocated shall be allocated as aforesaid in one or more successive allocations to each Electing Owner whose election specified a percentage of the Tendered Interest greater than the percentage that had then been allocated to such Electing Owner, until all of the remaining Tendered Interest has been allocated. Thereupon, the Company shall give each such Electing Owner notice of the Tendered Interest allocated to such Electing Owner. Notwithstanding the foregoing, such Electing Owners may determine, by unanimous written agreement among themselves, the proportions in which they may purchase the Tendered Interest; provided, however, that such Electing Owners shall not purchase or redeem less than all of the Tendered Interest. All elections and waivers of election hereunder shall be made by giving written notice to the Transferring Owner and to the Company within the applicable time period. If any Voting Owner fails to give written notice of the exercise of an option within the time frames herein set forth, then that Voting Owner shall be deemed to have waived the exercise of the option on the last day of the relevant period. If the other Voting Owners elect to purchase the entire Tendered Interest, a closing of the purchase shall be held upon the latest to occur of (I) the date for purchase set forth in the Offer Notice, (II) 20 days after the date that the last timely election to purchase was received, and (III) 30 days after the determination of the fair market value of the Tendered Interest pursuant to the provisions of Section 6.3(c). If the other Voting Owners do not elect to purchase the entire Tendered Interest in accordance with the provisions of this Section, the Transferring Owner may transfer, at any time or times within the 30-day period next following the waiver or expiration of the last applicable option under this Section, the Tendered Interest to the transferee without complying with the Super Majority voting requirement of Section 6.10 so long as the sale is on the terms set forth in the Offer Notice, or, in the case of an involuntary transfer, the Transferring Owner's successor in interest may keep the Tendered Interest without complying with the Super Majority voting requirement of Section 6.10; but if any transfer to a transferee on such terms is not consummated within said 30-day period, then the other Voting Owners' right of notice and right to purchase the Transferring Owner's interest shall apply to any subsequent transfer of the Tendered Interest.

(c) The purchase price for the Tendered Interest shall equal the lesser of (1) the purchase price set forth in the Offer Notice, and (2) the fair market value of the Tendered Interest as determined under this subsection. The fair market value of the Tendered Interest shall be as mutually agreed by the parties or, if there is no agreement, as determined with reference to an appraisal that shall value the Company as a going concern as of the Valuation Date considering the valuations of comparable businesses, and taking into account all applicable

discounts for lack of control, lack of marketability and any other applicable discounts. Such appraisal shall be conducted by the certified public accounting firm or other business valuation firm mutually acceptable to the Transferring Owner and a majority of the Percentage Interests of the non-Transferring Voting Owners. The valuation shall be finalized in written form and delivered to the Voting Owners or their legal representatives, as the case may be. All fees and expenses charged by the appraiser in connection with the valuation shall be paid one-half by the Company and one-half by the Transferring Owner. For the purposes of this Section 6.3, the term "Valuation Date" shall mean, other than to a Permitted Transferee, (x) in the case of a voluntary transfer, the date on which the Transferring Owner sends an Offer Notice, (y) in the case of an involuntary transfer by death or Disability, the date on which the deceased or Disabled Owner's legal representative is first qualified to act, or if later, the date on which the Company first learns of the death or Disability of the Owner, as the case may be, and (z) in the case of an involuntary transfer by Bankruptcy of the Owner, the date before the filing date of such Owner's bankruptcy petition. As used herein, "Bona Fide Offer" means an offer without any material contingencies, for consideration consisting of cash, cash equivalents or marketable securities, which offer must be in writing from an Unrelated Third Party. As used herein, "Unrelated Third Party" means a person who is not an Affiliate of the Transferring Owner and with whom the Transferring Owner does not have a material business or ownership relationship.

(d) The manner of payment by the other Voting Owners shall be on the basis of not less than 30 percent of the total purchase price for the Tendered Interest within 30 days after acceptance of the offer, with the balance to be paid in two installments of equal principal amount, the first of which shall be due and payable in full on the date 60 days after the date of acceptance of the offer and the second of which shall be due and payable in full on the date 90 days after acceptance of the offer, in all cases paid with interest at "base" or "prime" rate (the "Prime Rate") being charged by JPMorgan Chase Bank, located in Chicago, Illinois (or any successor thereto), on the date of the initial payment for the Tendered Interest is payable and such rate shall be re-set on each 1-year anniversary date thereafter until the purchase price is paid in full. The deferred payment shall be evidenced by a negotiable promissory note in a form reasonably acceptable to the Transferring Owner that provides for acceleration and the payment of legal fees in the event of a default that remains uncured for 30 days.

6.4 Substituted Owner. Notwithstanding any other provision of this Agreement, (1) a Permitted Transferee and (2) a transferee having purchased Shares after the Transferring Owner has complied with the right of first refusal set forth in Section 6.3(a) and (b), shall become a Substituted Owner, as defined in Section 6.5, provided that (i) the Permitted Transferee or other transferee executes a written acceptance and adoption of all terms and provisions of this Agreement, as the same may have been amended, and (ii) all of the applicable requirements of a change of ownership notice to the SEC, as required by Section 6.13, or a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Exchange Act, as required by Section 6.14, have been accomplished and, if necessary, approved by the SEC.

6.5 Status of a Substituted Owner.

(a) A "Substituted Owner" is a person admitted to all of the rights, and except as provided in the following sentence, who assumes all of the obligations, of an Owner who has made an assignment of Shares in accordance with Section 6.4. Such obligations shall not include

any obligation of the assignor to return to the Company or pay to a creditor, in accordance with Section 3.4, all or any part of a distribution that previously was made to the assignor.

(b) A transferee of Shares who has complied with the requirements of Section 6.4 shall become a Substituted Owner at such time as the transferee's admission as an Owner is reflected on the Company records.

6.6 [Reserved]

6.7 Prohibited Assignment or Transfer.

(a) No transfer or assignment of any Shares may be made if, in the written opinion of counsel for the Company: (1) such transfer or assignment, together with all other transfers and assignments of Shares within the preceding twelve months, would result in a termination of the Company for purposes of Code §708 or any comparable provision then in effect; (2) such transfer or assignment would violate the Securities Act of 1933, as amended, or applicable state securities or Blue Sky laws, or any other applicable provision of law in any respect; or (3) such transfer or assignment would cause the Company to be treated as an association taxable as a corporation rather than as a partnership for federal, state or local income tax purposes.

(b) In no event shall Shares, or any portion thereof, be assigned or transferred outright to a minor or an incompetent, or in violation of any state or federal law. Any such attempted sale, transfer, or assignment shall be void and ineffectual, and shall not bind the Company.

(c) The provisions of this Section 6.7 shall apply regardless of whether a transfer of an interest in the Company is only of an economic interest in the Company or a transfer whereby the transferee would become a Substituted Owner. No transferee of an Owner's Shares may become a Substituted Owner except as provided in Section 6.4.

(d) Notwithstanding anything to the contrary contained in this Agreement, any transfer or assignment of, or any attempt to transfer or assign, any Shares in contravention of, or without full compliance with, any of the provisions of this Article VI or any other provision of this Agreement shall be void ab initio, and ineffectual and shall not bind or be recognized by the Company.

6.8 Drag Along Rights.

(a) If (i) the Voting Owners by a Supermajority Vote of Owners (the "Take Along Group") determine to sell, exchange or dispose of (in a business combination or otherwise) in one or a series of bona fide arms-length transactions to an unrelated and unaffiliated third party all of the Shares held by them, and (ii) such sale is approved by the Board, then, upon twenty (20) days written notice from the Take Along Group to the other Owners, which notice shall include reasonable details of the proposed sale or exchange including the proposed time and place of closing and the consideration to be received by the other Owners (such notice being referred to as the "Sale Request"), each other Owner shall be obligated to, and shall (i) sell, transfer and deliver, or cause to be sold, transferred and delivered, to such third

party, all of his, her or its Shares in the same transaction at the closing thereof (and will deliver certificates for all of his, her or its Shares at the closing, free and clear of all claims, liens and encumbrances), and each other Owner shall be entitled to the same consideration per Share upon such sale as the other Owners in the sale, distributable in accordance with Section 4.1(b), and (ii) if Owner consent for the transaction is required, vote his, her or its Shares in favor thereof. It is understood that a change in corporate form or ownership of any Owner (whether accomplished by sale of equity interests, merger, consolidation, reorganization, recapitalization or other transaction affecting the Owner) shall not, in and of itself, constitute a sale, exchange or disposition of Voting Shares contemplated by this provision.

(b) Any transfer permitted pursuant to Section 6.8(a) above must provide (i) that the Owners not included in the Take Along Group shall only be required to make customary representations, warranties, and covenants, if applicable, relating to the their ownership of the Shares and their ability to convey good title thereto, free and clear of any liens, encumbrances, restrictions, charges or adverse claims, or any other restrictions on transfer, other than those set forth in this Agreement, and (ii) each such Owner may only be severally, but not jointly, liable with respect to such representations, warranties and covenants, if applicable, and such several liability shall be exclusively limited to a maximum amount equal to the consideration received by such Owner.

