UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0017
Expires:	July 31, 2000
Estimated average burden hours per response	45.00

FORM 1

APPLICATION FOR REGISTRATION OR EXEMPTION FROM REGISTRATION AS A NATIONAL EXCHANGE

On the basis of the attached statement and exhibits, the undersigned hereby applies for registration as a national securities exchange, pursuant to Section 6 of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

International Securities Exchange™
Exchange

By David Krell
David Krell, President

February 1, 1999
Date

MARION TURNER
Notary Public, State of New York
No. 4980716
Qualified in New York County
Certificate Filed in New York
Commission Expires 4/22/99

(SEAL)

Attest : Marion Turner
Name Title

INSTRUCTIONS FOR FORM 1 AND ACCOMPANYING STATEMENT AND EXHIBITS

1. Form 1 and the accompanying statement and exhibits shall be filed in duplicate, each of which shall be signed and attested by duly authorized officials of the exchange.
2. An exchange may use the printed Form 1 and statement. If the space provided in the statement for an answer to any item is insufficient, the answer may be typed on a separate insert page of pages which shall be incorporated into the statement by reference thereto in the space provided for the item.
3. If the exchange does not use the printed Form 1 and statement it shall type or print a complete Form 1 and statement
4. If the information called for by an exhibit is available in printed form, the printed material may be used provided it does not exceed 8½ x 11 inches in size.
5. If any item of the statement is inapplicable to that effect shall be made following the item. If any exhibit called for is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit.
6. All answers to items of the statements shall be stated as briefly as completeness will permit, and may be expanded upon or qualified by reference to applicable pages, articles, sections or paragraphs of any exhibit.
7. Paperwork Reduction Act Disclosures:
   a. Form 1 requires that, in order to register with the Commission as a national securities exchange, an exchange must file Form 1.
   b. The Form is designed to elicit the information necessary to determine whether an exchange is organized in compliance with the Exchange Act.
   c. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden.
   d. It is mandatory that applicants fill out Form 1 to become registered with the Commission.
   e. No assurance of confidentiality are given by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507.
   f. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507.

STATEMENT

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Statement to be Filed in Connection With an Application for Registration or Exemption Registration as a National Securities Exchange under the Securities Exchange Act of 1934.

ORGANIZATION

1. State the exact name of the exchange: **ISE LLC (trade name "International Securities Exchange")**

2. State the address and telephone number of the exchange: **110 Wall Street**,
New York, New York 10005
(212) 269-4914

3. (a) State the form of organization of the exchange: **Limited Liability Company**
(e.g., association, corporation, etc.)

   (b) State the date of organization in present form. If originally organized in another form also give date and form of original organization: **September 29, 1997**

   (c) Name the state and provide reference to any statute thereof under which the exchange is organized: **New York State; New York State Limited Liability Company Law**

   (d) State the name of each exchange which has been merged into, absorbed by, or consolidated with the subject exchange since September 1, 1934, giving the date when each merger, absorption, or consolidation occurred: **None**

4. State the date upon which the fiscal year of the exchange ends: **December 31**

5. State the name and address of counsel for the exchange: **Michael Simon**
110 Wall Street
New York, New York 10005

w/ cc to: **Orrick, Herrington & Sutcliffe**
666 Fifth Avenue
New York, New York 10103
Attn: Sam Scott Miller

6. State the name and address of the person hereby authorized to receive service of process and notices on behalf of the exchange: **Michael Simon**
110 Wall Street
New York, New York 10005

7. For each organization which during the previous year has been affiliated with or subsidiary to the exchange, either directly or indirectly, through security ownership, joint membership or otherwise, provide the following information:

   (a) Name and address of the organization: **Adirondack Trading Partners, LLC**
47 Laurel Hill Road
Centerport, New York 11721

   (b) Form or organization: **Limited Liability Company**
(e.g., association, corporation, etc.)

   (c) Name of state and reference to any statute thereof under which organized: **New York State; New York Limited Liability Law**

   (d) Date of organization in present form: **January 27, 1998**

   (e) Brief description of the nature and extent of affiliation: **Adirondack Trading Partners currently owns a majority of the Exchange's memberships. This affiliation is temporary as the Exchange's Constitution and Rules impose concentration limits that require Adirondack Trading Partners to sell most of its Exchange Memberships within ten years after trading is initiated on the Exchange.**

   (f) Brief description of its business or functions: **Adirondack Trading Partners intends to become a registered broker-dealer and a market maker on the International Securities Exchange**

(g) Name of any of the organizations identified above which ceased to be associated with the exchange during the previous year, and a brief statement of the reasons for the termination of the association: **None**

8. State the classes of membership (e.g., full membership, physical access membership, electronic access membership, etc.) and indicate the number of members in each category. **The Exchange may have up to ten Primary Market Makers (Class A Members), one hundred Competitive Market Makers (Class B Members), and an unlimited number of Electronic Access Members (Class C Members). While there is one owner of Class A Memberships and there are four owners of Class B Memberships, no Members have been authorized for trading on the Exchange to date.**

9. State as nearly as practicable the number of persons who are

(a) engaged primarily in the following activities or functions on or through the facilities of the exchange.1

(1) floor brokers: **None**

(2) specialists: **None**

(3) odd lot dealers: **None**

(4) other market makers: **None**

(5) proprietary traders (on the exchange floor): **None**

(6) inactive or other function: **None**

(b) State the estimated average total number of members in attendance at security trading sessions: **N/A**

EXHIBITS

Exhibits to be filed in connection with (i) an Application for Registration or Exemption from Registration as a National Securities Exchange pursuant to Section 6 of the Securities Exchange Act of 1934 and Rule 6a-1 thereunder, or (ii) a Periodic Amendment pursuant to Rule 6a-2.[2]

Exhibit A(1) A copy of the constitution, articles of incorporation or association with all amendments thereto, and of existing by-laws or rules or instruments corresponding thereto, whatever the name, of the exchange.

Exhibit A(2) A copy of all written rulings, settled practices having the effect of rules, and interpretations of the Governing Board or other committee of the exchange in respect of any of the provisions of the constitution, by-laws, rules or trading practices of the exchange, which are not included in the material submitted under Exhibit A(1).

Exhibit A(3) A copy of the constitution, articles of incorporation or association with all amendments thereto, and of existing by-laws or rules or instruments corresponding thereto, whatever the name, of each affiliate and subsidiary listed in answer to Item 7 of the Statement.

Exhibit B A complete set of all forms[3] pertaining to:

(1) Application for membership[4] in the exchange.

(2) Application for approval as a person associated with a member[5] of the exchange.

(3) Matters similar to any of the foregoing.

Exhibit C A complete set of all forms of financial statements, reports or questionnaires required of members, relating to such matters as members' financial responsibility or minimum capital requirements.

Exhibit D A complete set of documents, comprising the exchange's listing applications, including the agreements required to be executed in connection therewith, and a schedule of listing fees.

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[1] A person shall be considered to be "engaged primarily" in an activity or function for purposes of this item when that activity or function is the one in which that person is principally engaged. Where more than one type of person engages in any of the six types of activities or functions enumerated in this item, identify each such type (e.g., proprietary trader, Registered Competitive Trader and Registered Competitive Market Maker) and state the number of members in each.

[2] If any exhibit called for is inapplicable, a statement to that effect shall be furnished in lieu of such exhibit.

[3] Provide separate table of contents listing (by title and/or number) the forms included in Exhibits B, C, and D.

[4] The terms "member" and "membership" are used interchangeably; unless the context requires "member" has the same meaning as that provided in Section 3(a)(3)(A) of the Act.

[5] The term "person associated with a member" has the same meaning as that provided in Section 3(a)(18) of the Act.

Exhibit E — For the latest fiscal year of the exchange, audited consolidated financial statements which (1) are prepared in accordance with accepted accounting principles, and (2) are covered by a report prepared by an independent public accountant.[6]

Exhibit F — For the last fiscal year, unconsolidated financial statements of the exchange and each of its affiliates and subsidiaries listed in Item 7 of the statement, and any amendments thereto, which financial statements, at a minimum, shall consist of a balance sheet and an income statement with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading; provided, however, that if any such affiliate or subsidiary is required by another Commission rule to submit annual financial statements equivalent to those described herein, a statement tot hat effect, with a citation to such other Commission rule, may be included in lie of the financial statements required hereunder.

Exhibit G — A list of the present officers, governors, members of all standing committees,[7] or persons performing functions similar to any of the foregoing, whatever their title or technical status may be, of the exchange, who presently hold or have held their offices or positions during the previous year, indicating for each:

(1) Name.

(2) Title.

(3) Dates of commencement and termination of term of office or position.

(4) Length of time each has held the same office or position.

(5) Type of business in which each is primarily engaged (e.g., floor broker, specialist, odd lot dealer, etc.).

Exhibit H — A list of the present officers, directors, members of all standing committees or persons performing functions similar to any of the foregoing, whatever their title or technical status may be, of each affiliate and subsidiary listed in answer to Item 7 of the Statement, indicating for each:

(1) Name.

(2) Title.

Exhibit I — A list as of latest practicable date[8] alphabetically arranged of all individual members of the exchange indicating for each.[9]

(1) Name.

(2) Date of election to membership.

(3) Name of firm with which he is associated and his relationship thereto (e.g., partner, officer, director, employee).

(4) Business address.

Exhibit J — A list as of latest practicable date alphabetically arranged of all member organizations of the exchange indicating for each:

(1) Name.

(2) Form of organization (e.g., sole proprietorship, partnership, corporation, etc.).

(3) Principal place of business and telephone number.

(4) The individual(s) whose membership it uses.

Exhibit K — A schedule of securities listed on the exchange indicating for each:

(1) Name of issuer.

(2) Description of security.

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[6] I an exchange has no consolidated subsidiaries, it shall file audited financial statements under Exhibit E for the exchange alone, and need not file a separate unaudited financial statement for the exchange under Exhibit F.

[7] For Exhibits G and H, group members of each standing committee together.

[8] For Exhibits I, J, K, L and M, indicate the date as of which each list or schedule is prepared.

[9] For Exhibits I and J, if more than one class of membership is provided for by the constitution and rules of the exchange, either (1) list separately according to class; or (2) indicate the class of membership applicable.

Exhibit L A schedule of securities admitted to unlisted trading privileges on the exchange showing for each:

(1) Name of issuer.

(2) Description of security.

Exhibit M A schedule of unregistered securities admitted to trading on the exchange which are exempt from registration under Section 12(a) of the Act, indicating for each:

(1) Name of issuer.

(2) Description of security.

(3) Specific statutory exemption claimed (e.g., Rule 12a-6).

Exhibit A(1)

A copy of the Articles of Organization, Operating Agreement, Constitution and Rules of the International Securities Exchange are attached hereto.

ARTICLES OF ORGANIZATION

OF

ISE LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, as the organizer of ISE LLC, hereby adopts the following Articles of Organization under Section 203 of the New York Limited Liability Company Law:

ARTICLE I. The name of the limited liability company is: ISE LLC (the "Company").

ARTICLE II. The county in the state of New York in which the office of the Company is to be located is New York County.

ARTICLE III. The Secretary of State of the State of New York is designated as agent of the Company upon whom process against it may be served. The post office address within or without the State of New York to which the Secretary of State of the State of New York shall mail a copy of any process against the Company served upon him or her is c/o CT Corporation System, 1633 Broadway, New York, NY 10019.

ARTICLE IV. The Company is to be managed by one or more managers.

ARTICLE V. The Company shall have the power to indemnify, to the full extent permitted by the New York Limited Liability Company Law, as amended from time to time, all persons whom it is permitted to indemnify pursuant thereto.

IN WITNESS WHEREOF, this certificate has been subscribed this 24 day of September, 1997, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

KAP GROUP, LLC
Manager of ISE LLC

By: 
William A. Porter
Manager of KAP Group, LLC

SECOND AMENDED AND RESTATED
OPERATING AGREEMENT
OF
ISE LLC

A NEW YORK LIMITED LIABILITY
COMPANY

Second Amended and Restated Operating Agreement, dated as of January 1, 1999 by and among the persons who have executed the signature page(s) hereto as Members and who from time to time hereafter agree to be bound by this Agreement as Members of ISE LLC (the "Company") in accordance with the terms of this Agreement.

WITNESSETH:

WHEREAS, the Company has heretofore been formed as a limited liability company under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the Secretary of State of New York on September 29, 1997, and pursuant to an Operating Agreement dated December 31, 1997, entered into among the Members, as amended by an Amended and Restated Operating Agreement dated as of August 1, 1998 (the "Amended Operating Agreement"); and

WHEREAS, the Members of the Company wish hereby to amend and restate the Amended Initial Operating Agreement in order to adopt provisions appropriate for a registered national securities exchange under the Securities Exchange Act of 1934 and to make such other changes as incorporated herein; and

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

ARTICLE I
FORMATION AND BUSINESS OF THE COMPANY

1.1 **Formation**. The Company was organized on December 31, 1997, in accordance with and pursuant to the New York Limited Liability Company Law.

1.2 **Name**. The name of the Company is the ISE LLC. The Company may do business under that name, the name "International Securities Exchange" and, as permitted by applicable law, under any other name determined from time to time by the Board.

1.3 **Purpose of the Company**. The purpose of the Company shall be to conduct the operations of an "exchange" within the meaning of the Securities Exchange Act of 1934, as amended; and to conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the Board of Directors. The Company may exercise all powers necessary to or reasonably connected with the Company's business from time to time, and may engage in all activities necessary, customary, related or incidental to any of the foregoing.

1.4 **Principal Office**. The Company's principal place of business shall be located at 110 Wall Street, New York, New York 10005 or such other place determined from time to time by the Board. The Company may have such other business offices within or without the State of New York as determined from time to time by the Board.

1.5 **Registered Agent**. The name and address of the Company's registered agent in the State of New York is CT Corporation System, 1633 Broadway, New York, NY 10019. The registered agent may be changed from time to time by the Board upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the LLC Act.

1.6 **Term**. The term of the Company shall commence on the date hereof and continue until December 2099 unless the Company is earlier dissolved in accordance herewith and with the LLC Act.

1.7 **Members**. The Company shall maintain a record of the name, address, facsimile number, and taxpayer identification number of each Member, and such record shall be available to the Members.

ARTICLE II
DEFINITIONS

The following terms shall have the meaning set forth below when used in this Agreement, unless such meaning is expressly limited to this Agreement:

2.1 The term "**Agreement**" shall mean this **Second** Amended and Restated Operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the LLC Act.

2.2 The term "**Articles of Organization**" shall mean the Articles of Organization of the Company, as filed with the New York Secretary of State, as amended from time to time in accordance herewith and with the LLC Act.

2.3 The term "**Bankruptcy**" of a Member shall mean (a) the entry of an order for relief with respect to that Member in a proceeding under the United States Bankruptcy Code, as amended from time to time, or (b) the Member's initiation, whether by filing a petition, beginning a proceeding or in answer to a proceeding commenced by another person, of any action for liquidation, dissolution, receivership or other similar relief, or the Member's application for, or consent to the appointment of, a trustee, receiver or custodian for its assets. For purposes of this definition, a

Member's consent shall be deemed to have been given if an order appointing a trustee, receiver or custodian is entered by a court of competent jurisdiction and is not dismissed within ninety (90) days after its entry.

2.4 The term "**Board of Directors**" or "**Board**" shall have the meaning set forth in Article V of this Agreement.

2.5 The term "**Capital Account**" of a Member, as of any date, shall mean the account maintained for such Member pursuant to Section 3.3 of this Agreement, as adjusted through such date.

2.6 The term "**Capital Contribution**" of, or attributed to, a Member shall mean the total contributions to the capital of the Company, whether in cash, property (net of liabilities) or services, made, performed or to be performed by, or attributed to, such Member, valued on the date of contribution in the Company's books and records.

2.7 The term "**Capital Interest**" shall mean a Class A Member Capital Interest or a Class B Member Capital Interest, as the case may be.

2.8 The term "**Capital Transaction**" shall mean any transaction not in the ordinary course of the Company's business, in respect of which the Company receives cash or other consideration (but not Capital Contributions), including, without limitation, proceeds from sales or exchanges not in the ordinary course, financing and refinancing, condemnations or insurance policies.

2.9 The term "**Cash Available for Distribution**" as of any date, shall mean, except as otherwise determined by the Board, the excess of (a) all revenues received by the Company from its operations and investments over (b) total current operating expenses and reasonable reserves for future such expenses, including payments in respect of indebtedness of the Company, capital improvements and contingencies, as determined from time to time by the Board. Cash Available for Distribution shall not be reduced by noncash charges, including, without limitation, depreciation and amortization, and shall not include proceeds from Capital Transactions.