6.9 <u>Tag-Along Rights</u>.

(a) If any Voting Owner or a group of Voting Owners (collectively, the "Selling Group") proposes to sell, exchange or otherwise dispose of (i) Shares representing in the aggregate 50% or more of the Shares held by all Voting Owners, or (ii) Series A Voting Shares constituting 90% or more of the Shares of that series then owned directly or indirectly by CBOE and its Affiliates, in one transaction or in a series of similar transactions to a third party (a "Private Sale"), each of the Initial Owners not included in the Selling Group (a "Minority Owner") may, in its discretion, participate in such Private Sale by selling up to all of its Shares (the "Included Amount") at the same price and substantially upon the same terms as the Selling Group, according to the provisions set forth in this Section 6.9; provided that it is understood that a change in corporate form or ownership of any Owner (whether accomplished by sale of equity interests, merger, consolidation, reorganization, recapitalization or other transaction affecting the Owner) shall not, in and of itself, constitute a sale, exchange or disposition of Voting Shares contemplated by this provision.

(b) The Selling Group shall deliver written notice to each Minority Owner and the Company (1) setting forth the terms of any Private Sale, and (2) offering the Minority Owner the right (the "Tag-Along Right") to have the Minority Owner's Shares included in such Private Sale in accordance with Section 6.9(a), together with all documents required to be executed by the Minority Owner in order to include the Minority Owner's Shares in such Private Sale. If the Minority Owner exercises its Tag-Along Right in connection with any Private Sale, such Minority Owner shall deliver to the Selling Group, prior to the expiration of the 30-day period commencing on the effective date of the Selling Group's notice, evidence satisfactory to the Selling Group of the transfer of the Minority Owner's Shares to be included in such Private Sale, free and clear of all liens, together with all documents previously furnished to the Minority Owner for execution in connection with such Private Sale.

(c) The Selling Group shall have 60 days from the effective date of its notice referred to in Section 6.9(b) to consummate any Private Sale. The Selling Group will use commercially reasonable efforts to obtain the agreement of the prospective purchaser to the participation of the Minority Owners in any Private Sale. To the extent the prospective purchaser is not willing to purchase all the Shares to be sold by the Minority Owner, the number of Shares proposed to be sold in such Private Sale by each of the Owners in the Selling Group and each participating Minority Owner shall be reduced pro rata according to the proportion that each Owner's Shares to be sold in such Private Sale bear to the total number of Shares to be sold in such Private Sale.

(d) Promptly after the consummation of any Private Sale, the Selling Group shall notify the Company and the Minority Owner to that effect and shall furnish evidence of such sale (including the time of sale) and of the terms thereof as Company or the Minority Owner may reasonably request. No later than the fifth business day following such sale, the Selling Group shall cause to be remitted to the Minority Owner, to the extent such Minority Owner participated in the Private Sale, the proceeds of such sale attributable to the sale of the Minority Owner's Shares. If any Private Sale is not consummated prior to the expiration of the 60-day period referred to in Section 6.9(c), the Selling Group may not consummate such Private Sale and shall return to the Minority Owner all documents previously delivered to the Selling Group in connection with such Private Sale.

(e) Notwithstanding anything in this Section 6.9 to the contrary, there shall be no liability on the part of any Owner who is a member of the Selling Group to Minority Owner if any sale of Shares pursuant to this Section 6.9 is not consummated for whatever, or no, reason. Each member of the Selling Group and each Minority Owner that participates in any Private Sale shall bear its own expenses and costs, including any financial adviser or attorneys' fees, in connection with any Private Sale. It is understood that each Owner who is a member of the Selling Group, in such Owner's sole discretion, shall determine whether to effect a sale of Shares to any person pursuant to this Section 6.9.

6.10 Special Provision for Admission of New Owner. Notwithstanding any other provision of this Agreement, in the event that (i) the requisite Owners vote pursuant to Section 9.15(a) to issue additional equity securities and to admit a person as a new Voting Owner in exchange for such person's contribution of capital or other consideration, or (ii) such new Voting Owner shall become such under authority granted to the Board under Section 3.2(c) hereof, each Owner agrees that its Percentage Interest shall be adjusted if necessary to admit such new Voting Owner, which adjustment shall be in proportion to each Owner's Percentage Interest as in effect prior to the admission of such new Voting Owner. After giving effect to the completion of such new Voting Owner's capital contribution or such other consideration, each Owner's allocation of Shares shall be adjusted to reflect its adjusted Percentage Interest as determined in the manner so described.

6.11 Repurchase of Series C Non-Voting Restricted Shares. Should a Management Owner wish to sell his or her Series C Non-Voting Restricted Shares to the Company, or if the Company has by contract or the terms of a grant an obligation or right to purchase Series C Non-Voting Restricted Shares, the Board shall have the authority to authorize the Company to repurchase Series C Non-Voting Restricted Shares (or options, rights or warrants to acquire

Series C Non-Voting Restricted Shares) for such consideration and upon such terms as the Board, in its discretion, deems appropriate under the circumstances.

6.12 Ownership Concentration Limitations.

(a) No person (other than CBOE or CBOE Holdings, Inc. ("CBOE Holdings")), either alone or together with its [Affiliates]Related Persons, at any time, may be an Owner, directly or indirectly, of record or beneficially, of an aggregate amount of Shares that would result in a greater than twenty percent (20%) Percentage Interest in the Company (the "Concentration Limitation").

(b) The Concentration Limitation shall apply to each person (other than CBOE or CBOE Holdings) unless and until: (i) such person shall have delivered to the Board a notice in writing, not less than 45 days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any Shares that would cause such person (either alone or together with its [Affiliates]Related Persons) to exceed the Concentration Limitation, of such person's intention to acquire such ownership; (ii) the Board shall have, in its sole discretion, consented to expressly permit such ownership; and (iii) such waiver shall have been filed with, and approved by, the SEC under Section 19(b) of the Exchange Act and shall have become effective thereunder.

(c) In exercising its discretion under clause (ii) of Section 6.12(b), the Board shall have determined that (i) such beneficial ownership of Shares by such person, either alone or together with its [Affiliates]Related Persons, will not impair the ability of the Company and the Board to carry out their functions and responsibilities, including but not limited to, under the Exchange Act, and is otherwise in the best interests of the Company and its Owners; (ii) such beneficial ownership of Shares by such person, either alone or together with its [Affiliates]Related Persons, will not impair the ability of the SEC to enforce the Exchange Act; (iii) neither such person nor its [Affiliates]Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); and (iv) neither such person nor its [Affiliates]Related Persons is a [member of] CBOE trading permit holder or an NSX equity trading permit holder. In making the determinations referred to in the immediately preceding sentence, the Board may impose such conditions and restrictions on such person and its [Affiliates]Related Persons owning any Shares of the Company entitled to vote on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Company.

(d) Notwithstanding any of the foregoing, in the event that CBOE's or CBOE Holdings' Percentage Interest level of Series A Voting Shares or Percentage Interest level in the Company overall declines below the twenty percent (20%) threshold, the Company shall make all necessary filings with the SEC under Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.

(e) In the event that an Owner that is not a CBOE [member]trading permit holder or an NSX equity trading permit holder, either alone or together with its [Affiliates]Related Persons, exceeds the Concentration Limitation and subsequently becomes a CBOE [member]trading permit holder or an NSX equity trading permit holder, then that Owner

shall, within 180 days of the date that it becomes a CBOE [member]trading permit holder or an NSX equity trading permit holder, transfer sufficient ownership interest so that the Owner that is then also a CBOE [member]trading permit holder or an NSX equity trading permit holder does not exceed the Concentration Limitation.

6.13 Change of Ownership Notice to SEC. Beginning after SEC approval of the CBOE proposed rule change containing this Agreement ("SEC Approval"), the Company shall provide the SEC with written notice ten (10) days prior to the closing date of any transaction that results in a person's Percentage Interest, alone or together with any Affiliate, meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%.

6.14 Change of Ownership Rule Filing. Beginning after SEC Approval, in addition to the notice requirement in Section 6.13, (i) any transfer that results in the acquisition and holding by any person, alone or together with any Affiliate, of an aggregate Percentage Interest level permitted by Section 6.12 that meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (i.e., 25%, 30%, etc.); and (ii) any transfer of Series A Voting Shares to a Permitted Transferee of CBOE or any of its Affiliates or any other person, will constitute a proposed rule change that will be subject to the requirements of the rule filing process of Section 19 of the Exchange Act, subject to approval by the SEC, and the Company shall make all necessary filings with the SEC thereunder.

6.15 [Owner]Books, Records, and Jurisdiction.

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

(b) The books, records, premises, officers, directors, agents, and employees of the Company, to the extent related to the Facility, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Exchange Act. The books, records, premises, officers, directors, agents, and employees of the Company, to the extent related to the activities of NSX, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of NSX for the purpose of and subject to oversight pursuant to the Exchange Act.