2.10 The term "**Class A Member**" shall mean the owner of one or more Class A Membership Units.

2.11 The term "**Class B Member**" shall mean the owner of one or more Class C Membership Units.

2.12 The term "**Class C Member**" shall have the meaning set forth in Article I of the Constitution.

2.13 The term "**Class A Member Capital Interest**" shall mean for a Class A Member as of a date of determination, a percentage equal to (a) the number of Class A Membership Units owned by such Class A Member, divided by (b) the aggregate number of Class A Membership Units owned by all Class A Members.

2.14 The term "**Class B Member Capital Interest**" shall mean for a Class B Member as of a date of determination, a percentage equal to (a) the number of Class B Membership Units owned by such Class B Member, divided by (b) the aggregate number of Class B Membership Units owned by all Class B Members.

2.15 The term "**Class A Membership Interest**" shall mean a Class A Member's entire interest in the Company, including such Member's Economic Interest (to the extent not Transferred) and Management Interest.

2.16 The term "**Class B Membership Interest**" shall mean a Class B Member's entire interest in the Company, including such Member's Economic Interest (to the extent not Transferred) and Management Interest.

2.17 The term "**Class C Membership Interest**" shall mean a Class C Member's entire interest in the Company, including such Member's Management Interest.

2.18 The term "**Class A Membership Unit**" shall mean a unit of a Class A Membership Interest issued in accordance with this Agreement.

2.19 The term "**Class B Membership Unit**" shall mean a unit of a Class B Membership Interest issued in accordance with this Agreement.

2.20 The term "**Class C Membership Unit**" shall mean a unit of a Class C Membership Interest issued in accordance with this Agreement.

2.21 The term "**Code**" shall mean the Internal Revenue Code of 1986, as amended, in effect as of the date hereof and as amended from time to time hereafter.

2.22 The term "**Company**" shall have the meaning set forth in the preamble to this Agreement.

2.23 The term "**Company Minimum Gain**" shall mean the amount determined under Treas. Reg. Sections 1.704-2(i)(3) and 1.704-2(d), and shall be computed separately for each Member in a manner consistent with Code Section 704(b) and the Treasury Regulations thereunder.

2.24 The term "**Constitution**" shall mean the Constitution of the Company, initially in the form attached hereto as Exhibit B and thereafter such Constitution as it may hereafter be amended from time to time in accordance with its terms.

2.25 The term "**Director**" shall have the meaning set forth in Article V of this Agreement.

2.26 The term "**Economic Interest**" shall mean the right to share in the allocation of one or more of the Company's allocable items, including, without limitation, Net Profits and Net Losses, and/or in distributions of the Company's assets, in each case pursuant to this Agreement or the LLC Act, but shall not include any Management Interest.

2.27 The term "**Exchange**" shall mean the ISE LLC and shall have the same meaning as the "Company" as set forth in this Agreement.

2.28 The term "**Fiscal Year**" shall mean the Company's accounting, tax and fiscal year, which shall be the calendar year.

2.29 The term "**Fiscal Quarter**" shall mean one quarter of the Company's Fiscal Year.

2.30 The term "**Indemnitee**" shall mean a Director, officer, agent or employee of the Company who may be indemnified by the Company as set forth in Article XI of this Agreement and Article X of the Constitution.

2.31 The term "**Interest**" shall mean any of an Economic Interest, Management Interest and/or Membership Interest.

2.32 The term "**LLC Act**" shall mean the New York Limited Liability Company Law, as amended from time to time.

2.33 The term "**Management Interest**" of a Member shall mean such Member's right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the LLC Act.

2.34 The term "**Member**" shall mean a Class A Member, Class B Member or Class C Member.

2.35 The term "**Member Nonrecourse Debt**" shall mean nonrecourse debt of the Company under Treas. Reg. Section 1.704-2(b)(4).

2.36 The term "**Negative Capital Account**" shall mean a Capital Account with a balance less than zero and, where the context requires, the negative balance thereof, in each case as of the end of a Fiscal Year, after giving effect to the following:

(a) a credit for any amount required to be restored under Treas. Reg. Section 1.704-1(b)(2)(ii)(c), as well as any amounts in addition thereto pursuant to Treas. Reg. Sections 1.704-2(g)(1) and (i)(5), after taking into account any changes during such Fiscal Year in Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and

(b) a debit of the items described in Treas. Reg. Sections 1.704-l(b)(2)(ii)(d)(4), (5) and (6).

2.37 The terms "**Net Profits**" and "**Net Losses**" shall mean, for each Fiscal Year (or other period for which they are determined), the income and gain, and the losses, deductions and credits of the Company, respectively, in the aggregate or separately stated, as appropriate, determined

in accordance with generally accepted accounting principles consistently applied, but not including any items that are specially allocated pursuant to Section 4.4 of this Agreement.

2.38 The term "**officer**" shall have the meaning set forth in Article VIII of this Agreement.

2.39 The term "**person**" shall mean any individual, partnership, limited liability company, corporation, joint venture, trust, association or any other entity, domestic or foreign, and its respective heirs, executors, administrators, legal representatives, successors and assigns where the context of this Agreement so permits.

2.40 The term "**Rules**" shall mean the rules of the Exchange, as amended from time to time.

2.41 The term "**Transfer**" shall mean any sale, assignment, transfer, gift, exchange, bequest or other disposition of an Interest, in any manner, voluntary or involuntary, by operation of law or otherwise.

2.42 The term "**Transferee**" shall mean the person to whom a Member Transfers, or proposes to Transfer, an Interest.

2.43 The term "**Transferor**" shall mean any Member which Transfers, or proposes to Transfer, an Interest.

2.44 The term "**Treasury Regulations**" or "**Treas. Reg**." shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.

ARTICLE III
CAPITAL CONTRIBUTIONS
AND CAPITAL ACCOUNTS

3.1 **Initial Capital Contributions; Additional Capital Contributions**. The Company is authorized to accept a Capital Contribution in respect of each of ten (10) Class A Membership Units and Capital Contributions in respect of each of one hundred (100) Class B Membership Units, and as the Board may otherwise determine.

3.2 **Number of Members; Additional Members**.

(a) Initially there shall be ten (10) Class A Membership Units, one hundred (100) Class B Membership Units and an unlimited number of Class C Membership Units.

(b) The maximum numbers of Class A Membership Units, Class B Membership Units or Class C Membership Units may be changed only with the approval of the Members.

3.3 **Capital Accounts**.

(a) The Company shall establish and maintain a Capital Account for each Class A and each Class B Member. The Company shall not establish Capital Accounts for Class C Members.

(b) The Capital Accounts of each Member shall be increased by the amount of the income and gain allocated to such Member, and shall be decreased by any losses and deductions allocated, or distributions made, to such Member pursuant to the terms of this Agreement. It is the intention of the Members that Capital Accounts be maintained strictly in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv).

(c) Notwithstanding anything contained herein to the contrary, the manner in which Capital Accounts are maintained shall be modified, if necessary, in the opinion of the Company's accountants, to comply with applicable law, provided that no such change shall materially alter the economic agreement between or among the Members.

(d) Except as otherwise required by the LLC Act or permitted under this Agreement, the Constitution or the Rules, no Member shall have any liability to restore all or any portion of any Negative Capital Account.

(e) No Member shall be paid interest on the balance of its Capital Account, unless otherwise determined by the Board.

3.4 **Adjustments to Capital Accounts**.

(a) The Board may, in its discretion, adjust the Capital Accounts to reflect a revaluation of the Company's assets upon the occurrence of any of the following events:

(i) a Capital Contribution by a new or existing Member as consideration for the issuance of an Interest;

(ii) the distribution of cash or other property by the Company to a retiring or continuing Member as consideration for the repurchase or redemption of an Interest; or

(iii) events described in Treas. Reg. Section 1.704-1(b)(2)(iv)(f).

(b) Any adjustment pursuant to Section 3.4(a) of this Agreement shall be based on the fair market value of Company property on the date of adjustment, and shall reflect the manner in which the unrealized income, gain, loss or deduction inherent in the property, not previously reflected in Capital Accounts, would be allocated among the Members if there were a taxable disposition of the property for fair market value on that date.

(c) If the book value of a Company asset differs from the adjusted tax basis of that asset, the Capital Accounts shall be adjusted in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(g) for allocations of depreciation, depletion, amortization and gain or loss computed for book purposes rather than tax purposes.

(d) If there is any basis adjustment pursuant to an election under Code Section 754, the Capital Accounts shall be adjusted to the extent required by Treas. Reg. Section 1.704-1(b)(2)(iv)(m).

3.5 **Return of Capital Contributions**. Except as otherwise provided in this Agreement, no Member shall have any right to demand or receive (a) any cash or property of the Company in return of its Capital Contribution or in respect of its Interest until the dissolution of the Company or (b) any distribution from the Company in any form other than cash.

3.6 **Transfer of Interest**. If an Interest is Transferred as permitted by this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent the Capital Account relates to the Transferred Interest in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(l).

ARTICLE IV
DISTRIBUTIONS AND ALLOCATIONS

4.1 **Distributions**. Class A Members and Class B Members will be entitled to receive distributions, if any, approved by the Board; Class C Members shall not be entitled to receive any distributions from the Company. Except as otherwise required by law or as provided in this Agreement, all distributions approved by the Board shall be allocated fifty percent (50%) to the Class A Members as a class, and fifty percent (50%) to the Class B Members as a class. The distributions allocated to the Class A Members shall be distributed to those Class A Members in accordance with their respective Class A Member Capital Interests, and the distributions allocated to the Class B Members shall be distributed to those Class B Members in accordance with their respective Class B Member Capital Interests; provided, however, that mandatory distributions shall be made to the extent of Cash Available for Distributions and in proportion to such respective Capital Interests, as determined from time to time by the Board, to each Class A Member and Class B Member in amounts sufficient to allow them to pay federal, state and local income taxes (determined at the highest applicable marginal tax rates applicable to single persons) on the income of the Company deemed to be taxable income of the Members under Section 702 of the Code.

4.2 **Limitation on Distributions**. No distribution shall be declared and paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.

4.3 **Allocations of Net Profits and Net Losses.** Taxable income or loss and all items thereof shall be allocated among the Member in accordance with Section 704 of the Code and Treasury Regulations thereunder as determined by the Company's accountants.

4.4 **Distributions In Kind**. All distributions of Company property in kind shall be valued at their fair market value as of the date of distribution, and the amount of any gain or loss that would be realized by the Company if it were to sell such property at such fair market value shall be allocated to the Members in accordance with Section 4.3 of this Agreement.

4.5 **Tax Returns and Other Elections**. The Board shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all applicable laws of each jurisdiction in which the Company does business. Copies of all such returns, or summaries thereof, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Board, in its sole discretion.

4.6 **Transfers of Interest**. If an Interest is Transferred during the Fiscal Year as permitted by this Agreement,

(a) Net Profits and Net Losses allocable to such Interest shall be proportioned between the Transferor and Transferee as of the date of Transfer of the Interest on the last day of the Fiscal Quarter in which the Transfer occurred, and the portion of Net Profits and Net Losses allocated to the Transferor shall be determined by multiplying the Net Profits and Net Losses allocable to such Interest by a fraction, the numerator of which is the number of calendar days the Transferor owned the Interest (not including the day the Transfer

was effected) and the denominator of which is the total number of calendar days in the Fiscal Quarter, and the portion of Net Profits and Net Losses allocated to the Transferee shall be the remainder of the Net Profits and Net Losses; and

(b) tax credits, if any, shall be allocated among the Interest holders as determined at the time the property with respect to which the credit is claimed is placed in service.

ARTICLE V
BOARD OF DIRECTORS

5.1 **Number; Management and Authority**. The Company shall have one or more managers as prescribed in Exhibit A to this Agreement and in the Constitution, which manager or managers shall be referred to herein and in the Constitution and the Rules individually as a "Director" and collectively as the "Board of Directors" or the "Board." The Board of Directors shall have the powers and duties provided in Article IV of the Constitution.

5.2 **Election and Tenure of Directors**. Each Director shall be elected in the manner, and shall serve for a term, as provided under Article IV of the Constitution.

5.3 **Resignation or Removal**. A Director may resign or be removed in accordance with Article IV of the Constitution.

5.4 **Meetings of Board**. Meetings of the Board shall be conducted as provided under Article IV of the Constitution.

5.5 **Vacancies**. A vacancy on the Board may be filled in accordance with the requirements set forth in Article IV of the Constitution.

5.6 **Limitation of Liability**. Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable law from time to time, the Directors shall not have any liability to the Company or any Member by reason of being or having been a Director or for any breach of their duties in such capacity, as provided in Article X of the Constitution. This Section 5.6 shall not affect the Directors' liability:

(a) if an adverse judgment or other final adjudication establishes that (i) his acts or omissions were in bad faith or involved intentional misconduct, (ii) he gained financial or other advantages to which he was not entitled, or (iii) he did not perform his duties as required under the LLC Act with respect to a distribution made in violation of the LLC Act; or

(b) for any act or omission prior to the adoption of this Section 5.6.

5.7 **Reliance on Information**. In performing their duties, the Directors shall be entitled to rely on information, opinions, reports or statements, including financial statements, in each case prepared or presented by:

(a) one or more agents or employees of the Company; or

(b) counsel, public accountants or other persons, as to matters that the Board believes to be within their respective professional or expert competence.

5.8 **No Exclusive Duty**. The Directors may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Directors or in any income or revenues derived therefrom.

5.9 **Execution of Documents**.

(a) Except as otherwise determined by the Board or the Members or as set forth herein or in the LLC Act, any document or instrument may be executed and delivered on behalf of the Company by any Director, including, without limitation, any deed, mortgage, note or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at any time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and, subject to the authorization requirements set forth herein or in the LLC Act, no other signature shall be required for any such instrument to bind the Company.

(b) Any third person dealing with the Company, the Board or the Members may rely upon a certificate signed by the Board as to (i) the identity of the Members or the Board, (ii) acts by the Members or the Board, (iii) any act or failure to act by the Company, or (iv) any other matter involving the Company or any Director.

5.10 **Powers of the Board in Bankruptcy**. Subject to any limitations on the powers of the Board that may be contained in the Constitution, the Board shall have the power and authority, on behalf of the Company and any Controlled Subsidiary, to:

(a) represent the Company or a Controlled Subsidiary in any Bankruptcy or insolvency proceedings to which it is a party, in whatever capacity;

(b) determine whether the Company or a Controlled Subsidiary shall file any petition under the United States Bankruptcy Code or other applicable insolvency law; and

(c) execute and deliver, in the name of the Company or otherwise, any and all documents and instruments, including, without limitation, petitions and requests for relief, necessary or desirable in connection with actions under Section 5.10(a) or (b) of this Agreement, as determined by the Board.

5.11 **Compensation and Expenses**. The compensation of the Directors shall be fixed from time to time by the Board.

5.12 **Delegation to Agents and Officers**. In addition to those duties that any officers of the Company may be prescribed to have under the Constitution, the Board may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as the Board may from time to time designate. Such officers, agents, consultants and employees need not be Members or Directors, and shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Board, and may be removed at any time, with or without cause, by the Board.

5.13 **Other Duties of the Board**. In addition to its other duties set forth herein and in the Constitution, the Board:

(a) shall determine, from time to time, the method of accounting and the independent accountants for the Company;

(b) may make, on behalf of the Company, the election permitted by Code Section 754 with respect to adjustments to the basis of the Company property; and

(c) shall, promptly following receipt thereof, give notice to the Members of any proposed audit or adjustment of any Company tax return.

ARTICLE VI
MEMBERS

6.1 **Rights of Members**. (a) Each Class of Members shall have such voting rights and powers as may be provided in the Constitution.

6.2 **Meetings of Members**. Meetings of Members shall be conducted as provided under Article III of the Constitution.

6.3 **Qualifications**. Each of the Members shall satisfy such requirements for Membership as may be specified in the Constitution or the Rules.

6.4 **Liability for Wrongful Distributions**. A Member who receives a distribution from the Company which the Member knows to be in violation of this Agreement or the LLC Act shall be liable to the Company for the amount of such distribution for a period of three years after it was made.

6.5 **No Preemptive Rights**. No Member shall have any preemptive, preferential or other right with respect to (a) making additional Capital Contributions, (b) the issuance or sale of Interests by the Company, (c) the issuance of any obligations, evidences of indebtedness or securities of the Company convertible into, exchangeable for, or accompanied by, any rights to receive, purchase or subscribe to, any Interests, (d) the issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing, or (e) the issuance or sale of any other interests or securities by the Company.

ARTICLE VII
COMMITTEES

The Board may designate such Committees of the Board, and such Committees shall have such powers and consist of such persons, or shall consist of persons selected in such manner, as may be prescribed under Article VI of the Constitution.