(c) The Company and the Owners and their respective officers, [and]directors, [and their respective]agents, and employees[whose principal place of business and residence is outside of the United States], irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, [and]CBOE, and NSX, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, commenced or initiated by the SEC arising out of, or relating to, the Facility or the Company's [activities]control of NSX, as applicable (and shall be deemed to agree that the Company may serve as the U.S. agent for purposes of service of process in such suit, action or proceeding), 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 thereof may not be enforced in or by such courts or agency. For so long as [CBSX LLC]the Facility is a facility of CBOE and to the extent related to the Facility's activities, the provisions of this paragraph (c) shall not apply to CBOE and its respective officers, directors, agents and employees.

(d) With respect to this Section 6.15, the Company and each Owner shall take such action as is necessary, unless otherwise provided for by law, written statement of policy, individual contract or otherwise, to ensure that their officers, [and]directors, [and their]agents, and employees[whose principal place of business and residence is outside of the United States], consent in writing to the applicability of this provision with respect to Company-related activities. Consent in writing to the provisions of this Section 16.15(d) extends to the confidentiality provisions in Section 15.2 hereof. For so long as [CBSX LLC]the Facility is a facility of CBOE and to the extent related to the Facility's activities, the provisions of this paragraph (d) shall not apply to CBOE and its respective officers, directors, agents and employees.

ARTICLE VII
DEFAULT BY OWNERS

7.1 Default Events. Violation of any of the provisions of this Agreement by an Owner and failure to remedy or cure such violation, provided that such violation can be reasonably cured, within thirty (30) days after written notice of such violation from the Company or the non-Defaulting Owners shall constitute a "Default Event."

7.2 Effect of Default.

(a) On the occurrence of a Default Event by an Owner ("Defaulting Owner"), the non-Defaulting Owners (which shall be understood to exclude Management Owners) shall have the right, at their election, which election may be made at any time within 60 calendar days from the date of such Default Event (and provided such Default Event is continuing on the date such notice is given), to purchase the Shares of the Defaulting Owner in the Company. The non-Defaulting Owners may exercise their purchase options using the same methodology as is set forth in Section 6.3(a), treating all of the Defaulting Owner's Shares as the Tendered Interest and deeming an Offer Notice to be given to the non-Defaulting Owners as of the date that the Default Event occurs; provided, however, that such non-Defaulting Owners and, if applicable, the Company, as provided in Section 7.2(b) below, shall not purchase or redeem less than all of the remaining Shares of the Defaulting Owner.

(b) To the extent that the non-Defaulting Owners do not elect to purchase some or all of the Shares of a Defaulting Owner pursuant to Section 7.2(a), the Company shall have the right, at its election, which election may be made at any time within 30 days following the expiration of the 60-day period specified in Section 7.2(a) (and provided that such Default Event is continuing on the date such notice is given), to redeem all of the remaining Shares of the Defaulting Owner.

(c) The purchase price or redemption price, as the case may be, to be paid to the Defaulting Owner shall be paid in cash or, at the option of the purchaser(s), by the execution and delivery of the purchaser's note payable to the order of the Defaulting Owner, in the amount of the purchase price. Said note shall bear interest at the rate equal to the Prime Rate and shall be payable on the same terms as set forth in Section 6.3(d), the first such payment to be made upon execution and delivery of such note and with such note containing full prepayment privileges without penalty.

(d) The purchase price or redemption price to be paid to the Defaulting Owner in termination of its interest in the Company pursuant to the election described in Section 7.2 shall be the lesser of (1) the balance of the Defaulting Owner's Capital Account, after first adjusting for all Profits or Losses accruing up to the date of the occurrence of one or more Default Events and (2) the fair market value of the Defaulting Owner's Capital Account determined in the manner set forth in Section 6.3(c).

(e) Upon the payment of cash (or the delivery of a note) required by the purchaser(s) pursuant to Section 7.2(c) above, the Defaulting Owner shall have no further interest in the Company or its business or assets and the Defaulting Owner shall execute and deliver such assignments and other instruments as may be reasonable to evidence and fully and effectively transfer the interest of the Defaulting Owner to the purchaser(s).

(f) No assignment or transfer of a Defaulting Owner's interest as provided herein shall relieve the Defaulting Owner from any personal liability for its outstanding indebtedness, liabilities, liens, and obligations relating to the Company that may exist on the date of the assignment or transfer. The default of any Owner pursuant to Section 7.1 shall not relieve any other Owner from its agreements, liabilities, and obligations hereunder.

7.3 Additional Effects of Default. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any amount due to the Company hereunder or of any damages accruing to the Company by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver by the Company of any violation or breach shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained and forbearance by the Company to enforce one or more of the remedies herein provided on a Default Event shall not be deemed or construed to constitute a waiver of such default.

ARTICLE VIII
OWNER MEETINGS AND VOTING

8.1 Special Meetings. Special meetings of the Owners may be called by the Chairman, the President, the Board or the holders of not less than twenty percent (20%) of all outstanding Voting Shares held by the Voting Owners, at such time and place as the person calling the meeting shall determine.

8.2 Place of Meetings. The Board may designate any place as the place for any annual meeting or for any special meeting called by the Board, but if no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal office of the

Company in Chicago, Illinois; provided, however, that for any meeting of the Owners for which a waiver of notice designating a place is signed by all of the Owners, then that shall be the place for the holding of such meeting.

8.3 Notice of Meetings.

(a) Written notice stating the place, date and hour of the meeting of the Owners and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each Owner of record entitled to receive such notice and vote at the meeting, not less than 5 nor more than 20 days before the date of the meeting. Such notice shall be given by or at the direction of the President, or the Secretary or other persons calling the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the Owner at the address as it appears on the records of the Company, with postage thereon prepaid. If delivered (rather than mailed) to such address, such notice shall be deemed to be given when so delivered.

(b) Such notice may also be given by telephone or other means not specified herein (including electronic mail), and in each such case shall be deemed to be given when actually received by the Owner to be notified.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken, unless the adjournment is for more than 30 days or unless a new record date is fixed for the adjourned meeting.

8.4 Waiver of Notice. A waiver of notice of a meeting of the Owners, in writing and signed by an Owner entitled to receive such notice, whether signed before or after the time of such meeting as stated therein, shall be deemed equivalent to the giving of such notice. Attendance of an Owner in person or by proxy at a meeting of the Owners constitutes a waiver of notice of such meeting, except when the Owner, or the Owner's proxy, attends the meeting for the express purpose of objecting, announced at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

8.5 Meetings of All Owners. If at any time all of the Owners meet and, in a writing signed by all of the Owners, waive notice of and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting any lawful act of the Owners may be taken.

8.6 Record Date. In order that the Company may determine the Owners entitled to receive notice of and to vote at a meeting of the Owners, the date on which notice of the meeting is given, or if notice is waived, the close of business on the day next preceding the day on which the meeting is held, shall be the record date for such determination. A determination of the Owners entitled to notice of and to vote at a meeting of the Owners shall apply to any adjournment of the meeting. Only those persons who are Voting Owners of record on the record date shall be entitled to receive notice of and to vote at a meeting of the Owners and any adjournment thereof, notwithstanding any transfer of Shares on the books of the Company after the applicable record date.

8.7 Quorum; Vote and Procedures Required for Action.

(a) A Majority in Interest of the Owners present in person or by proxy shall constitute (1) a quorum at any meeting of the Owners, and (2) be the act of the Owners as further described in Section 8.7(b), unless otherwise stated in this Agreement or unless a different number of votes are required by applicable law. If a quorum is not present at such meeting, then Owners present in person or by proxy whose aggregate Shares constitute a majority of the aggregate Shares of all Owners present in person or by proxy at such meeting may adjourn the meeting from time to time without further notice. At an adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the original meeting. Withdrawal of Owners from any meeting shall not cause a failure of a duly constituted quorum at that meeting.

(b) For any action to be taken or right or power to be exercised under this Agreement by the Owners (each, an "Owner Action"), prior notification and presentation of such proposed Owner Action shall be made to the Board at a meeting of the Board convened for such purpose or otherwise scheduled, and such Owner Action shall be subject to approval by a majority vote of the entire Board.

8.8 Proxies; Voting Trusts. Each Owner entitled to vote at a meeting of the Owners may authorize such Owner's legal representative or another Owner or Owners to act for the Owner by proxy, but no proxy shall be valid more than 11 months after the date on which the proxy is given, unless otherwise provided in the proxy. Such proxy shall be in writing and shall be filed with the Company before or at the time of the meeting. Owners are prohibited from entering into voting trust agreements with respect to their Shares.

8.9 Voting of Shares. The outstanding Series A Voting Shares shall, in the aggregate (and without being deemed to be a voting trust), be entitled to a number of votes equal to fifty percent (50%) of the total number of Voting Shares outstanding, on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share shall be entitled to one vote on each matter submitted to a vote of the Owners. The Series C Non-Voting Restricted Shares shall not be entitled to vote on any matter submitted to a vote of the Owners. "Voting" or "vote" or any variant thereof as used herein shall include any consent, election or other expression of affirmation.

8.10 Voting Collar.

(a) Anything contained in this Agreement to the contrary notwithstanding, in the event that, despite the Concentration Limitation prohibitions of Section 6.12, an Owner of Series B Voting Shares, alone or together with any Related Persons of such Owner, that [is also a CBOE member]owns, or has the right to direct the vote, whether by proxy, through any voting agreement, plan or other arrangement, more than 20% of the outstanding Voting Shares[, alone or together with any Affiliate of such Owner] (Shares owned or so directed in excess of 20% being referred to as "Excess Shares"), the Owner and [its designated Directors] any Related Persons shall have no voting rights whatsoever, whether in person, by proxy, or through any voting agreement, plan or other arrangement,[nor right to give any proxy in relation to a vote of the Owner,] with respect to the Excess Shares held by such Owner and its Related Persons, nor may any Owner, either alone or together with its Related Persons, enter into any agreement, plan

or other arrangement with any other Owner, either alone or together with its Related Persons, under any circumstances that would result in the Shares that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Owner, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of Excess Shares; provided, however, that whether or not such Owner or its [designated Directors]Related Persons otherwise participate in a meeting in person, [or] by proxy or through any voting agreement, plan or other arrangement, such Owner's Excess Shares shall be counted for quorum purposes, and shall be counted as being voted on each matter in the same proportions as the Voting Shares held by the other Owners are voted (including any abstentions from voting).

(b) The voting limitation set forth in Section 8.10(a) shall apply to each Owner and any Related Persons (other than CBOE or CBOE Holdings) unless and until: (i) such Owner shall have delivered to the Board a notice in writing, not less than 45 days (or such shorter period as the Board shall expressly consent to) prior to any vote, of such Owner's intention, either alone or together with its Related Persons, to exercise voting rights with respect to the Excess Shares otherwise prohibited by Section 8.10(a); (ii) the Board shall have, in its sole discretion, expressly waived the voting limitations set forth in Section 8.10(a) to permit such exercise of voting rights; and (iii) the Board's waiver shall have been filed with, and approved by, the SEC under Section 19(b) of the Exchange Act and shall have become effective thereunder.

(c) In exercising its discretion under clause (ii) of Section 8.10(b), the Board shall have determined in respect of such Owner and any Related Persons that (i) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, otherwise prohibited by Section 8.10(a) by such Owner, either alone or together with its Related Persons, will not impair the ability of the Company and the Board to carry out their functions and responsibilities, including but not limited to, under the Exchange Act, and is otherwise in the best interests of the Company and its Owners; (ii) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Owner, either alone or together with its Related Persons, will not impair the ability of the SEC to enforce the Exchange Act; (iii) neither such Owner nor its Related Persons are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Exchange Act); and (iv) neither such Owner nor its Related Persons is a CBOE trading permit holder or an NSX equity trading permit holder. In making the determinations referred to in the immediately preceding sentence, the Board may impose such conditions and restrictions on such Owner and its Related Persons owning any Shares of the Company entitled to vote on any matter as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Company.

(d) In the event that an Owner and any Related Persons who are not a CBOE trading permit holder or an NSX equity trading permit holder, either alone or together with its Related Persons, receives permission to exercise voting rights or enter into an agreement, plan or arrangement, as applicable, with respect to Excess Shares pursuant to Section 8.10(b) and subsequently becomes a CBOE trading permit holder or an NSX equity trading permit holder, then that Owner and any Related Persons shall, within 180 days of the date that any of them

become a CBOE trading permit holder or an NSX equity trading permit holder, relinquish the voting rights they previously received with respect to such Excess Shares pursuant to Section 8.10(b).

8.11 Attendance by Conference Telephone. Owners may participate in any meeting of the Owners by means of conference telephone, or any similar means of communication through which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at that meeting.

8.12 Action by Consent. Any action required or permitted to be taken at any meeting of the Owners may be taken without a meeting if the number of Owners required to authorize or take such action at a meeting consent thereto in writing, including by electronic mail or facsimile, and the writing or writings are filed with the minutes of the proceedings of the Owners. The Company shall provide prompt notice to any non-consenting Voting Owners of the action so taken.

ARTICLE IX
DIRECTORS

9.1 General Powers. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors, with all rights and powers generally conferred by law on the board of directors of a corporation organized under the General Corporation Law of the State of Delaware as in effect from time to time, and those deemed necessary, advisable or consistent in connection therewith, and which Board may do all such lawful acts and things as are not by this Agreement or the Act directed or required to be exercised or performed by the Owners. Meetings of the Board may be conducted by the President of the Company or as the Board otherwise determines. At its discretion, the Board may appoint by majority vote a Director to serve as Chairman of the Board.

9.2 Number and Designation of Directors. Upon execution of this Agreement, the Board shall be composed of nine (9) Directors. The number of Directors and composition of the Board of Directors from time to time shall be determined as follows:

(a) each Owner owning Series B Voting Shares representing at least five percent (5%) of the aggregate Percentage Interests of the Company shall be entitled to designate one (1) Director; and

(b) the Owners of the Series A Voting Shares shall collectively be entitled to designate a number of Directors equal to the aggregate number of Directors designated pursuant to clause (a) above; and

(c) the Directors designated pursuant to clauses (a) and (b) above will designate one (1) additional Director from among the executive management personnel of the Company.

(d) The foregoing notwithstanding, as long as the [Company]Facility remains a facility of CBOE, CBOE 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 9.2, whether or not CBOE maintains any Percentage Interest or is admitted to the Company as an Owner.

9.3 Tenure. A Director appointed pursuant to Section 9.2 (each, an "Owner-Appointed Director") shall serve until his or her earlier death, resignation, or removal in a manner permitted by applicable law or this Agreement, or, with respect to Directors designated by Owners of Series B Voting Shares, until such time as the Owner designating such Director ceases to own a Percentage Interest representing at least five percent (5%) of the aggregate Percentage Interests of the Company. In such latter event, upon the termination of service of such a Series B-designated Director, the service of a single Director theretofore designated by the Owner(s) of the Series A Voting Shares (identified by the Series A Owner(s) in their sole discretion) shall simultaneously terminate.

9.4 Vacancies. A vacancy created because of the death, disability, resignation or removal of a Director appointed by any Voting Owner pursuant to Section 9.2 shall be filled by that Owner entitled to appoint such Director.

9.5 Regular Meetings. The Board may provide, by resolution or resolutions adopted from time to time, the time and place for the holding of regular meetings of the Board, without notice other than such resolution.

9.6 Action by Consent. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if the number of Directors required to authorize or take such action at a meeting consent thereto in writing, including by electronic mail or facsimile, and the writing or writings are filed with the minutes of the proceedings of the Board.

9.7 Special Meetings. Special meetings of the Board may be called by the Chairman, President or any three (3) Directors. The person or persons calling a special meeting of the Board shall fix the time and place at which the meeting shall be held and such time and place shall be specified in the notice of such meeting. In order to fulfill its obligations under Section 8.7(b), a meeting of the Board shall be duly called following receipt of notification of a proposed Owner Action, and shall be held on a date reasonably prior to the date for consideration of such Owner Action.

9.8 Notice. Notice of any special meeting of the Board shall be given at least five (5) days prior thereto by written notice to each Director at his or her business address or such other address as he or she may have advised the secretary of the Company to use for such purpose. If hand delivered, either in person or by nationally recognized overnight delivery service, such notice shall be deemed to be given when delivered to such address or to the person to be notified. If mailed, such notice shall be deemed to be given two business days after deposit in the United States mail so addressed, with postage thereon prepaid. Notice may also be given by telephone, facsimile transmission or electronic mail, and in each such case shall be deemed to be given when actually received by the Director to be notified. Notice of any meeting of the Board shall set forth the time and place of the meeting. Neither the business to be transacted at, nor the purpose of, any meeting of the Board (regular or special) need be specified in the notice or waiver of notice of such meeting. The foregoing notwithstanding, with respect to any matter deemed by the Board to require emergency consideration, the advance notice period required

shall be three (3) days, so long as notice is provided by telephone, facsimile transmission or electronic mail.

9.9 Waiver of Notice. A written waiver of notice, signed by a Director entitled to notice of a meeting of the Board or of a committee of the Board of which the Director is a member, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice to that Director. Attendance of a Director at a meeting of the Board or of a committee of the Board of which the Director is a member shall constitute a waiver of notice of such meeting except when the Director attends the meeting for the express purpose of objecting, announced at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

9.10 Quorum and Vote Required for Action. Subject at all times to the provisions of Section 8.10 hereof, at all meetings of the Board, a majority of the Directors fixed by this Agreement shall constitute a quorum for the transaction of business and the act of a majority of Directors present at any meeting at which there is a quorum, each Director being entitled to cast one (1) vote on all matters, shall be the act of the Board except as may be otherwise provided in this Agreement or under the Act. If a quorum shall not be present at any meeting of the Directors, a majority of the Directors present at such meeting may adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum shall be present.

9.11 Attendance by Conference Telephone. Directors or members of any committee designated by the Board may participate in a meeting of the Board or such committee by means of conference telephone, or any similar means of communication through which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at that meeting.