ARTICLE VIII
OFFICERS

8.1 **General**. The Company shall have such officers, and such officers shall have such duties, powers, responsibilities and authority, as may be provided in Exhibit A to this Agreement and in Article V of the Constitution.

8.2 **Appointment, Removal and Resignation**. Officers shall be appointed and removed, and may resign, as provided under Article V of the Constitution.

ARTICLE IX
TRANSFERABILITY AND WITHDRAWAL OF MEMBERSHIPS

9.1 **Transferability**. A Member may offer for sale and Transfer all or any portion of, or any rights in, its Interest, as provided under Article II of the Constitution, provided that the Transfer will not result in the termination of the Company pursuant to Code Section 708.

9.2 **Withdrawal**. A Member, other than a Class C Member, shall have no right or power to surrender such Member's Interest voluntarily or otherwise take, or permit to be taken, any action to such effect, and a Class C Member shall have no right to payment of any amounts upon withdrawal.

ARTICLE X
DISSOLUTION AND TERMINATION

10.1 **Events Causing Dissolution and Winding-up**. The Company shall be dissolved and wound up upon the first to occur of the following events:

(a) the approval of such action by the Members;

(b) the sale or other disposition of all or substantially all of the business or assets of the Company;

(c) the expiration of the term of the Company; or

(d) the entry of a decree of judicial dissolution under Section 702 of the LLC Act.

10.2 **Winding up of the Company**.

(a) If the Company is to be dissolved in accordance with Section 10.1 of this Agreement, then the Board shall wind up the affairs of the Company, including by selling or otherwise liquidating the Company assets in a bona fide sale or sales to third persons at such prices and upon such terms as they may determine. If the Board determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind.

(b) The proceeds of any liquidation of the Company shall be distributed in the following order of priority (to the extent that such order of priority is consistent with the laws of the State of New York):

(i) first, to the payment of the debts and liabilities of the Company and the expenses of dissolution and liquidation;

(ii) then, to the establishment of any reserves which the Board shall deem reasonably necessary for payment of such other debts and liabilities of the Company (contingent or otherwise), as are specified by the Board, such reserves to be held in escrow by a bank or trust company selected by the Board, and, to be disbursed as directed by the Board in payment of any of the specified debts and liabilities or, at the expiration of such period as the Board may deem advisable, to be distributed in the manner hereinafter provided; and

(iii) then, to the Members as set forth in Article IV of this Agreement.

(c) Notwithstanding anything contained herein to the contrary, no Member shall be entitled to receive, upon liquidation, distributions in excess of the positive balance of

such Member's Capital Account, except to the extent all Members receive such distributions in proportion to their respective Capital Interests.

(d) If any assets are distributed in kind, they shall be distributed on the basis of the fair market value thereof, and shall be deemed to have been sold at fair market value for purposes of the allocations under Article IV of this Agreement.

(e) If the Company is liquidated under Treas. Reg. Section 1.704-1(b)(2)(ii)(G), the liquidating distribution shall be made by the later of (i) the end of the Fiscal Year in which liquidation occurs, or (ii) ninety (90) days after the date of liquidation.

(f) The Company shall terminate when all assets of the Company have been sold and/or distributed and all affairs of the Company have been wound up.

10.3 **Articles of Dissolution**. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time when there are no Members, Articles of Dissolution shall be prepared, executed and filed in accordance with the LLC Act.

ARTICLE XI
INDEMNIFICATION

11.1 **Indemnification**. The Company shall indemnify and hold harmless such persons provided for under Article X of the Constitution against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages (collectively, "Losses") paid or incurred by any such person in connection with the conduct of the Company's business.

11.2 **Source of Payment**. Notwithstanding anything contained in this Agreement or the Constitution to the contrary, any amount to which an Indemnitee may be entitled under this Article XI shall be paid only out of the assets of the Company and any insurance proceeds available to the Company for such purposes. No Member shall be personally liable for any amount payable pursuant to this Article XI, or to make any Capital Contribution, return any distribution made to it by the Company, or restore any Negative Capital Account balance to enable the company to make any such payment.

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 **Notices**. Except as otherwise set forth herein, any notice, demand or communication required or permitted to be given under this Agreement shall be (a) in writing, (b) delivered by hand, nationally recognized overnight courier service, facsimile or registered or certified mail, postage prepaid, addressed to a party at its mailing address or facsimile number set forth in the books and records of the Company, and (c) deemed to have been given on the date delivered by hand

or sent by facsimile, one business day after deposit with such courier service, and three business days after being deposited in the United States mail.

12.2 **Books of Accounts and Records**.

(a) At the expense of the Company, the Board shall maintain at the Company's principal place of business, records and accounts of all operations and expenditures of the Company, including, without limitation, the following records:

(i) a current list in alphabetical order of the name and mailing address of each Member, Director, and officer, their respective facsimile numbers and, with respect to the Members, their respective shares of Net Profits and Net Losses, or information from which such shares can be derived;

(ii) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any such amendment has been executed;

(iii) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent Fiscal Years;

(iv) copies of this Agreement, the Constitution and the Rules, as in effect from time to time;

(v) any writings or other information with respect to each Member's obligation to contribute cash, property or services to the Company, including, without limitation, the amount of cash so contributed and a description and statement of the agreed-upon fair market value of property or services so contributed or to be contributed;

(vi) any financial statements of the Company for the three most recent Fiscal Years;

(vii) minutes of every annual, special and court-ordered meeting of the Members; and

(viii) any written consents obtained from the Members or Directors for actions taken by Members or Directors without a meeting.

(b) Upon reasonable advance notice, during normal business hours, any Member or its representatives may, at its expense, inspect and copy the records described in Section 12.2(a) for any purpose reasonably related to such person's Membership Interest.

12.3 **Arbitration**. This Agreement, and the application or interpretation hereof, shall be governed by and in accordance with the laws of the State of New York applicable to agreements made and fully to be performed therein, and specifically the LLC Act. Except as otherwise provided in this Agreement, any controversy between the parties arising out of this Agreement shall be arbitrated pursuant to the Constitution and the Rules.

12.4 **Amendment of Articles of Organization, Agreement and Constitution**. This Agreement and the Constitution may only be amended with the approval of the Board and the Members as provided in the Constitution.

12.5 **Execution of Additional Instruments**. Each Member hereby agrees to execute such other and further documents and instruments, including, without limitation, statements of their Interests and powers of attorney, as necessary to comply with applicable law or otherwise as reasonably requested by the Board.

12.6 **Construction**. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the neuter gender shall include the feminine and masculine genders and vice versa.

12.7 **Headings**. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

12.8 **Waivers; Rights and Remedies Cumulative**. The failure of any party to pursue any remedy for breach, or to insist upon the strict performance, of any covenant or condition contained in this Agreement shall not constitute a waiver of any such right with respect to any subsequent breach. Except as otherwise expressly set forth herein, rights and remedies under this Agreement are cumulative, and the pursuit of any one right or remedy by any party shall not preclude, or constitute a waiver of, the right to pursue any or all other remedies. All rights and remedies provided under this Agreement are in addition to any other rights the parties may have by law, in equity or otherwise.

12.9 **Severability**. If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.

12.10 **Successors and Assigns**. All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

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

12.12 **Investment Representations**. Each Member hereby represents and warrants to the Company and each other Member as follows:

(a) Such Member acknowledges that:

(i) the Interest owned by it has not been registered under the Securities Act of 1933, 15 U.S.C. §15b et seq., the New York State securities act or any other state securities laws (collectively, the "Securities Acts") because the Company is issuing (or a Member has Transferred) such Interest in reliance upon exemptions from the registration requirements contained in the Securities Acts for issuances not involving a public offering;

(ii) the Company (or the Transferor) has relied upon the fact that the Interest is to be held by such Member for investment purposes only, and not with a view to any resale or distribution thereof except as contemplated in the Constitution and Rules; and

(iii) the Company is under no obligation to register or qualify the Interest or to assist any Member in complying with any exemption from registration under the Securities Acts if such Member wishes to dispose of the Interest.

(b) Each Member is acquiring the Interest for such Member's own account, for investment purposes only, and not with a view to the resale or distribution thereof, except as contemplated in the Constitution and the Rules.

(c) Before acquiring the Interest, each Member investigated the Company and its business, and the Company made available to it all information necessary to make an informed decision to acquire the Interest.

12.13 **No Right to Petition for Dissolution**. The Members agree that irreparable harm would be done to the business and goodwill of the Company if any Member were to bring an action in Court under the LLC Act for the judicial dissolution of the Company. Accordingly, each Member, in his capacity as such, hereby irrevocably waives any such right to petition for dissolution of the Company under the LLC Act, and all similar rights under other applicable law, except to the extent such relief may be sought by the Company itself as authorized by the Members in accordance with this Agreement.

12.14 **No Third Party Beneficiaries**. The covenants, obligations and rights set forth in this Agreement are not intended to benefit any creditor of the Company or of any Member, or any other third person, and except as permitted by applicable law after the obligation to make an additional Capital Contribution has been fixed, or in connection with certain wrongful distributions, no such creditor or other third person shall, under any circumstances, have any right to compel any

actions or payments by the Board and/or the Members or shall, by reason of any provision contained herein, be entitled to make any claim in respect of any debt, liability, obligation or otherwise against the Company or any Member.

12.15 **Directors as Attorneys-in-Fact for Members**.

(a) Each Member hereby irrevocably constitutes and appoints, with full power of substitution, each Director, its true and lawful attorney-in-fact, with full power and authority in its name, place and stead, to execute, certify, acknowledge, deliver, file and record at the appropriate public offices:

(i) all certificates and other instruments, and any amendment thereto, which the Board deems appropriate to form, qualify or continue the business of the Company as a limited liability company;

(ii) any other instrument or document which may be required to be filed by the Company under the laws of any state, or which the Board deems advisable to file; and

(iii) any instrument or document, including amendments to this Agreement, which may be required to continue the business of the Company, admit a Member, or dissolve and liquidate the Company (provided that such continuation, admission or dissolution are in accordance with this Agreement), or to reflect any reductions in the amount of Members' capital.

(b) Each Member's appointment of the Directors as its attorneys-in-fact shall be deemed to be a power coupled with an interest and shall survive the incompetency, Bankruptcy or dissolution of the Member giving such power, except that, in the event of a Member's Transfer of an Interest in accordance with this Agreement, this power of attorney shall survive such Transfer only until such time, if any, as the Transferee shall have been admitted to the Company as a Member and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

12.16 **Entire Agreement**. By agreeing to be bound by this Agreement, each Member pledges to abide by the Constitution and the Rules. The Articles of Organization, this Agreement, the Constitution and the Rules embody the entire understanding and agreement between the Members concerning the subject matter hereof and thereof and supersede any and all prior negotiations, understandings or agreements with respect thereto. To the extent the LLC Act addresses a matter not otherwise addressed by this Agreement, the Constitution or the Rules, it is the intention of the Members that the provisions of the LLC Act shall apply, but no such application shall otherwise affect any provision of this Agreement, the Constitution or the Rules.

EXHIBIT A
ISE LLC OPERATING AGREEMENT

INTERIM MANAGEMENT PROVISIONS

1. **Managers**. Pursuant to Section 5.1 of the Operating Agreement, the Company shall have two Managers (the "Initial Directors") until such time as the Directors described in Article IV, Section 1(a) of the Constitution are elected at the Initial Election Meeting described in Article IV, Section 1(d) of the Constitution. The Managers shall be William A. Porter and David Krell. Each Manager shall have the authority to take any action which the Board would be authorized to take under the Operating Agreement and Constitution, without any requirement for meetings, notices thereof, quorums, adoption of resolutions or any other procedural requirements imposed under the Operating Agreement. The name of the Company shall be ISE, LLC until such time as a change of name is approved by the Managers of the Company.

2. **Officers**. Pursuant to Section 8.1 of the Operating Agreement, Mr. Porter shall serve as the Chairman of the Company and Mr. Krell shall serve as the President of the Company. Messrs. Porter and Krell shall manage the affairs of the Company and shall be the representatives of the Company in all public matters. Mr. Porter shall serve as the "tax matters partner" of the Company.

EXHIBIT B
ISE LLC OPERATING AGREEMENT

INTERNATIONAL SECURITIES EXCHANGE CONSTITUTION

INTERNATIONAL SECURITIES EXCHANGE

Constitution

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INTERNATIONAL SECURITIES EXCHANGE

Constitution

Article I

Definition of Terms

Section 1. When used in this Constitution, unless the context otherwise requires:

(a) The term "affiliate" of a person or "affiliated with" another person means a person who, directly or indirectly, controls, is controlled by, or is under common control with, another person.

(b) The term "Board" means the Board of Directors.

(c) The term "Class A Members" means Primary Market Maker Members.

(d) The term "Class B Members" means Competitive Market Maker Members.

(e) The term "Class C Members" means Electronic Access Members.

(f) The term "Clearing Member" means a Member that is self-clearing or an Electronic Access Member that clears Exchange Transactions for other Members of the Exchange.

(g) The term "control" means the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than twenty percent (20%) of the voting power in the election of directors of a corporation, or more than twenty-five percent (25%) of the voting power in the election of directors of any other corporation which directly, or through one or more affiliates, owns beneficially more than twenty-five percent (25%) of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.

(h) The term "Exchange" means the International Securities Exchange.

(i) The term "Exchange Act" means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as amended from time to time.

(j) The term "Exchange Transaction" means a transaction executed on or through the facilities of the Exchange.

(k) The term "good standing" means that a Member is not delinquent respecting Exchange dues, fees or other charges and is not suspended or barred from the Exchange or from association with a Member either by the Exchange or by means of a statutory disqualification.

(l) The term "industry representative" means a person who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as a person who has a consulting or employment relationship with or has provided professional services to the Exchange and a person who had any such relationship or provided any such services to the Exchange at any time within the prior three (3) years.

(m) The term "Founder" means a person or entity that purchased Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such Memberships.

(n) The term "Member" means a Class A, Class B or Class C Member and, unless the context indicates otherwise, shall include an individual Member or a Member Organization of the Exchange (or a registered nominee of a Member Organization) that is a Member in good standing.

(o) The term "Member Organization" means a corporation, partnership or limited liability company that is a Class A, Class B or Class C Member or for which a Membership is registered in accordance with Section 9 of Article II of this Constitution.

(p) The term "Membership" shall mean one (1) Class A, Class B or Class C Membership Unit, as those terms are defined in the Operating Agreement.

(q) The term "Membership Voting Rights" means the right of a Member to vote on all matters requiring a membership vote not designated as Ownership Voting Rights.

(r) The term "non-industry representative" means any person that would not be considered an "industry representative," as well as (i) a person affiliated with a broker or dealer that operates solely to assist the securities-related activities of the business of non-member affiliates, (ii) an employee of an entity that is affiliated with a broker or dealer that does not account for a material portion of the revenues of the consolidated entity, and who is primarily engaged in the business of the non-member entity.

(s) The "Operating Agreement" means the Operating Agreement among the Members of the Exchange pertaining to the rights and liabilities of each Member, of which this Constitution is a part.

(t) The term "Ownership Voting Rights" means the right of an owner of a Membership to vote on (i) any merger, consolidation or dissolution of the Exchange or any sale of all or substantially all of the assets of the Exchange, and (ii) any additional Classes of Memberships or any increase in the number of Memberships in any Class.

(u) The term "person associated with a Member" or an "associated person" means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Member, or any employee of such Member.

(v) The term "representative of the public" means a non-industry representative who has no material business relationship with a broker or dealer or the Exchange.

(w) The term "Rules" means the rules of the Exchange as adopted or amended from time to time.

(x) The "System" means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions.

ARTICLE II

Membership

Primary Market Maker Members

Section 1. (a) There shall be ten (10) Primary Market Maker Memberships.

(b) There shall be paid an annual Membership fee with respect to each Primary Market Maker Membership.

(c) Each Primary Market Maker Membership shall entitle a Member approved by the Exchange, during the period for which the annual Membership fee has been paid and while such Member remains in good standing, to enter quotations and orders into the Exchange's System for the Member's own account and perform other functions specified in the Rules to facilitate execution and handling of orders placed into the Exchange's System with respect to one (1) group of options classes allocated by the Exchange. Primary Market Makers shall also be permitted to effect proprietary transactions in other options classes traded on the Exchange pursuant to the Rules.

(d) Each Primary Market Maker Membership shall entitle a Member to the right to one (1) vote on matters requiring a vote of the Members as provided in this Constitution.

Competitive Market Maker Members

Section 2. (a) There shall be one hundred (100) Competitive Market Maker Memberships. However, the Exchange only may approve up to fifty (50) Competitive Market Maker Members to effect Exchange Transactions until authorized by the Board to approve additional Competitive Market Maker Members to effect Exchange Transactions. The Board may authorize the approval of additional Members at such time and in such numbers as it may determine.