9.12 Compensation. The Directors may be paid their reasonable expenses, if any, of attendance at each meeting of the Board and at each meeting of a committee of the Board of which they are members if and as provided by the Board in a written policy statement. The Board, irrespective of any personal interest of any of the Directors, shall have authority to fix compensation of all Directors for services to the Company as Directors, officers or otherwise.

9.13 Resignation, Removal and Replacement.

(a) A Director may resign at any time by giving written notice to the Chairman of the Board, if any, and to the President.

(b) A Director may be removed for cause by the act of a Majority in Interest of the Owners at a meeting of the Owners called expressly for the purpose of removing the Director. For these purposes, "for cause" shall mean (1) the Director has (A) committed a willful serious act of dishonesty, such as fraud, embezzlement or theft, (B) committed or attempted any act against the Company intending to enrich himself or herself at the expense of the Company, or (C) made an unauthorized use or disclosure of Confidential Information, (2) the Director has been charged with an act constituting a felony, (3) the Director has engaged in conduct that has caused serious injury, monetary or otherwise, to the Company, or (4) the Director, in carrying out his or her duties hereunder, has been guilty of negligence or willful misconduct.

(c) A Director may be removed, and replaced, at any time by the Owner that appointed the Director, each to be effective immediately upon providing written notification to the other Owners and to the remaining Directors.

9.14 Committees. The Board may designate by resolution one or more committees, which shall be comprised of individuals chosen by the Board, and may at the Board's discretion include non-Board members. Any such committee, to the extent provided in the resolution, shall have the authority and power to exercise such functions as may be delegated by the Board, which delegation may be revoked by the Board at any time in its discretion and any action taken pursuant to such delegation may be modified, suspended, overruled or revoked by the Board at any time in its discretion. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

9.15 Limitations on Authority of Board.

(a) Notwithstanding any contrary provision of this Agreement, and subject always to CBOE's rights to act under Section 1.8 and the final provision of this Section 9.15, it shall require the affirmative action of the Board, acting on behalf of the Company, the additional prior approving vote of CBOE, in exercise of its authority under Section 1.8, and a Super Majority of the Owners, to cause the Company to:

(1) Enter into a material new line of business or exit or change a material line of business outside the scope of the business contemplated in Section 1.6;

(2) Enter into any transaction with an Owner or Affiliate of an Owner outside the ordinary course of business or requiring payments in excess of $1 million;

(3) Make any material amendment to the organizational documents of the Company;

(4) Engage in any liquidation, dissolution, reorganization or recapitalization;

(5) Enter into licensing or other contractual arrangements, including without limitation, those providing for the encumbrance of assets or properties, outside the ordinary course of business, or requiring payments in excess of $1 million;

(6) Grant Board seats to new Owners or alter Board seat allocations for or among existing Owners (which action will require compliance with the rule filing process of Section 19 of the Exchange Act as well);

(7) Issue additional equity securities of the Company or securities convertible into equity securities of the Company, other than as provided for in Section 3.2 hereof;

(8) Declare or pay dividends or distributions, or repurchase any securities of the Company (other than Series C Non-Voting Restricted Shares), other than those that apply proportionately to all Owners;

(9) Enter into any merger, consolidation or acquisition or sale of material assets or ownership interests (including any such transaction involving any subsidiary of the Company);

(10) Undertake an initial public offering of the Company or any of its subsidiaries;

(11) Change senior level management, including entering into, terminating or amending employment agreements with management and key employees;

(12) Materially change the Company's business model;

(13) Change auditors or accounting policies, practices or procedures;

(14) Change the status or registration of the [Company]Facility as a facility of CBOE (which action will require compliance with the rule filing process of Section 19 of the Exchange Act as well);

(15) Create or designate any new or additional class or series of Shares or increase the authorized number of Shares of any class or series;

(16) Approve or authorize the acquisition by any person or group of a greater than 20% Percentage Interest in the Company (which action will require compliance with Section 6.14 as well); or

(17) Amend, or be bound by or recognize an amendment of, the provisions of this Section 9.15(a) in any way; and

without the affirmative vote of CBOE if exercised under Section 1.8, no such action, transaction or aspect of an action or transaction shall be authorized, undertaken or effective. The foregoing notwithstanding, with respect to any matter, including those listed above, that implicates Regulatory Requirements, CBOE shall always have the sole discretion and authority to cause any action to be taken by and on behalf of the Company, as provided for in Section 1.8, without regard to the foregoing requirements of this Section 9.15.

(b) Notwithstanding any contrary provision of this Agreement, other than with respect to the Services Agreement, and the CBOE License, each of which is hereby authorized and approved in the form attached as Prior Exhibit B and Prior Exhibit C, respectively, and as may have been subsequently amended, and each of which may be executed on behalf of the Company by any representative of the Owner of the Series A Voting Shares, the Board shall have no authority to enter into any contracts or agreements with an Owner other than with the approval of a majority of the Directors, excluding those Directors who are appointed by the interested Owner.

(c) In performing their duties hereunder, each Director shall agree to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the SEC[and], CBOE, and NSX pursuant to their regulatory authority, as applicable, and the provisions of this Agreement. In addition, each Director will take into consideration whether any actions taken or proposed to be taken as a Director for or on behalf of the Company, or any failure or refusal to act (including a failure to be present to constitute a quorum, or to reasonably provide an affirmative vote or consent) would constitute interference with CBOE's or NSX's regulatory functions and responsibilities, as applicable, in violation of this Agreement or the Exchange Act. Interference with respect to the Facility shall be determined reasonably and in good faith by the Board designees of CBOE, which determination will be final and binding.

9.16 Director Conduct. In serving as a Director hereunder, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the SEC[and], CBOE and NSX pursuant to their regulatory authority, as applicable, and the provisions of this Agreement; and to engage in conduct that fosters and does not interfere with the Company's ability to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In furtherance of the foregoing, after appropriate notice and opportunity for hearing, the Board, with the approving vote of both CBOE in exercise of its authority under Section 1.8, and a majority vote of the Owners, excluding the vote of the Owner whose Director designee is subject to sanction, may suspend or terminate a Director's service as such to the Company under this Agreement: (i) in the event such Director is subject to a "statutory disqualification," as defined in Section 3(a)(39) of the Exchange Act; or (ii) in the event such Director has violated any provision of this Agreement implicating 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 X
OFFICERS

10.1 Designation; Number; Election. The Board shall designate the officers of the Company. Such officers shall include a President (who shall be the chief executive officer of the Company and may be referred to as either the President or the Chief Executive Officer, or both), and, at such time as the Board deems it economically reasonable to provide such full-time services on an in-house basis, a Chief Financial Officer or similar title who shall also serve as the Treasurer of the Company, and such other officers as the Board may choose. The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. Any two or more offices may be held by the same person. Except as provided in Section 11.3, election or appointment as an officer shall not of itself create contract rights as an employee of the Company.

10.2 Salaries. The salaries of all officers and agents of the Company chosen by the Board shall be approved by the Board, and no officer shall be prevented from receiving such salary by reason of the fact that he may also be a Director of the Company.

10.3 Term of Office; Removal. Each officer of the Company chosen by the Board shall hold office until the next annual appointment of officers by the Board and until his or her successor is appointed and qualified, or until his or her earlier death, resignation or removal in the manner hereinafter provided. Any officer or agent chosen by the Board may be removed at any time by the Board whenever in its judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any vacancy occurring in any office of the Company at any time or any new offices may be filled by the Board for the unexpired portion of the term.

10.4 President. The President shall be in charge of the business of the Company, subject to the direction and control of the Board. In general, the President shall discharge all duties incident to the principal executive office of the Company and such other duties as may be prescribed by the Board from time to time. Without limiting the generality of the foregoing, the President shall see that the resolutions and directions of the Board are carried into effect except in those instances in which that responsibility is specifically assigned to some other person by the Board, and, except in those instances in which the authority to execute is expressly delegated to another officer or agent of the Company or a different mode of execution is expressly prescribed by the Board, may execute for the Company certificates evidencing duly authorized Shares, any contracts, deeds, mortgages, bonds, or other instruments which the Board has authorized, and may (without previous authorization by the Board) execute such contracts and other instruments as the conduct of the Company's business in its ordinary course requires, and may accomplish such execution in each case either under or without the seal of the Company and either individually or with any other officer authorized by the Board, according to the requirements of the form of the instrument. The President may vote all securities that the Company is entitled to vote except as and to the extent such authority shall be vested in a different officer or agent of the Company by the Board.

10.5 Chief Financial Officer and Treasurer. The Chief Financial Officer (or other similar title) shall be the principal accounting and financial officer of the Company and as such shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board or the President. Without limiting the generality of the foregoing, the Treasurer shall have charge of and be responsible for the maintenance of adequate books of account for the Company and shall have charge and custody of all funds and securities of the Company and be responsible therefor and for the receipt and disbursement thereof. If required by the Board, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board may determine.

ARTICLE XI
INDEMNIFICATION

11.1 Indemnification of Directors and Officers. The Company shall, to the fullest extent to which it is empowered to do so by the Act or any other applicable laws as the same may from time to time be in effect, indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a Director or officer of the Company, or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement

actually and reasonably incurred by such person in connection with such action, suit or proceeding. In furtherance of the foregoing, the indemnification provisions contained in §18-303 of the Act shall be deemed extended to the officers of the Company.

11.2 Advancement of Expenses. Expenses incurred by an officer or Director of the Company in defending any threatened or pending action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a Director or officer of the Company, or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall be ultimately determined that he or she is not entitled to be indemnified as authorized by the Act or any other applicable laws.

11.3 Contract with the Company. The provisions of this Article XI shall be deemed to be a contract between the Company and each person who serves as such officer or Director described in Section 11.1 at any time while this Article and the relevant provisions of the Act or other applicable laws, if any, are in effect, and any repeal or modification of any such law or of this Article XI shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

11.4 Indemnification of Employees and Agents. Persons who are not covered by the foregoing provisions of this Article XI and who are or were employees or agents of the Company, or are or were serving at the request of the Company as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board.

11.5 Fiduciary Duties of Directors and Officers. In accordance with §18-1101(c) of the Act, to the extent that, at law or in equity, an Owner, Director, officer or other person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Owner, Director, officer or other person that is a party to or otherwise bound by this Agreement, such Owner, Director, officer or other person acting pursuant to this Agreement shall not be liable to the Company or to such other Owner, Director, officer or other person for such Owner's, Director's, officer's or other person's good faith reliance on the provisions of this Agreement. In furtherance of the foregoing, the parties to this Agreement intend that the Directors and officers of the Company, in carrying out their managerial roles described in this Agreement, shall be charged with the same fiduciary duties of care, loyalty and good faith as are incumbent upon corporate directors and officers under the Delaware General Corporation Law.

11.6 Other Rights of Indemnification. The indemnification and the advancement of expenses provided or permitted by this Article XI shall not be deemed exclusive of any other rights to which those indemnified may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

ARTICLE XII
DISSOLUTION AND TERMINATION

12.1 Dissolution. The first to occur of the following events (each, a "Dissolving Event") shall cause the dissolution of the Company:

(a) The sale of all or substantially all of the assets of the Company; or

(b) The written consent of the Board and a Super Majority of the Owners to the dissolution of the Company.

12.2 Winding Up and Termination. If a Dissolving Event occurs, the Company's affairs shall be concluded in the following manner:

(a) The Board (or if there be no Directors serving, such person or persons as may be designated in writing by a Majority in Interest of the Owners) shall proceed with the liquidation of the Company, and the proceeds of such liquidation (less any reasonable portion thereof reserved by the Board, or the person or persons acting in the Board's stead, for a reasonable time to pay contingent or unforeseen Company liabilities) shall be applied and distributed to the Owners in accordance with their respective Percentage Interests.

(b) The foregoing notwithstanding, in payment of proceeds required by Section 12.2(a), upon the winding up and termination of the Company, the Company shall first distribute to the contributing Owner any property originally contributed to the Company by such Owner to the extent that such property is then owned by the Company, irrespective of the fact that the deemed Gross Asset Value of such property exceeds the value otherwise distributable to such contributing party under section 12.2(a) above). The Owners acknowledge and agree that any such property so distributed shall be deemed to have a Gross Asset Value on the date of distribution equal to the then adjusted book value of the property as determined under Regulations §§ 1.704-1(b)(2)(iv)(f) and (g).

(c) It is the intent of the parties hereto that the liquidation amounts distributable to Owners pursuant to Section 12.2 (such Owners' "Liquidation Amounts") shall be equal to the Owners' respective ending Capital Accounts. Therefore, notwithstanding anything to the contrary in this Agreement, to the extent not inconsistent with the applicable regulations under Section 704 of the Code, if, upon the dissolution and liquidation of the Company, any Owner's ending Capital Account (determined immediately after all Profits and Losses, have been tentatively allocated under this Agreement for the taxable period ending with the date of dissolution and liquidation and reflected in the Capital Accounts of the Owners as if this Section 12.2(c) were not in this Agreement) is less than such Owner's Liquidation Amount, then (i) such Owner shall be specially allocated items of income or gain (including gross income) for such taxable period (and, if necessary, for the preceding taxable year if the Company has not yet filed its tax return for such preceding year), and (ii) the other Owners shall be specially allocated items of loss or deduction for such taxable period year (and, if necessary, for the preceding taxable year if the Company has not yet filed its tax return for such preceding year), until each such Owner's actual Capital Account equals the Liquidation Amount for such Owner. The special allocation provision provided by this Section 12.2(c) shall be applied in such a manner so as to cause the difference between each Owner's Liquidation Amount and the balance in its

Capital Account (determined after this allocation, but immediately prior to the distributions pursuant to Section 12.2(c)) to be the smallest dollar amount possible.

(d) A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors.

(e) Within 90 days after the complete liquidation of the Company, the Board (or if there be no Directors serving, such person or persons as may be designated by a Majority in Interest of the Owners) shall furnish to each Owner a written statement for the period from the first day of the then current taxable year through the date of such complete liquidation. Such statement shall include a Company statement of income and expenses for such period and a Company balance sheet as of the date of such complete liquidation. Upon compliance with the foregoing distribution plan, the Owners shall cease to be such, and the Board (or the person or persons acting in the Board's stead) shall execute, acknowledge, and cause to be filed a Certificate of Cancellation of the Company, and all other instruments that may be required to effectuate the dissolution and termination of the Company.

(f) Each Owner shall look solely to the assets of the Company for all distributions with respect to the Company, the Owner's capital contributions thereto, and its share of Profits or Losses, and no Owner shall have recourse therefor (upon dissolution or otherwise) against the Board, any Director or any other Owner.

ARTICLE XIII
FISCAL AFFAIRS

13.1 Taxable Year. The taxable year of the Company shall end on December 31 of each year.

13.2 Books and Records. The Company shall keep adequate books of account of the Company on the cash or accrual basis to the extent permitted by the Code and in accordance with U.S. generally accepted accounting principles, as the Chief Financial Officer shall determine, wherein shall be recorded all contributions to the capital of the Company, and all income, distributions, expenses, and transactions of the Company. A separate Capital Account for each Owner shall be maintained pursuant to Section 3.5 of this Agreement. The Company also shall maintain as a part of the books and records of the Company a list of the names and addresses of the Owners. Each Owner's name and address may be changed by such Owner by written notice to the Company. Such books of account, together with the Company's federal, state, local and foreign income tax returns for each of the six preceding taxable years of the Company, shall be kept at the principal office of the Company, which must be in the United States, and any Owner shall have the right at all reasonable times during usual business hours to audit, examine, and make copies of or extracts from the books of account and tax returns of the Company. Such rights may be exercised through any designated agent or employee of an Owner. Each Owner shall bear all expenses incurred in any examination made for such Owner's account. Anything to the contrary notwithstanding, the Company's complete records and books of account shall be subject at all times to inspection and examination by CBOE (to the extent related to the Facility), by NSX (to the extent related to the Company's control of NSX), and by the SEC at no additional charge to CBOE, NSX and the SEC, as applicable.

13.3 Reports. On or before February 15 of each year, the Company shall furnish to each Owner, at the expense of the Company, (a) a balance sheet, a statement of income and expenses, and a statement of Owners' equity for the Company's operations for the preceding year, all of which shall be accompanied by an audit report of a firm of independent public accountants selected by the Board; (b) a report of the activities of the Company for the previous year; and (c) a report to each Owner containing information with respect to the Company to be used in preparing that Owner's federal, state, local and foreign income tax returns. In addition, the Company shall furnish to each Owner, within 45 days following the close of each calendar quarter, an unaudited balance sheet and statement of income and expenses for the Company's operations during such quarter.

13.4 Bank Accounts. All funds of the Company shall be deposited in its name in such money market, checking, and savings accounts, certificates of deposit, and United States or foreign government obligations as the Board may designate. Withdrawals therefrom shall be made upon such signatures as the Board may designate.

13.5 Tax Returns and Periodic Reports. In addition to the reports required under Section 13.3 of this Article, the Company shall cause such annual income tax returns and periodic reports for the Company as are required by applicable law to be prepared and filed with the appropriate authorities. The income tax returns of the Company shall be prepared and filed on the basis of accounting selected by the Board.

13.6 Accounting Decisions. All decisions as to accounting principles, except as specifically provided to the contrary herein, shall be made by Chief Financial Officer, subject to approval by the Board.

13.7 Basis Election. Upon the transfer of an interest in the Company or a distribution of Company property, the Board, acting on behalf of the Company, shall have the right, but not the obligation, to elect to adjust the basis of the Company property as allowed by Code §§ 734(b), 743(b), and 754, or comparable provisions then in effect; provided, however, that if such an election is made, the Company shall not be required to make (and shall not be obligated to bear the expense of making) any accounting adjustment resulting from such election in the information supplied to the Owners, or if the Company provides any such adjustment, the Company shall have the right to charge the Owner or Owners benefiting from such election for the Company's reasonable expenses in making such adjustment.