(b) There shall be paid an annual Membership fee with respect to each Competitive Market Maker Membership.

(c) Each Competitive Market Maker Membership shall entitle a Member approved by the Exchange, during the period for which the annual Membership fee has been paid and while such Member remains in good standing, to enter quotations and orders into the Exchange's System for the Member's own account with respect to one (1) group of options classes allocated by the Exchange. Competitive Market Makers shall also be permitted to effect proprietary transactions in other options classes traded on the Exchange pursuant to the Rules.

(d) Each Competitive Market Maker Membership shall entitle a Member to the right to one (1) vote on matters requiring a vote of the Members as provided in this Constitution.

Electronic Access Members

Section 3. (a) There shall be an unlimited number of Electronic Access Memberships.

(b) Each Electronic Access Member shall pay an annual Membership fee that entitles such Member, during the period for which such fee has been paid and while such Member remains in good standing, to (i) enter orders into the Exchange's System, and/or (ii) clear Exchange Transactions for Exchange Members.

(c) Electronic Access Members shall not have a transferable interest in the Exchange and may withdraw from Membership upon the approval of the Exchange, which shall be given upon a determination that the Class C Member has satisfied all obligations to the Exchange and Members.

(d) Except as specifically provided otherwise by this Constitution or by law, Electronic Access Members shall not have the right to vote on any matters requiring a vote of the Members.

Lessee Members

Section 4. (a) A Class A or Class B Member in good standing may lease his or its Membership to a person or entity approved by the Exchange, subject to and in accordance with such Rules and procedures as may be adopted by the Board.

(b) During the term of such lease, for the purposes of this Constitution and the Rules, the lessee shall be considered to be, and the lessor shall not be considered to be, a Member of the Exchange, except as provided in (c) and (d) of this Section or otherwise specified in the Rules.

(c) Under the lease agreement, the lessor may retain the right to vote Membership Voting Rights or those rights may be passed to the lessee; provided, however, if the lessor is a Founder, the Membership Voting Rights shall pass to the lessee.

(d) The lessor shall not transfer to the lessee Ownership Voting Rights associated with the leased Membership.

(e) The lessor, and not the lessee, shall be entitled to receive, with respect to such Membership, any distribution of the assets of the Exchange.

Approval of Members

Section 5. To become a Member, or to be reinstated or readmitted as a Member, a person must be approved by the Exchange.

Eligibility for Members; Good Standing

Section 6. (a) Members shall be individuals, corporations, partnerships and limited liability companies, organized under the laws of a jurisdiction of the United States, or such other jurisdiction as the Board may approve, subject to their meeting the conditions of approval as stated in this Constitution and the Rules.

(b) Except as otherwise provided in this Constitution and the Rules, Members must have as the principal purpose of their Membership the conduct of a public securities business as defined in the Rules.

(c) The good standing of a Member may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or the Member violates any of its agreements with the Exchange or any of the provisions of the Constitution or the Rules.

(d) Unless a Member is in good standing, the Member shall have no rights or privileges of Membership except as otherwise provided by law, this Constitution or the Rules, shall not hold himself or itself out for any purpose as a Member, and shall not deal with the Exchange on any basis except as a non-Member.

Membership Agreement

Section 7. No person admitted to the Exchange as a Member shall be entitled to any privileges thereof until such Member has agreed to be bound by the Operating Agreement, Constitution and Rules by execution of a Membership Agreement. By such agreement such Member pledges to abide by the same as it has been or shall be from time to time amended.

Nominees of Member Organizations

Section 8. Every applicant for Membership as a Member Organization and every Member Organization shall, in accordance with the Rules, designate an individual nominee with respect to each Membership, who shall be authorized to represent the Organization in all matters relating to the Exchange.

Registration of Individual Memberships for Member Organizations

Section 9. (a) Every individual Member or applicant who is or intends to become an executive officer, director, principal shareholder or general partner of an organization engaged or proposed to engage in business as a broker or dealer on the Exchange may apply to register his Membership for such organization.

(b) Additional individual Members may register their Memberships for a Member Organization in accordance with the Rules. Such organization shall be subject to the same requirements for approval as if it were itself applying for Membership as a Member Organization, except that the individual Member so applying shall represent the Member Organization in lieu of a nominee.

(c) Registration of an individual Membership for an organization may be withdrawn by the Exchange for any reason that would justify withdrawal of the approval of either the individual or the organization for Membership.

Acquisition and Transfer of Memberships

Section 10. Memberships may be offered for sale and transferred by the owners thereof, or under certain circumstances by the Exchange, as provided in the Rules.

Concentration Limits

Section 11. (a) A Member, together with any person who directly or indirectly controls, is controlled by, or is under common control with the Member, may not own or lease more than twenty percent (20%) of any Class of Memberships. The Exchange may establish limitations that further limit the number of Class A and Class B Memberships that may be owned or leased by a Member.

(b) The Exchange shall establish limitations on the number of Memberships with respect to which a Member initially may be approved to effect Exchange Transactions based upon the number of Members in each Class that have been approved to effect Exchange Transactions.

(c) Founders shall have a temporary exemption, not to exceed ten (10) years, from the limitation contained in paragraph (a) of this Section.

ARTICLE III

Meetings of Members

Place of Meetings

Section 1. Each meeting of the Members shall be held at such a place as the Board may designate for the purpose of electing Directors and such other business as may be properly conducted at such a meeting.

Annual Election Meeting

Section 2. An annual election meeting of the Members shall be held on the second Thursday in the month of November of each year, and at such time as may be designated by the Board prior to the giving of notice of the meeting for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms.

Special Meetings

Section 3. Special meetings of the Members may be called by the Chairman of the Board or a majority of the Board for any purpose or purposes and shall be called if five (5) Members of a Class of Members or more than thirty percent (30%) of a Class of Members, whichever is greater, request such a meeting, unless otherwise prescribed by law, and shall be held at such times and places as the Board may designate.

Notice of Meetings

Section 4. (a) Unless otherwise provided by law, written notice of the time, place and purpose or purposes of each meeting of the Members shall be delivered to each Member entitled to vote at the meeting either personally or by telephone, facsimile, e-mail, or first class mail, at least ten (10) but not more than sixty (60) days before the date of the meeting.

(b) Notice of a meeting need not be given to any Member who, either before or after the meeting, executes a waiver of notice, or who attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened.

Proxies

Section 5. At all meetings of the Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the Board before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Quorum

Section 6. (a) Except as otherwise provided by the law or this Constitution, a majority of the Members of each Class entitled to vote on, or take action with respect to, a matter to be considered at the meeting, each present in person or represented by proxy, shall constitute a quorum for the transaction of business at such meeting with respect to that matter.

(b) The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Members whose absence would result in less than a quorum being present.

(c) In the absence of a quorum, a majority of Members present and entitled to vote thereat may adjourn any meeting from time to time for a period not to exceed sixty (60) days without further notice.

Voting by Members

Section 7. (a) Any action requiring the approval of the Members shall require the approval of the Class A Members and approval of the Class B Members, except as otherwise specified in this Constitution.

(b) Any action requiring the approval of a Class of Members shall require the affirmative vote of a majority of the Members of such Class present or represented by proxy at a meeting of the Members at which a quorum is present.

Action without Meeting

Section 8. (a) Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if Members holding voting interests sufficient to authorize such action at a meeting at which all Members entitled to vote thereon were present and voted consent thereto in writing.

(b) Action taken pursuant to this Section shall be effective when all necessary Members have signed a consent, unless the consent specifies a different effective date.

Participation in Meetings by Telephone

Section 9. Members may participate in a meeting by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Record Dates

Section 10. (a) For the purpose of determining Members entitled to notice of, or to vote at, any meeting of the Members, or the identity of Members for any other purpose, the date on which notice of the meeting is mailed, or on which the declaration of such distribution is adopted, as the case may be, shall be the record date for such determination.

(b) When a determination of Members entitled to vote at any meeting has been made as provided in this Section, the determination shall apply to any adjournment of the meeting.

(c) The record date for determining Members entitled to take action without a meeting pursuant to Section 8 of this Article III shall be the date the first Member signs a written consent.

Actions Requiring Approval of Members

Section 11. (a) The following require approval by the Members:

(i) any merger, consolidation or dissolution of the Exchange or any sale of all or substantially all of the assets of the Exchange;

(ii) any additional Classes of Memberships, or an increase in the number of Memberships in any Class; and

(iii) Any amendment to this Constitution or the Operating Agreement.

(b) Notwithstanding anything to the contrary, the Operating Agreement and this Constitution may not be amended without the approval of the Class C Members if such amendment would:

(i) impose an obligation on the Class C Members to make Capital Contributions to the Company;

(ii) allocate or distribute any type of income, gain, loss, deduction or credit with respect to the Class C Members;

(iii) specify any manner of computing distributions to the Class C Members;

(iv) alter the voting rights of the Class C Members; or

(v) change the number of Directors on the Board of Directors or the composition thereof.

Limitation on Voting Rights of Founders

Section 12. There shall be no Membership Voting Rights associated with Memberships owned by a Founder with respect to which the Founder has not been approved to effect Exchange Transactions or which have not been leased. Such Memberships shall not be deemed outstanding for purposes of any vote by the Members involving the exercise of Membership Voting Rights.

ARTICLE IV

Board of Directors

Number, Election and Tenure

Section 1. (a) The Board shall be composed of fifteen (15) Directors:

(1) Two (2) Directors shall be Class A Members or officers, directors or partners of Class A Members who are elected by a plurality of the Class A Members ("Class A Directors").

(2) Two (2) Directors shall be Class B Members or officers, directors or partners of Class B Members who are elected by a plurality of the Class B Members ("Class B Directors").

(3) Two (2) Directors shall be Class C Members or officers, directors or partners of Class C Members who are elected by a plurality of the Class C Members ("Class C Directors).

(4) Eight (8) Directors shall be non-industry representatives ("Non-Industry Directors"), at least two (2) of whom shall be representatives of the public ("Public Directors") who are elected as provided in paragraph (c) below.

(5) The President shall be a director by virtue of his office.

(b) *Tenure*. Except as provided in paragraph (e) below, Directors shall serve for a term of two (2) years. One half of each Class of Directors will be elected at each annual meeting of the Members. The President shall serve on the Board until removed. No Director, other than the President, who has been elected to three (3) consecutive terms shall be eligible for election as a director except after an interval of at least two (2) years.

(c) *Industry Directors.* No Member Organization shall have more than one (1) representative elected to the Board.

(d) *Election of Non-Industry Directors*. If an election is uncontested, the Non-Industry Directors shall be approved by the Class A Members, the Class B Members and the Class C Members voting by Class. If there are more candidates than the number of vacancies to be filled, Non-Industry Directors shall be elected by a plurality of the Members as follows:

(1) Each Member shall be entitled to one (1) vote for each vacancy to be filled in such election, which votes may be exercised for one or more candidates.

(2) Each vote exercised by Members of Classes with fewer Members than the largest Class of Members shall be weighted so that each Class of Members shall have equal voting power.

(e) *Initial Election Meeting*. An initial election meeting of the Members shall be held prior to the initiation of trading on the Exchange (the "Initial Election Meeting"). Members shall elect Directors pursuant to the following procedures:

(1) Members shall be given notice of the Initial Election Meeting pursuant to Article III, Section 4 of this Constitution.

(2) The Secretary shall receive nominations of persons for election to the Board from Members of the Class entitled to elect such person (as provided in paragraph (a) above) until the fifth business day prior to the Initial Election Meeting.

(3) Nominees for Director shall provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as a Class A, Class B, Class C, Non-Industry or Public Director.

(4) The Secretary shall determine whether a nominee for Director qualifies for classification as a Class A, Class B, Class C, Non-Industry or Public Representative.

(5) All qualified nominees shall be placed on the ballot for election by the Members as provided in paragraph (a) above.

(6) Of the Directors elected at the Initial Election Meeting, the Board shall randomly designate one (1) Class A Director, one (1) Class B Director, one (1) Class C Director and four (4) Non-Industry Directors (at least one (1) of which shall be a Public Director) who shall serve for an initial term of three (3) years.

Chairman of the Board

Section 2. The Chairman of the Board shall be appointed from among the Directors by the affirmative vote of at least two-thirds of the Directors then in office; provided that after [insert date two years after initiation of trading on the Exchange], the Chairman of the Board shall be appointed from among the Non-Industry Directors. The Chairman shall serve as such for a term of one (1) year. The Chairman shall have the authority provided in this Constitution and the Rules, but shall not be an officer of the Exchange.

Vice Chairman of the Board

Section 3. The Vice Chairman of the Board shall be appointed from among the Directors by the affirmative vote of at least two-thirds of the Directors then in office. The Vice Chairman of the Board shall serve as such for a term of one (1) year. The Vice Chairman of the Board shall have the authority provided in this Constitution and the Rules, but shall not be an officer of the Exchange.

Resignation or Removal of a Director

Section 4. (a) Any Director may resign at any time by giving notice thereof to the Chairman of the Board or the Secretary. Such resignation shall be effective as of the date of such notice or on such other date as may be specified in such notice. The resignation of a Director shall not affect his rights as a Member.

(b) The Board, by vote of two-thirds of the Directors then in office, shall have the power to remove any Director if he shall cease to satisfy the qualifications for the Class of Directors to which he was elected or in the event that he refuses, fails, neglects or is unable to discharge his duties or for any cause affecting the best interests of the Exchange.

Filling Vacancies

Section 5. (a) If a Director position becomes vacant, the Nominating Committee shall nominate, and the Board shall elect by majority vote of the remaining Directors then in office, a person satisfying the qualifications for the Class of Directors in which there is a vacancy, except that if the remaining term of office for the vacant Director position is not more than six (6) months, no replacement shall be required.

(b) In the case of the absence or inability to act of the Chairman of the Board, or a vacancy in the office of the Chairman of the Board, the Vice Chairman of the Board shall exercise the powers and discharge the duties of the Chairman of the Board. In the absence or inability to act of both the Chairman and the Vice Chairman, the Board may designate an Acting Chairman of the Board. In the absence of such a designation by the Board, the President, or in his absence or inability to act, the senior available Vice President shall assume all the functions and discharge all of the duties of the Chairman of the Board.

Powers of the Board

Section 6. (a) The Board shall be the governing body of the Exchange and shall be vested with all powers necessary for the management of the business and affairs of the Exchange and for the promotion of its welfare, objects and purposes.

(b) The Board shall regulate the business conduct of Members and may exercise all such powers of the Exchange and take all such lawful actions that are not by law, this Constitution or the Rules directed or required to be exercised or done by Members.

(c) In the exercise of its powers, the Board may organize such subsidiaries, impose such fees and charges, adopt or amend such Rules, issue such orders and directions and make such decisions as it deems necessary or appropriate.

(d) The Board may prescribe and impose penalties for violations of the Constitution or Rules, for neglect or refusal to comply with orders, directions or decisions of the Board, or for any other offenses against the Exchange.

Meetings of the Board.

Section 7. (a) Each meeting of the Board shall be held at such times and places as the Board may designate for the purpose of conducting such business as may be properly conducted at such a meeting.

(b) A special meeting of the Board may be called by the Chairman of the Board, or by the Secretary if one (1) Class A Director and one (1) Class B Director shall request such a meeting, or if a majority of the Non-Industry Directors shall request such a meeting, and shall be held at such times and places as the Secretary may designate.

(c) Notice of each meeting of the Board shall state the date, time and place thereof, but need not state the purpose thereof except as may be otherwise required by law, and shall be delivered to each Director orally, by e-mail, mail or any other means, at least one (1) hour before the time of the meeting.

Quorum

Section 8. (a) At all meetings of the Board, unless otherwise set forth in this Constitution or required by law, a quorum for the transaction of business shall consist of a majority of the Board, including no less than fifty percent (50%) of the Non-Industry Directors.

(b) The requirement that no less than fifty percent (50%) of the Non-Industry Directors be present to constitute a quorum shall be deemed satisfied if at least fifty percent (50%) of the Non-Industry Directors are (i) present at or (ii) have waived their attendance for a meeting after receiving an agenda prior to such meeting.

(c) When a quorum is present at a meeting of the Board, a majority of Directors shall have the power to decide any question that may come before such meeting except as otherwise provided by law or this Constitution.

(d) In the absence of a quorum, a majority of Directors at any meeting shall have the power to adjourn the meeting. If after such adjournment, a quorum becomes present, the meeting may be called to order and any business that might have been transacted at the meeting as originally noticed may be transacted.

(e) The Directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Directors whose absence would result in less than a quorum being present.