13.8 Appointment of IRS Tax Matters Partner. CBOE shall serve as the "tax matters partner" as that term is defined in Code §6231(a)(7), so long as CBOE shall agree to serve in such capacity. Thereafter, a Majority in Interest of the Owners shall designate another person to serve as such. The Company shall indemnify the tax matters partner for all costs or expenses incurred in such capacity.

13.9 Code Section 83 Safe Harbor Election.

(a) Each Owner authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "Notice") apply to any Shares transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services

provided to the Company. For purposes of making such Safe Harbor election, the Tax Matters Partner is hereby designated as the "partner who has responsibility for federal income tax reporting" by the Company and, accordingly, the execution of such Safe Harbor election by the Tax Matters Partner constitutes the execution of a "Safe Harbor Election" in accordance with Section 3.03(1) of the Notice. The Company and each Owner hereby agree to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Owner shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor Share issued by the Company in a manner consistent with the requirements of the Notice.

(b) The Company and any Owner may pursue any and all rights and remedies they may have to enforce the obligations of the Company and Owners (as applicable) under Section 13.9(a), including, without limitation, seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of Section 13.9(a). An Owner's obligations to comply with the requirements of this Section 13.9 shall survive such Owner ceasing to be an Owner of the Company and/or the termination, dissolution, liquidation and winding up of the Company, and, for purposes of this Section 13.9, the Company shall be treated as continuing in existence.

(c) Each Owner authorizes the Board to amend Sections 13.9(a) and 13.9(b) to the extent necessary to achieve substantially the same tax treatment with respect to any Shares transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the Notice (e.g., to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to such Owner (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all Shares transferred to a service provider by the Company in connection with services provided to the Company).

ARTICLE XIV
AMENDMENTS

14.1 Procedure for Amendment.

(a) Upon ten (10) calendar days prior written notice to the Voting Owners, t[T]his Agreement may be amended upon the written consent or affirmative vote of a Majority in Interest of the Owners (subject to the approval of CBOE if, in the sole determination of CBOE, the amendment would affect the ability of CBOE to fulfill its regulatory responsibilities and obligations); provided, however, that the unanimous consent of all Voting Owners shall be necessary for any amendment that would (i) adversely affect any Voting Owner's Percentage Interest (other than the issuance, transfer, repurchase, or redemption of equity securities pursuant to this Agreement); (ii) materially alter the manner of distributing Net Cash Flow, or allocating Profits, Losses and credits (other than the issuance, transfer, repurchase, or redemption of equity securities pursuant to this Agreement); (iii) amend this Agreement in any respect that affects the rights or obligations of any Voting Owner (other than an amendment that affects on an equal basis such rights or obligations of all Voting Owners) in any material way or (iv) amend this Section. In addition, the Board may amend this Agreement without the written consent of the

Voting Owners (x) if the Directors are advised in writing by outside counsel to the Company that such amendment is required as a condition to maintaining the status of the Company being an association not taxable as a corporation for federal, state or local income tax purposes; or (y) to correct a false statement or error in this Agreement or the Company's articles of organization, if the correction will neither adversely affect the rights and interests of the Voting Owners, nor decrease the obligations and duties of the Board. The Board shall, within 30 days of the making of any amendment to this Agreement, file or cause to be filed such amendment or record thereof in all places where such filing is necessary or desirable to protect the interests of the Owners or to comply with any applicable law. Beginning after SEC Approval, so long as the [Company]Facility is a facility of CBOE, any provisions of this Agreement that CBOE, in its sole discretion, determines to constitute "stated policies, practices and interpretations" of the Company, as defined in Rule 19b-4 of the Exchange Act, will be deemed to be "rules of a facility of an exchange," and for adoption or modification will be required to be filed as a proposed rule change by CBOE with the SEC and, if necessary under the Exchange Act, to be approved by the SEC. For so long as the Company controls NSX, before any amendment, alteration or repeal of any provision of this Agreement, to the extent related to the Company's control of NSX, shall be effective, such amendment, alteration or repeal shall be submitted to the NSX board of directors, and if CBOE and the NSX board of directors determine that such amendment, alteration or repeal must be filed with or filed with and approved by the SEC, then such amendment, alteration or repeal shall not become effective until filed with or filed with and approved by the SEC, as the case may be.

(b) The consent of a Management Owner shall be required to amend this Agreement with respect to (i) any change that would adversely affect such Management Owner's Percentage Interest (other than the issuance, transfer, repurchase, or redemption of equity securities pursuant to this Agreement), (ii) any change that would adversely affect such Management Owner's opportunity to assign Shares under Section 6.1, (iii) any material change to the manner of distributing Net Cash Flow, or allocating Profits, Losses and credits that would materially adversely impact the economic benefit to such Management Owner of his or her ownership interest (other than the issuance, transfer, repurchase, or redemption of equity securities pursuant to this Agreement), or (iv) any substantive amendment of this Section 14.1(b).

ARTICLE XV
MISCELLANEOUS PROVISIONS

15.1 Governing Law. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Delaware, including the Act. An Owner's interest in the Company shall be personal property for all purposes. All real and other property owned by the Company shall be deemed owned by the Company as an entity (and may be held in the name of a nominee for the Company), and no Owner individually shall have any ownership of such property.

15.2 Confidentiality. Except with the consent of the Board or as required by law or as requested by any governmental or regulatory authority (provided that such Owner shall notify the Board promptly of any request for information before disclosing it, if practicable and permitted by applicable law), and other than with respect to CBOE's and NSX's communications with the SEC with respect to the conduct of the [Company]Facility's business or NSX's

business, respectively, no Owner shall disclose any Confidential Information to any person or use any Confidential Information to the detriment of the Company or its Owners or for its own benefit or the benefit of others. Each Owner agrees that it will inform its members, shareholders, directors, officers, employees and agents of this Section 15.2 and direct such persons to treat the Confidential Information in accordance with this Section 15.2. Each Owner recognizes that irreparable injury will result to the Company, an Owner or its Affiliate about whom Confidential Information has been disclosed, and that the continued relationship among the Owners is predicated upon the commitments undertaken by the Owners pursuant to this Section 15.2. In the event of any breach or threatened breach of any commitment of an Owner pursuant to this Section 15.2, the Company and any potentially injured Owner shall be entitled, in addition to any other remedies and damages available, to injunctive relief to restrain the violation of such commitments by an Owner, its members, shareholders, directors, officers, employees and agents, or by any person or persons acting for or with the Owner in any capacity whatsoever. Notwithstanding the foregoing, each Owner's obligations under this Section 15.2 shall not apply to any Confidential Information that: (a) is or becomes public knowledge through no act or failure to act of the Owner receiving such information, or such Owner's members, shareholders, directors, officers, employees or agents; (b) is known to the Owner receiving such information or such Owner's members, shareholders, directors, officers, employees or agents prior to the time of receipt of such information; (c) is independently developed by the receiving Owner without the use of Confidential Information of the disclosing Owner; or (d) is disclosed to the receiving Owner by a third party that the receiving Owner reasonably believes has the right to disclose the information. At any time, if requested by the Board acting in good faith and in the best interests of the Company, an Owner shall surrender to the Company any Confidential Information, and all records, files and other documents provided to the Owner by the Company (including all copies thereof) relating to Confidential Information; provided that such Owner may retain copies of such Confidential Information to the extent required for regulatory purposes. Nothing in this Agreement shall be interpreted to limit or impede the rights of the SEC[or], CBOE or NSX to access and examine any Confidential Information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of an Owner or an officer, director, agent or employee of an Owner to disclose any Confidential Information to the SEC[or], CBOE or NSX.

15.3 No Anti-Competitive Effect. Nothing herein shall prevent any Owner from acting as trader, broker or market maker on any other exchange or trading system or from holding membership on any other exchange or trading system, or from investing in, or participating in the governance of, any other exchange or trading system, so long as such Owner complies at all times with its obligations of confidentiality under Section 15.2

15.4 Consents and Approvals. Whenever the consent or approval of any Owner is required or permitted under this Agreement, such consent or approval may be evidenced by a written consent signed by such Owner or an authorized signatory thereof.

15.5 Notices. Except as otherwise expressly provided herein, all notices under this Agreement shall be in writing and shall be given to each Owner at its street or electronic mail address set forth in Prior Exhibit A hereto (or at such other address as the Owner hereafter may specify by notice to the Company), and to the Company at its principal office. Unless delivered personally, by nationally recognized overnight courier, by a confirmed facsimile transmission, or

by electronic mail, each such notice shall be given by certified mail, postage prepaid. Each notice shall be effective when so delivered or two business days after being so mailed.

15.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

15.7 Waiver of Partition. Each Owner hereby irrevocably waives during the term of the Company any right to maintain an action for partition with respect to the property of the Company.

15.8 Binding Effect. Each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, assigns, successors, and legal representatives.

15.9 Remedies Not Exclusive. Any remedy herein contained for breach of an obligation hereunder shall not be deemed to be exclusive, and shall not impair the right of any party to exercise any other right or remedy, whether for damages, injunction, or otherwise.