(f) Except as otherwise expressly required by law or this Constitution, if a quorum is present, the affirmative vote of a majority of the Directors present and entitled to vote on, or take action with respect to, any matter shall be the act of the Board.

Participation in Meetings by Telephone

Section 9. Directors may participate in a meeting by conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Action without Meeting

Section 10. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote, if those Directors whose approval would be required if all Directors were present at a meeting consent thereto in writing, and such consents are filed with the minutes of proceedings of the Board.

Interested Directors

Section 11. (a) No Director shall directly or indirectly participate as a member of the Board of Directors or of any committee in any matter which would substantially affect his interest or the interests of any person in whom he is directly or indirectly interested, although interested Directors may be counted in determining the presence of a quorum at the meeting of the Board or of a committee which authorizes actions with respect to such matter.

(b) An interested Director shall disqualify himself or shall be disqualified by a vote of the Board of Directors or the chairman of any committee.

(c) For purposes of this Section, a Director is not personally interested by reason of being or having been a Member of a committee which has made prior inquiry, examination or investigation of the subject under consideration, nor in the determination of matters that may affect the Members as a whole or certain classes of Members, and Class A, B and C Directors shall not be prohibited from participating in such determination in the normal course of conducting Exchange business.

Delegation to Agents and Officers

Section 12. The Board may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as the Board may from time to time designate. Such officers, agents, consultants and employees need not be Members or Directors, and shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Board, and may be removed at any time, with or without cause, by the Board.

ARTICLE V

Officers

Titles

Section 1. The Exchange shall have a President, one or more Vice Presidents, a Treasurer, a Secretary and any other officers as may be appointed by the President.

Qualification

Section 2. Officers of the Exchange shall not be Members of the Exchange nor affiliated with a Member or Member Organization. If an officer of the Exchange owns one or more Memberships he must (i) abstain from exercising any voting rights associated with such Membership(s), and (ii) lease such Membership(s) consistent with the requirements of Rule 300(a)(3) and (5). The terms of any lease of a Membership by an officer must be reasonable and approved by a majority of the Non-Industry Directors. Except in the case where more than one (1) officer is also a Founder, the Exchange shall permit only one (1) officer to be an owner of one or more Memberships.

President

Section 3. (a) The President shall be appointed by the Board, shall be a Director by virtue of his office and an ex-officio member, without the right to vote, of all committees, without prejudice to his being specifically appointed as a voting member of any committee.

(b) The President shall serve as the Chief Executive Officer of the Exchange, shall manage the affairs of the Exchange and shall be the representative of the Exchange in all public matters.

(c) The President shall not engage in any other occupation during his incumbency except with the approval of the Board.

(d) The President may be removed by a vote of two-thirds of the Directors then in office, exclusive of the President, in the event that he refuses, fails, neglects or is unable to discharge his/her duties or for any cause affecting the best interests of the Exchange.

(e) In the case of temporary absence or inability to act, the President may designate any other officer to assume all the functions and discharge all the duties of the President. Upon his failure to do so, or if the office of President is vacant, any officer appointed by the Board shall perform the functions and duties of the President.

Appointment of Vice Presidents, Secretary and Treasurer

Section 4. (a) The President shall appoint, with the approval of the Board, one or more Vice Presidents, a Secretary and a Treasurer, and shall have the authority to remove any officer so appointed with or without cause and shall remove an officer if so directed by the Board. Except as provided otherwise in this Article, Vice Presidents, the Secretary and the Treasurer shall serve for the tenure prescribed by the President with the approval of the Board.

(b) Officers appointed by the President may be lessors of one or more Memberships, but shall not be Members of the Exchange, as defined in the Rules, nor affiliated with a Member or Member Organization.

Vice Presidents

Section 5. Any Vice President shall have such duties as may be prescribed by the President.

Secretary

Section 6. The Secretary shall attend all meetings of the Board and all meetings of the Members and shall keep official records of all proceedings thereof. The Secretary shall give notices of meetings of the Board and meetings of the Members in accordance with the provisions of this Constitution and the Rules. The Secretary shall determine whether a nominee for Director or prospective committee member qualifies for classification as a Class A, Class B, Class C, non-industry or public representative, and shall be responsible for reviewing the qualifications of such representatives at least annually. The Secretary shall also perform such other duties as may be prescribed by the President.

Treasurer

Section 7. The Treasurer shall have responsibility for the financial affairs of the Exchange and shall maintain appropriate books and records of the financial affairs of the Exchange. The Treasurer shall deposit all monies and other assets in accounts in the name of the Exchange, and disburse funds in accordance with the Rules or as otherwise directed by the Board. The Treasurer shall have such other duties as may be prescribed by the President.

Resignation of Officers

Section 8. Any officer may resign by giving notice thereof to the Chairman of the Board, President or Secretary, or to any Officer to whom he reports. Such resignation shall be effective as of the date of such notice or on such other date as may be specified in such notice.

ARTICLE VI

Committees

Designation of Committees

Section 1. (a) The Board may appoint such committees or subcommittees as it deems necessary or desirable, and may fix their compositional requirements, powers, duties, and terms of office. Any committee or subcommittee consisting solely of one or more Directors, to the extent provided in this Constitution or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the Exchange.

(b) A committee or subcommittee may consist of industry and non-industry representatives that are not Directors. Such committee members may be appointed by the Board or the Board may delegate such authority. Each prospective committee member who is not a Director shall, upon request, provide the Secretary such information as is reasonably necessary to serve as the basis for a determination as to his classification as a Class A, Class B, Class C, non-industry or public representative.

(c) A member of a committee or subcommittee appointed by the Board may be removed from such committee or subcommittee only by the Board for refusal, neglect, or inability to discharge such committee member's duties.

Executive Committee

Section 2. (a) The Executive Committee shall consist of six (6) Directors, including the Chairman of the Board, the Vice Chairman of the Board and the President. At least three (3) of the members of the Executive Committee shall be Non-Industry Directors, at least one (1) of whom must be a Public Director.

(b) The Chairman of the Executive Committee shall be the President of the Exchange.

(c) The Executive Committee shall have and may exercise all the powers and authority of the Board except that the Executive Committee shall not have the powers of the Board with respect to approving any merger, consolidation, sale of substantially all of the assets or dissolution of the Company.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least one (1) of the non-industry committee members. The requirement that at least one (1) of the non-industry committee members be present to constitute a quorum shall be deemed satisfied if all of the non-industry committee members have waived their attendance for a meeting after receiving an agenda prior to such meeting.

(e) When a quorum is present at a meeting of the Executive Committee, a majority of such Committee members shall have the power to decide any question that may come before such meeting.

Nominating Committee

Section 3. (a) The Nominating Committee shall be composed of one (1) Class A representative, one (1) Class B representative, one (1) Class C representative and three (3) non-industry representatives, at least one (1) of whom must be a public representative. No officer or employee of the Exchange shall serve on the Nominating Committee.

(b) A member of the Nominating Committee may not simultaneously serve on the Board, unless such member is in the final year of his term as Director and does not stand for reelection to the Board until such time as he is no longer a member of the Nominating Committee.

(c) The Nominating Committee shall nominate persons for election to the Board of Directors by the Members during the annual election meeting pursuant to the following:

(i) During September of each year, the Nominating Committee shall hold at least two (2) meetings, at least one (1) of which is open to Members, for the purpose of selecting not less than one (1) nominee for each expiring term and vacancy on the Board of Directors.

(ii) The Nominating Committee will accept nominations for an expiring term or vacancy of a Class A, Class B or Class C Director from Members of the Class entitled to elect such person, and, with respect to Non-Industry Directors, all Members of the Exchange.

(iii) In the event any nominee named by the Nominating Committee withdraws or becomes ineligible, the Nominating Committee may select an additional nominee to replace the withdrawn or ineligible nominee.

(d) Nominees for Director shall provide the Secretary such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as a Class A, Class B, Class C, Non-Industry or Public Director.

(e) In addition to the nominees named by the Nominating Committee, persons may be nominated for election to the Board by a petition, signed by not less than five percent (5%) of the Memberships of the Class entitled to elect such person if there are more than eighty (80) Memberships in the Class eligible to vote, ten percent (10%) if there are forty (40) to eighty (80) Memberships in the Class eligible to vote, and twenty-five percent (25%) if there are fewer than fifty (50) Memberships in the Class eligible to vote. Such petition must be filed with the Secretary no later than 5:00 p.m. (EST) on October 15, or the first business day thereafter in the event October 15 is a holiday or weekend.

(f) At all meetings, a quorum for the transaction of business shall consist of a majority of the members of the Nominating Committee, including at least one (1) non-industry committee member. The requirement that at least one (1) of the non-industry committee members be present to constitute a quorum shall be deemed satisfied if all of the non-industry committee members have waived their attendance for a meeting after receiving an agenda prior to such meeting. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(g) The Exchange shall immediately notify Members of the names of nominees and replacement nominees.

Audit Committee

Section 4. (a) The Board shall appoint an Audit Committee consisting of three (3) to five (5) Directors, none of whom shall be officers or employees of the Exchange. Each member of the Audit Committee shall be a Non-Industry Director, and at least one (1) of the Non-Industry Directors shall be a Public Director who shall serve as Chair of the Audit Committee. Members of the Audit Committee shall serve for one (1) year terms.

(b) The Audit Committee shall annually recommend to the Board of Directors independent public accountants for appointment as auditors of the books, records and accounts of the Exchange. The Audit Committee shall have the responsibility to annually review with the independent auditors the scope of their examination and the cost thereof. The Audit Committee shall review the annual "management letter" and other reports submitted by the independent auditors and take such action with respect thereto as it may deem appropriate. It also shall periodically review with the independent auditors and the internal auditor the Exchange's internal controls and the adequacy of the internal audit program.

(c) At all meetings of the Audit Committee, a quorum for the transaction of business shall consist of a majority of the Audit Committee. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

Conduct of Proceedings

Section 5. Except as otherwise provided in the Constitution, the Rules or by resolution of the Board, each committee may determine the manner in which its proceedings shall be conducted. Committees shall keep minutes of their meetings and periodically report their proceedings to the Board.

ARTICLE VII

Regulation

Rulemaking

Section 1. The Board may, by the affirmative vote of a majority of the entire Board, which must include the affirmative vote of at least one (1) Class A and at least one (1) Class B Director, adopt, amend or repeal such Rules as it may deem necessary or proper, including, but not limited to, Rules with respect to:

(a) The trading of contracts on the Exchange;

(b) The access of Members to and the conduct of Members with the Exchange System and their use of System facilities;

(c) Insolvency of Members and Member Organizations;

(d) The formation of Member Organizations, the continuance thereof and the interest of Members;

(e) The partners, officers, directors, stockholders and employees of Members and Member Organizations;

(f) The officers of Members and Member Organizations;

(g) The business conduct of Members and Member Organizations;

(h) The business connections of Members and Member Organizations, and their association with or domination by or over corporations or other persons engaged in the securities business;

(i) Capital requirements for Members and Member Organizations;

(j) The procedure for arbitration;

(k) Transfers of Memberships and disposition of the proceeds of such transfers; and

(l) The conduct and procedure for disciplinary hearings and reviews therefrom.

Supervision

Section 2. (a) The Exchange shall have general supervision over the examination of Members and Member Organizations and approved persons in connection with their conduct of the business of Member Organizations.

(b) The Board may examine the business conduct and financial condition of Members, approved persons and Member Organizations.

(c) The Board may adopt Rules with respect to the Exchange's supervision over partnership and corporate arrangements and over officers of Members and Member Organizations, as well as with respect to the employment, compensation and duties of such employees as it may deem appropriate.

(d) The Board shall supervise all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange.

(e) The Board shall have the power to approve or disapprove any connection or means of communication with the Exchange and may require the discontinuance of any such connection or means of communication.

Securities

Section 3. The Board may approve the admission of securities for trading on the Exchange or may remove the same from trading on the Exchange.

ARTICLE VIII

Arbitration

Controversies Arbitrated

Section 1. Any controversy between parties who are Members or Member Organizations, and any controversy between a Member or Member Organization and any other person, arising out of the business of such Member or Member Organization on the Exchange, shall at the insistence of any such party be submitted for arbitration in accordance with the provisions of this Constitution and the Rules.

Arbitration Rules

Section 2. All arbitration proceedings shall be conducted in accordance with, and before arbitrators selected as provided by the Rules.

ARTICLE IX

Indemnification

Indemnification

Section 1. To the fullest extent permitted by applicable law from time to time in effect, the Exchange shall:

(a) Indemnify and hold harmless the Directors, officers, agents and employees of the Exchange and their respective directors, trustees, shareholders, officers, employees, agents and other affiliates, against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages (collectively, "Losses") paid or incurred by any such person in connection with the conduct of the Exchange's business; and

(b) Indemnify each person who at any time is, or has been, a Director or officer, agent or employee of the Exchange, and is threatened to be, or is, made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or it is, or was a Director or officer, agent or employee of the Exchange, or is serving, or has served, at the request of the Company as a manager, officer, Member, employee or agent of another person, against all losses actually and reasonably incurred in connection with any such pending, threatened or completed action, suit or proceeding.

Advancement of Expenses

Section 2. An Indemnitee shall be entitled to receive, upon application therefor, advances from the Exchange to cover the costs of defending any pending, threatened or completed claim, action, suit or proceeding against it for Losses in connection with which it would be entitled to indemnification under this Article IX, provided, that such advances shall be repaid to the Exchange (with interest thereon at an annual rate equal to the Prime Rate) if the Indemnitee receiving such advance is found by a court of competent jurisdiction upon entry of a final judgment to have violated any of the standards which preclude indemnification.

Rights Not Exclusive; Survival

Section 3. The rights of an Indemnitee set forth in this Article IX shall not be exclusive of any other rights to which it may be entitled, whether by separate agreement or otherwise, nor shall such rights limit or affect any other such rights. All rights of an Indemnitee under this Article IX shall survive the dissolution of the Exchange, and shall inure to the benefit of his or its heirs, personal representatives, successors and assigns.

INTERNATIONAL SECURITIES EXCHANGE

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CHAPTER 1

Definitions

Rule 100. Definitions

(a) The following terms, when used in these Rules, shall have the meanings specified in this Chapter 1, unless the context indicates otherwise. Any term defined in Article I of the Constitution and not otherwise defined in this Chapter shall have the meaning assigned in Article I of the Constitution.

(1) The term "**aggregate exercise price**" means the exercise price of an options contract multiplied by the number of units of the underlying security covered by the options contract.

(2) The term "**American-style option**" means an options contract that, subject to the provisions of Rule 1100 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised on any business day prior to its expiration date and on its expiration date.

(3) The term "**associated person**" or "**person associated with a Member**" means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member or any employee of a Member.

(4) The term "**bid**" means a quote or limit order to buy one or more options contracts.

(5) The term "**call**" means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(6) The term "**class of options**" means all options contracts of the same type covering the same underlying security.

(7) The term "**Clearing Corporation**" means The Options Clearing Corporation.

(8) The term "**closing purchase transaction**" means an Exchange Transaction that will reduce or eliminate a short position in an options contract.

(9) The term "**closing writing transaction**" means an Exchange Transaction that will reduce or eliminate a long position in an options contract.

(10) The term "**covered short position**" means (i) the obligation of a writer of a call option is secured by a "specific deposit" or an "escrow deposit" meeting the conditions of Rule 710(f) or 710(h), respectively, of the Rules of the Clearing Corporation, or the writer holds in the same account as the short position, on a share-for-share basis, a long position either in the underlying security or in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or less than the exercise price of the options contract in such short position; and (ii) the writer of a put option holds in the same account as the short position, on a share-for-share basis, a long position in an options contract of the same class of options where the exercise price of the options contract in such long position is equal to or greater than the exercise price of the options contract in such short position.

(11) The term "**discretion**" means the authority of a broker or dealer to determine for a customer the type of option, the class or series of options, the number of contracts, or whether options are to be bought or sold.

(12) The term "**European-style option**" means an options contract that, subject to the provisions of Rule 1100 (relating to the cutoff time for exercise instructions) and to the Rules of the Clearing Corporation, can be exercised only on its expiration date.

(13) The term "**exercise price**" means the specified price per unit at which the underlying security may be purchased or sold upon the exercise of an options contract.

(14) The term "**Federal Reserve Board**" means the Board of Governors of the Federal Reserve System.

(15) The terms "**he**," "**him**" or "**his**" shall be deemed to refer to persons of female as well as male gender, and to include organizations, as well as individuals, when the context so requires.

(16) The term "**long position**" means a person's interest as the holder of one or more options contracts.

(17) The term "**Member**" means an individual or organization that has been approved by the Exchange as an "Electronic Access Member," "Competitive Market Maker Member" or "Primary Market Maker Member."