15.10 Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is invalid or unenforceable to any extent, then the remainder of this Agreement, and the application of such remaining provisions to other persons or circumstances, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15.11 Captions. Article and Section titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.

15.12 Identification. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

15.13 Complete Agreement. This Agreement, including the Services Agreement and the CBOE License, constitutes the complete, final and exclusive statement of the terms of the agreement between the parties with respect to the subject matter hereof. It supersedes all prior written or oral agreements, statements, discussions, negotiations or expressions of intention, including, without limitation, that certain Operating Agreement of CBOE Stock Exchange, LLC dated as of December 18, 2006, the First Amended Operating Agreement, and the Second Amended Operating Agreement.

15.14 Creditors. No provision of this Agreement shall be construed for the benefit of or be enforceable by any creditor of the Company.

15.15 Investment Purpose. Each Owner makes the following representations and warranties in connection with the Owner's contribution of capital to the Company:

(a) Such Owner's Shares are being acquired solely by and for the account of such Owner, for investment and not for subdivision, fractionalization, resale or distribution; such

Owner has no contract, undertaking, agreement or arrangement with any person to sell, transfer or pledge such Shares (or any part thereof) to such person or to anyone else; and such Owner has no present plans or intention to enter into any such contract, undertaking, agreement or arrangement, except to a Permitted Transferee.

(b) Such Owner acknowledges that the Shares have not and will not be registered under the federal Securities Act of 1933, as amended, or any state securities laws and cannot be sold or transferred without compliance with the registration provisions of said Act or compliance with exemptions, if any, available thereunder. Such Owner understands that neither the Company nor the Board has any obligation or intention to register such interests under any federal or state securities act or law, or to file the reports to make public the information required by Rule 144 under the Securities Act of 1933, as amended.

(c) Such Owner has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Company.

15.16 Indirect Controlling Parties. For purposes of this Section 15.16: (i) a "controlling interest" is defined as the ownership by any person, alone or together with any Affiliate, of a 25% or greater interest in an Owner, and (ii) an "Indirect Controlling Party" is defined as a person who, alone or together with any Affiliate, acquires a controlling interest in an Owner. An Indirect Controlling Party shall be required to execute an amendment to this Agreement upon establishing a controlling interest in any Owner who, alone or together with any Affiliate, holds a Percentage Interest in the Company equal to or greater than 20%. In such amendment the Indirect Controlling Party shall agree to become a party to this Agreement and shall agree 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 Section 15.16 is subject to the rule filing process of Section 19 of the Exchange Act. The rights and privileges of the applicable Owner under this Agreement shall be suspended until such time as the amendment executed pursuant to this Section 15.16 has become effective pursuant to Section 19 of the Exchange Act or the Indirect Controlling Party no longer holds a controlling interest in the Owner.

15.17 Authorization; Binding Obligations; Compliance with Other Instruments; Title to and Sufficiency of Assets. Each of the Initial Owners and each person that becomes a party to this Agreement, whether pursuant to Section 15.16, by reason of becoming an Owner of Shares, or otherwise (each, an "Affirming Party") represents and warrants to each other party hereto that:

(a) The Affirming Party, if an entity, is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and all governance actions on the part of the Affirming Party necessary for the authorization of this Agreement and the performance of all of its obligations hereunder and thereunder at the effective date of such Affirming Party becoming a party hereto have been taken. Except for the requirement, as applicable to [CBOE]the Facility or NSX (with respect to the Company's control of NSX), that those portions of this Agreement that constitute rules of a facility of an exchange or rules of a national securities exchange, as applicable, be filed for public comment and approval by the SEC, this Agreement, when executed and delivered by the Affirming Party will be a valid and binding obligation of the Affirming Party, enforceable against it in accordance with its terms

except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors rights and (ii) general principles of equity that restrict the availability of equitable remedies, and no consent, approval, order, license, permit or authorization of, or notification, registration, declaration or filing with, any governmental authority, or any other person or entity, is required to be obtained or made by or with respect to the Affirming Party in connection with its execution, delivery and performance of this Agreement, or the consummation of the transactions contemplated hereby.

(b) The execution and delivery by the Affirming Party of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the terms hereof will not, breach, conflict with, or result in any violation of or default (with or without notice or lapse of time or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of any benefit under, or result in the creation or imposition of any mortgage, pledge, lien, lease, encumbrance or charge of any nature whatsoever upon any of the properties or assets of the Affirming Party under, (i) any loan or credit agreement, note, bond, mortgage, indenture, deed of trust, license, franchise, lease, contract, commitment, permit, agreement, understanding, instrument or obligation or other arrangement to which the Affirming Party is a party or by which the Affirming Party or any of its properties or assets may be bound or affected, (ii) any provision of any constitutive or governing documents of the Affirming Party or (iii) any legal requirement applicable to the Affirming Party or any of its properties or assets. The execution, delivery, and performance of and compliance with this Agreement, and the acquisition of Shares pursuant hereto, if applicable, will not, with or without the passage of time or giving of notice, result in the suspension, revocation, impairment, forfeiture or non-renewal of any permit, license, authorization or approval applicable to the Affirming Party, its business or operations or any of its assets or properties.

(c) If Affirming Party has committed to contribute property to the Company as all or part of its capital contribution, Affirming Party has good title to or a valid leasehold or license interest in that property sufficient to permit the Company to use that property to conduct the business contemplated hereunder to be conducted, free and clear of all liens, security interests, pledges, encumbrances and claims of others.

15.18 Legal Representation. CBOE has selected its in-house attorneys and [the law firm of Schiff Hardin LLP]outside legal counsel to provide counsel and advice to CBOE and its affiliates, including the Company, in connection with the organization of the Company, the negotiation and documentation of this Agreement, the Services Agreement and the CBOE License, negotiations with and presentations to appropriate regulatory authorities, and related matters. The foregoing attorneys do not and will not represent any of the other Owners or any of their respective Indirect Controlling Parties, if any, even if and as the foregoing become owners of the Company's Shares. Each of those other parties is expected to, and should obtain, their own independent counsel.

15.19 Election of ETP Holder Directors of NSX. For so long as the Company controls NSX, at any meeting of the stockholders of NSX held for the purpose of electing directors of NSX, or in the event written consents are solicited or otherwise sought from the stockholders of NSX with respect thereto, the Company shall cause all outstanding shares of NSX owned by the Company and entitled to vote at an election of directors to be voted in favor of those ETP Holder Directors (as such term is defined in the bylaws of NSX) nominated in

accordance with the certificate of incorporation and bylaws of NSX and, with respect to any such written consents, shall cause to be validly executed such written consents electing such directors.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto being duly sworn, have signed and acknowledged this instrument as of the day and year first above written.

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By:______________________________
Name:____________________________
Title:_____________________________

[SUSQUEHANNA INTERNATIONAL GROUP, LLP]SIG STRATEGIC INVESTMENTS, LLLP

By:______________________________
Name:____________________________
Title:_____________________________

IB EXCHANGE CORP

By:______________________________
Name:____________________________
Title:_____________________________

VDM CHICAGO, LLC (f/k/a VDM CBSX, LLC)

By:______________________________
Name:____________________________
Title:_____________________________

[LABRANCHE & CO. INC.]COWEN STRUCTURED HOLDINGS LLC

By:______________________________
Name:____________________________
Title:_____________________________

LIME BROKERAGE LLC

By:______________________________
Name:____________________________
Title:_____________________________

IMC-CHICAGO, LLC

By:______________________________
Name:____________________________
Title:_____________________________

BLUEFIRE CAPITAL, LLC

By:______________________________
Name:____________________________
Title:_____________________________

WOLVERINE HOLDINGS, L.P.

By:______________________________
Name:____________________________
Title:_____________________________

ALLSTON TRADING, LLC

By:______________________________
Name:____________________________
Title:_____________________________

Exhibit A
to
[Second]Third Amended and Restated
Operating Agreement of CBOE Stock Exchange, LLC

Name of Voting Owner	Number of Shares	Series	Percentage Interest
Chicago Board Options Exchange, Incorporated	[50]25,000,000	Series A	[50]49.96%
VDM Chicago, LLC	[19,4]9,700,000	Series B	19.38[4]%
[LaBranche & Co. Inc.]Cowen Structured Holdings LLC	[9,70]4,850,000	Series B	9.69[7]%
IB Exchange Corp.	[9,70]4,850,000	Series B	9.69[7]%
[Susquehanna International Group, LLP]SIG Strategic Investments, LLLP	[9,70]4,850,000	Series B	9.69[7]%
Lime Brokerage LLC	[1,50]750,000	Series B	1.50%
IMC-Chicago, LLC	10,000	Series B	0.02%
Bluefire Capital, LLC	10,000	Series B	0.02%
Wolverine Holdings, L.P.	10,000	Series B	0.02%
Allston Trading, LLC	10,000	Series B	0.02%
TOTALS	**[50]25,000,000** **[50,000,000]25,040,000**	**Series A** **Series B**	**[50]49.96%** **50.04%**