(18) The term "**market makers**" refers to "Competitive Market Makers" and "Primary Market Makers" collectively.

(19) The term "**Non-Customer**" means a person or entity that is a broker or dealer in securities.

(20) The term "**Non-Customer Order**" means any order that is not a Public Customer Order as defined in subparagraph (30) below.

(21) The term "**offer**" means a quote or limit order to sell one or more options contracts.

(22) The term "**opening purchase transaction**" means an Exchange Transaction that will create or increase a long position in an options contract.

(23) The term "**opening writing transaction**" means an Exchange Transaction that will create or increase a short position in an options contract.

(24) The term "**options contract**" means a put or a call issued, or subject to issuance by the Clearing Corporation pursuant to the Rules of the Clearing Corporation.

(25) The term "**OPRA**" means the Options Price Reporting Authority.

(26) The term "**order**" means a commitment to buy or sell securities as defined in Rule 715 (types of orders).

(27) The term "**outstanding**" means an options contract which has been issued by the Clearing Corporation and has neither been the subject of a closing writing transaction nor has reached its expiration date.

(28) The term "**primary market**" means the principal market in which an underlying security is traded.

(29) The term "**Public Customer**" means a person that is not a broker or dealer in securities.

(30) The term "**Public Customer Order**" means an order for the account of a Public Customer.

(31) The term "**put**" means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the number of shares of the underlying security covered by the options contract.

(32) The term "**quote**" or "**quotation**" means a bid or offer entered by a market maker that updates the market maker's previous bid or offer, if any.

(33) The term "**Rules of the Clearing Corporation**" means the Certificate of Incorporation, the By-laws and the Rules of the Clearing Corporation, and all written interpretations thereof, as the same may be in effect from time to time.

(34) The term "**SEC**" means the United States Securities and Exchange Commission.

(35) The term "**series of options**" means all options contracts of the same class having the same exercise price and expiration date.

(36) The term "**short position**" means a person's interest as the writer of one or more options contracts.

(37) The term "**SRO**" means a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act.

(38) The term "**type of option**" means the classification of an options contract as either a put or a call.

(39) The term "**uncovered**" means a short position in an options contract that is not covered.

(40) The term "**underlying security**" means the security that the Clearing Corporation shall be obligated to sell (in the case of a call option) or purchase (in the case of a put option) upon the valid exercise of an options contract.

CHAPTER 2

Organization and Administration

Rule 200. Establishment of Committees

The Chief Executive Officer, with the approval of the Board, shall appoint any committee members that are not Directors to committees established by the Board under Article VI, Section 1 of the Constitution, or established by the Chief Executive Officer pursuant to authority delegated to him by the Board.

Rule 201. Removal of Committee Members

The Chief Executive Officer may, with the approval of the Board, remove any committee member that is not a Director for refusal, neglect, or inability to discharge such committee member's duties.

Rule 202. Committee Procedures

Except as otherwise provided in the Constitution, the Rules or resolution of the Board, each committee shall determine its own time and manner of conducting its meetings, and the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

Rule 203. General Duties and Powers of Committees

Each committee shall administer the provisions of the Constitution and the Rules pertaining to matters within its jurisdiction. Each committee shall have such other powers and duties as may be delegated to it by the Board. Each committee is subject to the control and supervision of the Board.

Rule 204. Divisions of the Exchange

The divisions of the Exchange shall include the Regulatory Division and such other Divisions as the Chief Executive Officer, with the approval of the Board, may establish. The Chief Executive Officer shall appoint a head of every Division and may designate departments within each Division.

Rule 205. Membership Dues

The dues payable by Members shall be fixed from time to time by the Board. Dues shall be payable in full on the first day of January, April, July and October on a nonrefundable basis and shall be applied to the quarter beginning on that day.

Rule 206. Transaction Fees

Members shall pay a fee for each transaction they execute on the Exchange, as may be determined by the Board.

Rule 207. Communication Fees

The Board may, at its discretion, impose a communication fee for quotes entered on the Exchange in addition to the fee contained in Rule 206.

Rule 208. Regulatory Fees or Charges

In addition to the dues and charges specified in this Chapter, the Board may, from time to time, fix and impose other fees, assessments or charges to be paid to the Exchange by Members or by Classes of Members with respect to applications, registrations, approvals, use of Exchange facilities, or other services or privileges granted, including but not limited to the following:

(a) *Regulatory Oversight Service Fees.*

(1) Members that are subject to Rule 15c3-3 under the Exchange Act (the "Net Capital Rule") and for which the Exchange has been assigned as the designated examining authority ("DEA") pursuant to Rule 17d-1 under the Exchange Act shall be required to pay quarterly a fee to be determined by the Board.

(2) Members, whether or not they are members of another registered national securities exchange or securities association with which the Exchange has executed an agreement under Rule 17d-2 under the Exchange Act to allocate responsibility for examining Members for compliance with and enforcement of certain regulatory requirements, shall be required to pay quarterly a fee to be determined by the Board.

(b) *Registration Fees.* Members shall pay application, maintenance and transfer registration fees for their Registered Options Principals (ROPs") as described in Rule 601 and Registered Representatives ("RRs") as described in Rule 602.

Rule 209. Transfer Fees

Members shall pay a fee for each transfer or lease of a Membership, as may be determined by the Board.

Rule 210. Liability for Payment of Fees

(a) A Member that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within thirty (30) days after they have become payable shall be reported to the President, who may, after giving reasonable notice to the Member of such

arrearages, suspend the Member until payment is made. Should payment not be made within six (6) months after payment is due, the Membership may be disposed of by the Exchange in accordance with Rule 310(b).

(b) A person associated with a Member who fails to pay any fine or other amounts due to the Exchange within thirty (30) days after such amount has become payable and after reasonable notice of such arrearages, may be suspended from association with a Member until payment is made.

Rule 211. Exchange's Costs of Defending Legal Proceedings

(a) Any Member or person associated with a Member who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Exchange or any of its Directors, officers, committee members, employees or agents, and related to the business of the Exchange, shall pay to the Exchange all reasonable expenses, including attorneys' fees, incurred by the Exchange in the defense of such proceeding, but only in the event that such expenses exceed fifty thousand dollars ($50,000).

(b) Paragraph (a) of this Rule shall not apply to disciplinary actions by the Exchange, to administrative appeals of Exchange actions or in any specific instance where the Board has granted a waiver of this provision.

CHAPTER 3

Membership

Rule 300. Public Securities Business

(a) Every owner of a Membership shall have as the principal purpose of its ownership the conduct of a public securities business. Such a purpose shall be deemed to exist if and so long as:

(1) the Member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) an Electronic Access Member approved to effect or clear Exchange Transactions; or (ii) a Primary or Competitive Market Maker approved in accordance with Rule 800; and

(2) all transactions effected by the Member are in compliance with Section 11(a) of the Exchange Act and the rules and regulations adopted thereunder; or

(3) the owner is a lessor to a lessee Member that has such a purpose; or

(4) the owner is a general partner or executive officer or nominee of a Member Organization with such a purpose and the Membership is registered for that organization; or

(5) Until [insert date that is ten (10) years after initiation of trading on the Exchange], the owner is a Founder.

(b) No owner of a Membership shall utilize any scheme, device, arrangement, agreement or understanding designed to circumvent or avoid, by reciprocal means or in any other manner, the provisions of this Rule.

Rule 301. Ownership of Memberships

Memberships may be owned by individuals and organizations.

(a) Owners of Memberships that are neither registered brokers-dealers nor associated with registered broker-dealers shall have no trading privileges on the Exchange.

(b) Memberships owned by persons or entities that are not registered broker-dealers nor associated with registered broker-dealers shall be leased to registered broker-dealers approved by the Exchange.

(c) With respect to each Membership owned or leased by a corporation, partnership or limited liability company ("LLC"), the organization must designate an individual

nominee in accordance with Rule 306, and Article II, Section 8 of the Constitution. With respect to each Membership registered for a corporation, partnership or LLC pursuant to Article II, Section 9 of the Constitution, the Member Organization shall be represented by the individual Member who registered the Membership for the organization.

(d) For purposes of Rules 301 through 316 only, the terms "Member" and "Member Organization" also shall apply to non-broker-dealer owners of Memberships, and shall continue to apply to owners whether or not a Membership is leased.

Rule 302. Qualification of Members

(a) *Individuals.* A Member may be a natural person who is at least twenty-one (21) years of age and who, except for lessors or Founders, is registered as a broker-dealer pursuant to Section 15 of the Exchange Act or is associated with a registered broker-dealer, and who meets the qualifications for Members contained in the Rules.

(b) *Organizations.* Members may be corporations, partnerships or LLCs organized under the laws of one of the states of the United States or under other laws as the Board shall approve. Except for lessors and Founders, such corporations, partnerships or LLCs must be broker-dealers registered pursuant to Section 15 of the Exchange Act and meet the qualifications for Members in accordance with Exchange Rules applicable thereto.

Rule 303. Denial of and Conditions to Membership

(a) The Exchange may deny (or condition) Membership or may prevent a person from becoming associated (or condition an association) with a Member for the same reasons that the SEC may deny or revoke a broker-dealer registration and for those reasons required or allowed under the Exchange Act.

(b) The Exchange also may deny (or condition) Membership or may prevent a person from becoming associated with (or condition an association) with a Member when the applicant, directly or indirectly:

(1) has a negative net worth, has financial difficulties involving an amount that is more than five percent (5%) of the applicant's net worth, or has a pattern of failure to pay just debts (whether or not such debts have been the subject of a bankruptcy action);

(2) is unable satisfactorily to demonstrate a capacity to adhere to all applicable Exchange, SEC, the Clearing Corporation and Federal Reserve Board policies, rules and regulations, including those concerning record-keeping, reporting, finance and trading procedures; or

(3) is unable satisfactorily to demonstrate reasonably adequate systems capability and capacity.

(c) When an applicant is a subject of an investigation conducted by any SRO or government agency involving his or its fitness for Membership, the Exchange need not act on the

application until the matter has been resolved.

(d) The Exchange may determine not to permit a Member or person associated with a Member to continue as a Member or associated therewith, if the Member or associated person:

(1) fails to meet any of the qualification requirements for membership or association after the membership or association has been approved;

(2) fails to meet any condition placed by the Exchange on such membership or association;

(3) violates any agreement with the Exchange; or

(4) becomes subject to a statutory disqualification under the Exchange Act.

(e) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must, within thirty (30) days of becoming subject to a statutory disqualification, submit an application to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification. Failure to timely file such an application is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (d) of this Rule.

(f) Subject to Chapter 15 (Summary Suspension), any applicant who has been denied Membership or association with a Member or granted only conditional Membership or association pursuant to paragraph (a) or (b) of this Rule, and any Member or person associated with a Member who is not permitted pursuant to paragraph (d) of this Rule to continue as a Member or associated with a Member or which continuance as a Member or association is conditioned, may appeal the Exchange's decision under Chapter 17 (Hearings and Review).

(g) An applicant will be denied Membership if, together with any person who directly or indirectly controls, is controlled by, or is under common control with, approval would result in the applicant owning and/or leasing more than one (1) Primary Market Maker Membership or more than five (5) Competitive Market Maker Memberships, unless this requirement is waived by the Board for good cause shown.

Rule 304. Persons Associated with Member Organizations

(a) Persons associated with Member Organizations shall be bound by the Constitution and Rules of the Exchange and the rules of the Clearing Corporation. The Exchange may bar a person from becoming or continuing to be associated with a Member Organization if such person does not agree in writing, on a form prescribed by the Exchange, to furnish the Exchange with information with respect to such person's relationship and dealings with the Member Organization, and information reasonably related to such person's other securities business, as may be required by the Exchange, and to permit the examination of its books and

records by the Exchange to verify the accuracy of any information so supplied.

(b) Each Member Organization shall file with the Exchange and keep current a list and descriptive identification of those persons associated with the Member Organization who are its executive officers, directors, principal shareholders, and general partners. Such persons shall file with the Exchange a Uniform application for Securities Industry Registration or Transfer (Form U-4).

(c) A claim of any person associated with a Member Organization described in the first sentence of paragraph (b) of this Rule against such organization shall be subordinate in right of payment of customers and other Members.

Rule 305. Documents Required of Applicants and Members

(a) Although the Exchange may request additional information, at a minimum, the partnership agreement and all amendments thereto, in the case of a partnership, the articles of incorporation, by-laws and all amendments thereto, in the case of a corporation, and in the case of a limited liability company, the articles of organization and operating agreement and all amendments thereto, and any lease agreement to which a Membership is subject pursuant to Rule 312, shall be filed with, and shall be subject to review by, the Exchange; however, no action or failure to act by the Exchange shall be construed to mean that the Exchange has in any way passed on the investment merits of or given approval to any such document.

(b) Every Member shall file with the Exchange and keep current an address where notices may be served.

(c) In a manner and form prescribed by the Exchange, every Member shall pledge to abide by the Constitution and Rules of the Exchange, as amended from time to time, and by all circulars, notices, directives or decisions adopted pursuant to or made in accordance with the Constitution and Rules.

(d) Members and Member Organizations shall keep and maintain a current copy of the Constitution and Rules in a readily accessible place. Member Organizations that are approved to do business with the public pursuant to Rule 600 shall make the Constitution and Rules available for examination by customers.

Rule 306. Nominees

(a) Pursuant to Rule 301(c), every Member Organization must authorize an individual nominee to represent the organization with respect to such Membership in all matters relating to the Exchange.

(1) The Member Organization represented by a nominee shall guarantee all obligations arising out of such nominee's representation of the Member Organization in all matters relating to the Exchange.

(2) The guarantee shall include all obligations to the Exchange and all

obligations to other Members or Member Organizations resulting from Exchange transactions or transactions in other securities.

(b) The authorization and guarantee required in paragraphs (a) of this Rule shall be on a form or forms prescribed by the Exchange.

(c) A nominee may perform functions on the Exchange only on behalf of the Member Organization for which he is authorized.

Rule 307. Application Procedures and Approval or Disapproval

(a) Every individual or organization applying to become an owner or lessee of a Membership (the "applicant") shall file an application with the Exchange. Applications must be accompanied by a non-refundable application fee.

(b) Within a reasonable time following receipt of an application for Membership, the name of the applicant shall be posted by the Exchange.

(c) Before an application is approved by the Exchange:

(1) Every individual applicant and, in the case of applicant organizations, all persons associated with the organization, shall be subject to investigation by the Exchange. The applicant shall file any documents that may be required by the Exchange.

(2) An applicant seeking trading privileges shall have completed the requirements of Rule 600 (registration of Electronic Access Members) or Rule 800 (registration of market makers), including taking any required examinations.

(3) Unless an exception is granted by the Exchange for good cause, the name of the applicant shall have been posted by the Exchange for at least five (5) business days.

(d) An applicant must be approved by the Exchange to perform in at least one of the recognized capacities of a Member as stated in Rule 300(a).

(e) Upon completion of the application process, the Exchange shall consider whether to approve the application, unless there is just cause for delay. Individual applicants and persons associated with applicant organizations may be required to appear in person before the Exchange. The Exchange may also require any Member or person associated with a Member Organization who may possess information relevant to the applicant's suitability for Membership to provide information or testimony.

(f) The Exchange will determine whether to approve an application. Written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefor, shall be provided to the applicant.

(g) If the application process is not completed within six (6) months of the filing of

the application form and payment of the appropriate fee, the application shall be deemed to be automatically withdrawn.

Rule 308. Effectiveness of Membership Applications

(a) Applicants must become effective Members within ninety (90) days of the date of approval by the Exchange as follows:

(1) An individual or organizational applicant for Membership upon purchase of and payment for an Exchange Membership and release by the Exchange.

(2) A lessee applicant upon the transfer of a Membership to his or its use pursuant to Rule 312 and release by the Exchange.

(b) With respect to each Membership that becomes effective in accordance with this Rule, the Exchange shall promptly notify all Members thereof.

Rule 309. Purchase of Membership

(a) *Founders.* The Exchange's Class A and Class B memberships shall be purchased by the Founders from the Exchange at a price determined by the Exchange.

(b) *Outstanding Memberships.* Memberships with respect to which notices of sale have been filed under Rule 310 may be purchased by approved applicants in accordance with the following procedures:

(1) All bids from approved applicants must be submitted in writing to the Exchange.

(2) The Exchange will maintain all bids by Class of Membership according to the highest price and the earliest submission date.

(3) The highest bid with the earliest filing date will be posted by Class by the Exchange.

(4) All bids remain in effect until written revocation thereof is received by the Exchange; however, bids will automatically expire unless an approved applicant reapplies for and is reapproved every ninety (90) days from the applicant's receipt of notification of the immediate prior approval pursuant to Rule 307(f).

(5) A bid filed in accordance with the procedures of this paragraph (b) may not be changed or withdrawn once matched with an offer filed in accordance with Rule 310.

(6) Not later than the second business day following the matching of the bid and offer, the purchaser shall deliver to the Exchange a certified or cashier's check made payable to the Exchange covering the purchase price of the Membership.

Rule 310. Sale and Transfer of Membership

(a) *Sale by Owner*. The owner of a transferable Membership who desires to sell his Membership shall submit a written offer of sale to the Exchange.

(1) The Exchange will maintain all offers of sale by Class of Membership according to the lowest price and the earliest submission date.

(2) The lowest offer with the earliest filing date will be posted by the Exchange.

(3) All offers remain in effect until written revocation thereof is received by the Exchange.

(4) An offer filed in accordance with this paragraph may not be changed or withdrawn once matched with a bid filed in accordance with Rule 309(b).

(5) A Member who has filed an offer of sale shall, so long as he remains in good standing and until the purchase price has been paid, continue to have all of the rights and privileges, and shall remain subject to all of the duties and obligations, of Membership.

(b) *Sale by Exchange.* Whenever one or more of the following conditions exist with respect to a Membership, the Exchange may offer the Membership for sale in accordance with paragraph (a) of this Rule:

(1) An individual Member has died or has been declared legally incompetent, and the legal representative of such Member has failed to consummate a transfer of the Membership(s) within six (6) months of the Member's death or incompetence or within such extended time as may have been granted by the Exchange;

(2) A Member's good standing has been terminated or has been suspended and has failed to be reinstated at the expiration of the period of suspension including any extension of such period that may have been granted by the Exchange; and

(3) A Member Organization has been dissolved, formally or informally, and no transfer of its Membership(s) has been accomplished within six (6) months of the dissolution or within such extended time as may have been granted by the Exchange.

(4) A Member exceeds the concentration limitations contained in Rule 317.

(5) A Founder that owns a number of Memberships that exceeds the concentration limits contained in Article II, Section 11 of the Constitution fails to lease or sell at least forty percent (40%) of the Memberships that exceed those limitations by [insert date six (6) years after initiation of trading on the Exchange], provided, however, that if there is more than one (1) Membership subject to sale by the Exchange under this subparagraph (5), the Exchange shall hold one or more auctions for the sale of such

Memberships pursuant to the following procedures:

(i) An auction shall be held at least once every three (3) months.

(ii) One or more Memberships may be offered for sale at each auction.

(iii) The minimum price at which a Membership may be sold shall be not less than twenty percent (20%) below the average of the last three (3) bona fide sale prices of Memberships within the last twelve (12) months or, if there were fewer than three (3) bona fide sales during this period, a reasonable price to be determined by the Board.

(iv) Any person or entity approved for Membership by the Exchange shall be eligible to place a bid for a Membership during the thirty (30) days preceding the date of an auction.

(v) During the thirty (30) days preceding an auction, the Exchange shall make known the price of the highest bid.

(vi) The proceeds from a sale of a Membership shall be subject to Rule 311, and shall be reduced by any unusual expenses incurred by the Exchange in connection with the sale.

(c) *Transfer by Owner.* The owner of a Membership may transfer such Membership without adhering to the provisions contained in paragraph (a) of this Rule so long as one of the following qualifying circumstances is applicable to and description of the desired transfer and the transferee is approved in accordance with the Rules of the Exchange:

(1) The owner of a Membership (whether or not such Membership is registered for a Member Organization) requests the transfer of such Membership to his spouse, brother, sister, parent, child, grandparent or grandchild;

(2) The owner of a Membership requests the transfer of such Membership to an organization which has succeeded, through statutory merger, exchange of stock or acquisition of assets to the business of the transferor;

(3) The owner of a Membership requests the transfer of such Membership to an organization in which the transferor will maintain a substantial interest, that is, an interest at least equal in value to his cost or the current market price of the Membership, whichever is lower; or

(4) The owner of a Membership requests the transfer of such Membership to an individual or organization which is a partner or shareholder of the transferor as part or all of a liquidation distribution of the transferor.

(d) Transfers pursuant to paragraph (c) of this Rule shall not become effective until

there has been deposited with the Exchange an amount equal to the last sale of a Membership of the same Class as the Membership being transferred or an acceptable letter of guarantee from a Clearing Member for such amount, which amount shall be applied as though it were proceeds of the sale of a Membership for the purposes of Rule 311.

Rule 311. Proceeds from Sale of Membership

(a) Upon any sale of a Membership pursuant to Rule 310, the Exchange shall hold the proceeds of the sale for a period of twenty (20) days from the date of posting notice of the sale, during which period claims against the proceeds may be filed by Members for payment in accordance with this Rule.

(b) As soon as practicable following such twenty (20) day period, the proceeds shall be applied by the Exchange to the following purposes and in the following order of priority:

(1) The payment of such sums as the Exchange shall determine are or may become due to the Exchange from the Member or from the Member Organization on whose behalf the Membership was registered.

(2) The payment of such sums as the Exchange shall determine are or may become due to the Clearing Corporation from the Member whose Membership is transferred or from the Member Organization on whose behalf the Membership was registered.

(3) The payment of such sums as the Exchange shall determine are due by such Member or by the Member Organization on whose behalf the Membership was registered to other Members in payment of claims made by such other Members arising directly as a result of:

(i) Exchange Transactions,

(ii) transactions of such Member in securities other than on the Exchange which are effected or carried in an account maintained by a Clearing Member, or

(iii) loans or guarantees of loans to such Member or Member Organization for the propose of purchasing an Exchange Membership or for any purpose other than the purchase of securities which loans were made or guaranteed by such other Members.

(c) No claim asserted under paragraph (b)(3) of this Rule shall be considered by the Exchange nor shall any Member asserting such a claim have any rights thereunder, unless a written statement of such claim shall have been filed with the Exchange prior to the expiration of the twenty (20) day period referred to in the first paragraph of this Rule. If the proceeds of the sale of a Membership are insufficient to pay in full all claims allowed under paragraph (b)(3), payment shall be made pro rata upon all such allowed claims.

(d) If a claim is contingent or the amount that ultimately will be due thereon cannot, for any reason, be immediately ascertained or determined, the Exchange in its sole discretion may, out of the proceeds of the sale of the Membership, reserve and retain for later distribution in accordance with the Rules such amount as it may deem appropriate, pending the determination of the amount due on such claim.

(e) After provision of the sums payable under paragraph (b) hereof and provision for the reserve if any under paragraph (d) hereof, there may, in the discretion of the Exchange, be deducted from the remaining proceeds and paid to the Exchange the amount of any unusual expenses incurred by the Exchange involving the disposition of such proceeds.

(f) The surplus, if any, of proceeds of the sale of a Membership, after provision for the above payments and the setting aside of the reserve under paragraph (d) hereof, shall be paid to the Member whose Membership is sold or to his or its legal representatives.

(g) No recognition or effect shall be given by the Exchange to any agreement or to any instrument entered into or executed by a Member or his legal representatives which purports to transfer or assign the interest of such Member in his or its Membership, or in the proceeds or any part thereof, or which purports in any manner to provide for the disposition of such proceeds to a creditor of such Member, nor shall payment of such proceeds be made by the Exchange on the order of such Member.

Rule 312. Leasing Memberships

(a) The owner of a Membership in good standing may lease such Membership to an individual or organization, provided the lessee is approved for Membership in accordance with the Rules of the Exchange.

(b) Lease agreements, which must be approved by the Exchange in accordance with Rule 307, shall include provisions covering:

(1) the duration of the lease arrangement;

(2) the consideration to be paid by the lessee;

(3) the assignability of the respective interests of the lessee and lessor in such lease agreement; and

(4) as between the parties, which party shall exercise the voting rights of the Membership and which party shall provide the funds necessary to satisfy all applicable Exchange dues, fees and other charges.

(c) Any division of rights and responsibilities between lessor and lessee shall not affect the obligation of the lessor to pay all amounts due the Exchange.

(d) The lease of a Membership shall not become effective until:

(1) the lessee has deposited with the Exchange an amount equal to the last sale of a Membership of the same Class as the Membership being leased or an acceptable letter of guarantee from a Clearing Member for such amount, which amount shall be applied to claims of Member creditors of the lessee Member at the end of the term of the lease as though it were proceeds of the sale of a Membership for the purposes of Rule 311; and

(2) in the case where the lessor Member is a broker-dealer that conducted business on the Exchange, there has been deposited by such lessor Member with the Exchange an amount equal to the last sale of a Membership of the same Class as the Membership being leased or an acceptable letter of guarantee from a Clearing Member for such amount, which amount shall be applied to claims of Member creditors of the lessor Member as though it were proceeds of the sale of a Membership for the purposes of Rule 311.

(e) In the event the lessor of a Membership effects a sale thereof pursuant to the provisions of Rule 310(a), claims may be made against the proceeds from the sale of such Membership in accordance with Rule 311 by Members having claims against either the lessee or the lessor, with priority given to claims made against the lessee.

Rule 313. Death, Retirement, Withdrawal and Resignation

Upon the death, retirement, withdrawal or resignation from a Member Organization of an individual Member whose Membership is registered for the organization, of a nominee, or of the general partner--leaving the organization without a Membership or without a nominee, or without a general partner--the Exchange may permit the organization to continue to act as a Member in good standing for such period as the Exchange deems reasonably necessary to enable the organization to acquire a Membership, to obtain approval of a substitute nominee, or to admit a new general partner, as applicable.

Rule 314. Dissolution and Liquidation of Member Organizations

Every Member Organization shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution. Upon receipt of such notice, the Member may be suspended in accordance with Chapter 15 (Summary Suspension) of the Rules.

Rule 315. Obligations of Terminating Members

(a) Every Member who sells or transfers his Membership pursuant to the provisions of this Chapter must be current in all filings and payments of dues, fees and charges relating to that Membership, including filing fees and charges required by the SEC and Securities Investor Protection Corporation.

(b) If a Member fails to make all such filings, or to pay all such dues, fees and charges, the Exchange may, notwithstanding the other applicable provisions of this Chapter, withhold distributions of the proceeds of sale of the Membership, or delay the effectiveness of the Membership of the transferee, until such failures have been remedied.

Rule 316. Transfer of Individual Membership in Trust

An individual Member in good standing may transfer his Membership in trust, subject to each of the following conditions:

(a) Subject to paragraph (b) of this Rule, the Member transferring his Membership in trust (the "trust Member"), during his lifetime, shall be the sole trustee and sole beneficiary of the trust. The trust Member shall remain personally responsible for all obligations and liabilities associated with the Membership and its use, and the Membership shall remain subject to all of the Rules of the Exchange.

(b) The terms of the trust shall provide the following:

(1) In the event the trust Member dies, is declared legally incompetent, or is in any condition that substantially impairs his ability to transact ordinary business (is "disabled"), as certified in a written opinion furnished to the Exchange by the trust Member's physician who has personally examined or treated him, a legally qualified individual or institution may be appointed as successor trustee for the sole purpose of transferring the Membership in accordance with the Rules, including the requirements of Rule 311, subject to the right of the Exchange to offer the Membership for sale in accordance with Rule 310(b)(1).

(2) Notwithstanding subparagraph (1) above, the terms of the trust may authorize the successor trustee to continue to hold the Membership in trust for the benefit of the trust Member during any period when the trust Member is declared legally incompetent or is disabled so long as the Membership is leased for that period in accordance with the requirements of Rule 312.

(3) The trust shall provide that the Exchange shall bear no liability for any actions taken or omitted by the trust Member or any successor trustee in respect of the administration of the trust of the management of trust assets.

(c) A Membership held in trust may be transferred during the lifetime of the trust Member or at his death in accordance with the provisions of Rule 310(c)(1), and may also be transferred during the lifetime of the trust Member in accordance with the provisions of Rule 310(c)(3).

(d) A Membership held in trust may be transferred to the trust Member to be held directly and not in trust.

(e) A copy of the trust agreement reflecting the foregoing requirements shall be furnished to the Exchange, accompanied by the certification of the attorney who prepared the agreement that it conforms to the requirements of this Rule.

(f) The Exchange may disapprove a transfer in trust if it finds the trust agreement fails to satisfy the requirements of the Rule by written notice of such disapproval sent to the

Member proposing the transfer.

Rule 317. Limitations on Number of Memberships

(a) *General Rule*. The Exchange generally will approve a Member to effect Exchange Transactions pursuant to only one (1) Primary Market Maker Membership and up to five (5) Competitive Market Maker Memberships. However, upon good cause shown, the Exchange may approve a Member to effect Exchange Transactions with respect to two (2) Primary Market Maker Memberships and up to ten (10) Competitive Market Maker Memberships.

(b) *Initial Approval of Memberships.*

(1) Primary Market Maker Memberships. The Exchange will not initially approve a Member to effect Exchange Transactions with respect to more than one (1) Primary Market Maker Membership until the Exchange has approved at least five (5) Members to effect Exchange Transactions with respect to Primary Market Maker Memberships.

(2) Competitive Market Maker Memberships. The Exchange will not initially approve a Member to effect Exchange Transactions with respect to multiple Competitive Market Maker Memberships until the Exchange has approved a minimum number of Members to effect Exchange Transactions with respect to Competitive Market Maker Memberships as follows:

Number of Approved Memberships	Maximum Number of Memberships Per Member
10 or fewer	2
11 to 15	3
16 to 25	5
26 to 40	8
over 40	10

CHAPTER 4

Business Conduct

Rule 400. Just and Equitable Principles of Trade

No Member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members shall have the same duties and obligations as Members under the Rules of this Chapter.

Rule 401. Adherence to Law

No Member shall engage in conduct in violation of the Exchange Act, the Constitution or the Rules of the Exchange, or the rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange Transaction, or any written interpretation thereof. Every Member shall so supervise persons associated with the Member as to assure compliance therewith.

Rule 402. Sharing of Offices and Wire Connections

No Member, without the prior written consent of the Exchange, shall establish or maintain wire connections or office sharing arrangements with other Members or with non-member broker-dealers.

Rule 403. Nominal Employment

No Member may employ any person in a nominal position on account of business obtained by such person.

Rule 404. False Statements

No Member or applicant for Membership shall make any false statements or misrepresentations in any application, report or other communication to the Exchange, and no Member shall make any false statement or misrepresentation to the Clearing Corporation with respect to the reporting or clearance of any Exchange Transaction or adjust any position at the Clearing Corporation in any class of options traded on the Exchange except for the purpose of correcting a bona fide error in recording or transferring the position to another account.

Rule 405. Manipulation

(a) No Member shall effect or induce the purchase, sale or exercise of any security for the purpose of creating or inducing a false, misleading, or artificial appearance of activity in such security or in the underlying security, or for the purpose of unduly or improperly influencing the market price of such security or of the underlying security or for the purpose of making a price which does not reflect the true state of the market in such security or in the underlying security.

(b) No Member or any other person or organization subject to the jurisdiction of the Exchange shall directly or indirectly participate in or have any interest in the profit of a manipulative operation or knowingly manage or finance a manipulative operation. For the purposes of this paragraph but without limitation:

(1) any pool, syndicate or joint account, whether in corporate form or otherwise, organized or used intentionally for the purposes of unfairly influencing the market price of any security by means of options or otherwise and for the purpose of making a profit thereby, shall be deemed to be a manipulative operation;

(2) the soliciting of subscriptions to any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation; and

(3) the carrying on margin of either a "long" or a "short" position in securities for, or the advancing of credit through loans of money or of securities to, any such pool syndicate or joint account shall be deemed to be financing a manipulative operation.

Rule 406. Rumors

No Member shall circulate, in any manner, rumors of a character which might affect market conditions in any security; provided, however, that this Rule shall not prohibit discussion of unsubstantiated information, so long as its source and unverified nature are disclosed.

Rule 407. Prevention of the Misuse of Material Nonpublic Information

(a) Every Member, other than a lessor that is neither registered, nor required to be registered, as a broker-dealer under Section 15 of the Exchange Act, shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Member's business, to prevent the misuse of material nonpublic information by such Member or persons associated with such Member in violation of the Exchange Act and Exchange Rules.

(1) Misuse of material nonpublic information includes, but is not limited to:

(i) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation;

(ii) trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and

(iii) disclosing to another person any material nonpublic information

involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

(2) Each Member shall establish, maintain and enforce the following policies and procedures as appropriate for the nature of each Member's business:

(i) all associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information;

(ii) signed attestations from the Member and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place;

(iii) records of all brokerage accounts maintained by the Member and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Member for the purpose of detecting the possible misuse of material nonpublic information; and

(iv) any business dealings the Member may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Member receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.

(b) Members that are required, pursuant to Exchange Rule 1403 (Audits), to file Form X-17A-5 under the Exchange Act with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such Members stating that the procedures mandated by this Rule have been established, enforced and maintained.

(c) Any Member or associated person who becomes aware of a possible misuse of material nonpublic information must promptly notify the Exchange.

Rule 408. Disciplinary Action by Other Organizations

Every Member shall promptly notify the Exchange in writing of any disciplinary action, including the basis therefor, taken by any national securities exchange or registered securities association, clearing corporation, commodity futures market or government regulatory body against the Member or its associated persons, and shall similarly notify the Exchange of any disciplinary action taken by the Member itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or any other significant limitation on activities.

Rule 409. Other Restrictions on Members

Whenever the Exchange shall find that a Member has failed to perform on his or its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot be permitted to continue in business with safety to customers or creditors or the Exchange, the Exchange may summarily suspend the Member in accordance with Chapter 15 (Summary Suspension) or may impose such conditions and restrictions upon the Member as considered reasonably necessary for the protection of the Exchange and the customers of such Member.

Rule 410. Significant Business Transactions

(a) Except as provided in paragraph (c) below, a Member that clears market maker trades is required to notify the Exchange in writing fifteen (15) days prior to any of the following proposed significant business transactions ("SBT"):

(1) the combination, merger or consolidation between the Member and another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products;

(2) the transfer from another person of market maker, broker-dealer, or customer securities or futures accounts that are significant in size or number to the business of the Member;

(3) the assumption or guarantee by the Member of liabilities of another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products, in connection with a direct or indirect acquisition of all or substantially all of the person's assets; or

(4) termination of the Member's clearing business or any material part thereof.

(b) Notification of any of the following SBTs shall be made in writing to the Exchange, not later than five (5) business days from the date on which the SBT becomes effective:

(1) the sale by the Clearing Member of a significant part of its assets to another person;

(2) a change in the identity of any general partner or a change in the beneficial ownership of ten percent (10%) or more of any class of the outstanding stock of any corporate general partner;

(3) a change in the beneficial ownership of twenty percent (20%) or more of any class of the outstanding stock of the Member or the issuance of any capital stock of the Member; or

(4) the acquisition by the Clearing Member of assets of another person that would constitute a "business" that is "significant," as those terms are defined in Section

11-01 of Regulation S-X under the Exchange Act.

(c) A Clearing Member is required to notify the Exchange in writing thirty (30) days prior to a proposed SBT included in paragraph (a) of this Rule, and such SBT shall be subject to the prior approval of the Exchange, if the Member's market maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

(1) fifteen percent (15%) of cleared Exchange market maker contract volume for the most recent three (3) months;

(2) an average of fifteen percent (15%) of the number of Exchange market makers as of each month and for the most recent three (3) months; or

(3) twenty-five percent (25%) of Exchange market maker gross deductions (haircuts) defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Member in relation to the aggregate of such haircuts carried by all other Clearing Members for any month end within the most recent three (3) months.

(d) An SBT that comes within paragraph (c) of this Rule may be disapproved or conditioned within the thirty (30) day period if the Exchange determines that such SBT has the potential to threaten the financial or operational integrity of market maker transactions. In making this determination, the Exchange may consider, among other relevant matters, the following:

(1) The effect of the proposed SBT on the capital size and structure of the resulting Clearing Member Organization(s), the potential for financial failure and the consequences of any such failure on the Exchange market as a whole, and the potential for increased or decreased operational efficiencies arising from the proposed transaction.

(2) The effect of the proposed SBT upon overall concentration of market makers, including a comparison of the following measures before and after the proposed transaction:

(i) proportion of Exchange market maker contract volume cleared;

(ii) proportion of Exchange market makers cleared; and

(iii) proportion of market maker gross deductions (haircuts) as defined by Rule 15c3-1(a)(6) or (c)(2)(x) under the Exchange Act carried by the Clearing Member(s) in relation to the aggregate of such deductions carried by other Members that clear market maker transactions.

(3) The regulatory history of the affected Members, specifically as it may indicate a tendency to financial or operational weakness.

(e) Transactions that come within paragraph (c) of this Rule shall be reviewed according to the following procedures:

(1) A Member must provide promptly, in writing, all information reasonably requested by the Exchange. Any information disclosed by Members pursuant to the requirements of this Rule shall be kept confidential by the Exchange until such information is otherwise publicly disclosed and shall be used only for purposes of reviewing the proposal.

(2) If the Exchange determines, prior to the expiration of the thirty (30) day period, that a proposed SBT may be approved without conditions, the Exchange shall promptly so advise the Member.

(3) All decisions to disapprove or condition a proposed SBT or to impose extraordinary requirements shall be in writing, shall include a statement setting forth the grounds for the decision, and the Member shall be promptly notified of any such decisions by the Exchange.

(4) Notwithstanding any other provisions of the Rules, the Member may appeal a decision to disapprove or condition a proposed SBT directly to the Board by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. Appeal to the Board shall be the exclusive method of reviewing such a decision.

(5) An appeal to the Board of a decision to disapprove or condition a proposed SBT shall not operate as a stay of that decision during the pendency of the appeal.

(6) The Exchange shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Exchange Act of all final decisions to disapprove or condition a proposed a SBT.

(f) The Exchange may impose additional financial and/or operational requirements on a Member that clears market maker trades at any time when it determines that the Member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of market maker transactions.

(g) The provisions of this Rule do not preclude summary Exchange action under Rule 409, under Chapter 15 (Summary Suspension) or other Exchange action pursuant to the Rules.

(h) The Exchange may exempt a Member from the requirements of this Rule, either generally or in respect of specific types of transactions, based on the limited proportion of market maker trades on the Exchange that are cleared by the Member or on the limited importance that the clearing of market maker trades bears to the total business of the Member.

Rule 411. Position Limits

(a) Except with the prior permission of the President or his designee, to be

confirmed in writing, no Member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange if the Member has reason to believe that as a result of such transaction the Member or its customer would, acting alone or in concert with others, directly or indirectly:

(1) control (as defined in paragraph (f) below) an aggregate position in an options contract traded on the Exchange in excess of 13,500 or 22,500 or 31,500 or 60,000 or 75,000 options contracts (whether long or short) of the put type and the call type on the same side of the market respecting the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of options contracts as may be fixed from time to time by the Exchange as the position limit for one or more classes or series of options; or

(2) exceed the applicable position limit fixed from time to time by another exchange for an options contract not traded on the Exchange, when the Member is not a member of the other exchange on which the transaction was effected.

(b) Should a Member have reason to believe that a position in any account in which it has an interest or for the account of any customer is in excess of the applicable limit, such Member shall promptly take the action necessary to bring the position into compliance.

(c) Reasonable notice shall be given of each new position limit fixed by the Exchange.

(d) Limits shall be determined in the following manner:

(1) A 13,500-contract limit applies to those options having an underlying security that does not meet the requirements for a higher options contract limit.

(2) To be eligible for the 22,500-contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least twenty (20) million shares, or the most recent six (6) month trading volume of the underlying security must have totalled at least fifteen (15) million shares and the underlying security must have at least forty (40) million shares currently outstanding.

(3) To be eligible for the 31,500-contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least forty (40) million shares or the most recent six (6) month trading volume of the underlying security must have totalled at least thirty (30) million shares and the underlying security must have at least 120 million shares currently outstanding.

(4) To be eligible for the 60,000-contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least eighty (80) million shares or the most recent six (6) month trading volume of the underlying security must have totalled at least sixty (60) million shares and the underlying security must have at least 240 million shares currently outstanding.

(5) To be eligible for the 75,000-contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totalled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

(e) Every six (6) months, the Exchange will review the status of underlying securities to determine which limit should apply. A higher limit will be effective on the date set by the Exchange, while any change to a lower limit will take effect after the last expiration then trading, unless the requirement for the same or a higher limit is met at the time of the intervening six (6) month review. If, however, subsequent to a six (6) month review, an increase in volume and/or outstanding shares would make a stock eligible for a higher position limit prior to the next review, the Exchange in its discretion may immediately increase such position limit.

(f) Control exists under this Rule 411 when it is determined that an individual or entity makes investment decisions for an account or accounts, or materially influences directly or indirectly the actions of any person who makes investment decisions.

(1) Control will be presumed in the following circumstances, and will be presumed to continue until determined otherwise pursuant to paragraph (f)(2) below:

(i) among all parties to a joint account who have authority to act on behalf of the account;

(ii) among all general partners to a partnership account;

(iii) when an individual or entity holds an ownership interest of ten percent (10%) or more in an entity (ownership interest of less than ten percent (10%) will not preclude aggregation), or shares in ten percent (10%) or more of profits and losses of an account;

(iv) when accounts have common directors or management;

(v) where a person has the authority to execute transactions in an account.

(2) Control, presumed by one or more of the above findings or circumstances, can be rebutted by proving that the factor does not exist or by showing other factors which negate the presumption of control. The rebuttal proof must be submitted by affidavit and/or such other documentary evidence as may be appropriate in the circumstances. The Exchange will also consider the following factors in determining if aggregation of accounts is required:

(i) similar patterns of trading activity among separate entities;

(ii) the sharing of kindred business purposes and interests;

(iii) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/ or restrictions;

(3) Initial determinations under this paragraph (f) shall be made by the Regulatory Division. The initial determination may be reviewed by the President or his designee, based upon a report by the Regulatory Division. A Member or customer directly affected by such a determination may ask the President or his designee to reconsider, but may not request any other review or appeal except in the context of a disciplinary proceeding. The decision to grant non-aggregation under this paragraph (f) shall not be retroactive.

Rule 412. Exemptions from Position Limits

(a) *Equity Hedge Exemption*. The following positions, where each options contract is "hedged" by 100 shares of stock or securities convertible into such stock, or, in the case of an adjusted options contract, the same number of shares represented by the adjusted contract, shall be exempted from established position and exercise limits up to that number of options contracts equal to the limit as computed in Rule 411(d): long call and short stock; short call and long stock; long put and long stock; and short put and short stock.

(1) The equity hedge exemption is in addition to the standard limit and other exemptions available under Exchange Rules.

(2) In no event may the equity hedge exemption for any class of options exceed twice the standard limit established by Rule 411, except that the equity hedge exemption for a market maker who also receives a market maker exemption from the standard limit pursuant to paragraph (b) of this Rule may not exceed twice the market maker exempted position.

(b) *Market Maker Exemption*. The provisions set forth below apply only to market makers seeking an exemption to the standard position limits in all options traded on the Exchange for the purpose of assuring that there is sufficient depth and liquidity in the marketplace, and not to confer a right upon the market maker applying for an exemption.

(1) In light of the procedural safeguards, the purpose of this exemption process, and the prohibition against the granting of retroactive exemptions, decisions granting or denying exemptions are not subject to review under Chapter 17 (Hearing and Review) of the Exchange Rules regarding Hearings and Review.

(2) An exemption may be granted for the purpose of maintaining a fair and orderly market in the options on a given underlying security.

(3) Generally, an exemption will be granted only to a market maker who has requested an exemption, who is appointed to the options class in which the exemption is requested pursuant to Rule 802, whose positions are near the current position limit and

who is significant in terms of daily volume. The positions must generally be within ten percent (10%) of the limits contained in Rule 411.

(4) If an exemption is granted, it will be effective at the time the decision is communicated, and retroactive exemptions will not be granted.

(5) The size and length of an exemption will be determined on a case by case basis; however, an exemption usually will be granted until the nearest expiration. The exemption may specify the extent to which the resulting position may be carried in options in one or more expiration cycles.

(6) Procedures for market makers nearing the limits due to general market conditions:

(i) A request for an exemption from the established position and exercise limits must be in writing and must state the specific reasons why an exemption should be granted.

(ii) The request should be submitted to the Exchange no later than 1:00 p.m. for same-day review.

(iii) Review of the request will be conducted informally, *i.e.*, the Exchange may receive information in such manner as is most effective, in its discretion, to ascertain whether an exemption is necessary to maintain depth and liquidity in the market.

(iv) The Exchange will communicate the exemption decision to the requesting market maker and his or its Clearing Member as soon as possible, generally on the day following review.

(7) Requests for instant exemptions may be made for extraordinary situations, such as when there is an order imbalance or a market maker is near the limits intraday. Following immediate review of the situation, the Exchange will decide whether an exemption is warranted.

(c) *Firm Facilitation Exemption*. To the extent that the following procedures and criteria are satisfied, a Member Organization may receive and maintain for its proprietary account an exemption ("facilitation exemption") from the applicable standard position limit in non-multiply-listed options traded on the Exchange for the purpose of facilitating, pursuant to the provisions of Rule 716(c), (i) orders for its own Public Customer (one that will have the resulting position carried with the firm) or (ii) orders received from or on behalf of a Public Customer for execution only against the member firm's proprietary account.

(1) The Member Organization must receive approval from the Exchange prior to executing facilitating trades.

(2) The facilitation exemption shall be granted to the Member Organization

owning or controlling the account in which the exempt options positions are held. For purposes of this paragraph (c), control shall be determined in accordance with the provision of Rule 411(f).

(3) Exchange approval may be given on the basis of verbal representations, in which event the Member Organization shall, within a period of time to be designated by the Exchange, furnish the appropriate forms and documentation substantiating the basis for the exemption. The approval for the facilitation exemption will specify the maximum number of contracts that may be exempt under this paragraph (c). In no event may the aggregate exempted position under this paragraph (c) exceed twice the applicable standard limit.

(4) The facilitation exemption is in addition to the standard limit and other exemptions available under Exchange Rules. A Member Organization so approved is hereinafter referred to as a "facilitation firm."

(5) The facilitation firm must provide all information required by the Exchange on approved forms and keep such information current. The facilitation firm shall promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them.

(6) The facilitation firm shall comply with the following provisions regarding the execution of its Public Customer Order and its own facilitating order:

(i) neither order may be contingent on a "fill-or-kill" instructions; and

(ii) the orders must be executed pursuant to Rule 716(c).

(7) To remain qualified, a facilitation firm must, within five (5) business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish the Exchange with documentation reflecting the resulting hedging positions.

(8) The facilitation firm shall:

(i) liquidate and establish its Public Customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate its Public Customer's or its own stock position or its equivalent with an equivalent index options position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option;

(ii) promptly notify the Exchange of any material change in the exempted options position or the hedge; and

(iii) not increase the exempted options position once it is closed unless approval is received again pursuant to a reapplication under this paragraph (c).

(9) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the facilitation exemption and may form the basis for subsequent denial of an application for a facilitation exemption hereunder.

Rule 413. Exercise Limits

(a) Except with the prior permission of the President or his designee, to be confirmed in writing, no Member shall exercise, for any account in which it has an interest or for the account of any customer, a long position in any options contract where such Member or customer, acting alone or in concert with others, directly or indirectly, has or will have:

(1) exercised within any five (5) consecutive business days aggregate long positions in any class of options traded on the Exchange in excess of 13,500 or 22,500 or 31,500 or 60,000 or 75,000 options contracts or such other number of options contract as may be fixed from time to time by the Exchange as the exercise limit for that class of options; or

(2) exceeded the applicable exercise limit fixed from time to time by another exchange for an options class not traded on the Exchange, when the Member is not a member of the other exchange which lists the options class.

(b) Reasonable notice shall be given of each new exercise limit fixed by the Exchange by posting notice thereof by the Exchange.

(c) Limits shall be determined in the manner described in Rule 411. For a market maker that has been granted an exemption to position limits pursuant to Rule 412(a), the number of contracts which can be exercised over a five (5) business day period shall equal the market maker's exempted position.

Rule 414. Reports Related to Position Limits

(a) Each Member shall file with the Exchange the name, address and social security or tax identification number of any customer, as well as any Member, any general or special partner of the Member, any officer or director of the Member or any participant, as such, in any joint, group or syndicate account with the Member or with any partner, officer or director thereof, who, on the previous business day held aggregate long or short positions of 200 or more options contracts of any single class of options traded on the Exchange. The report shall indicate for each such class of options contracts the number of options contracts comprising each such position and, in case of short positions, whether covered or uncovered.

(b) Electronic Access Members that maintain an end of day position in excess of 10,000 non-FLEX equity options contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report whether such position is hedged and

provide documentation as to how such position is hedged. This report is required at the time the subject account exceeds the 10,000 contract threshold and thereafter, for customer accounts, when the position increases by 2,500 contracts and for proprietary accounts when the position increases by 5,000 contracts.

(c) In addition to the reports required by paragraph (a) and (b) of this Rule, each Member shall report promptly to the Exchange any instance in which the Member has reason to believe that a person included in paragraph (a), acting alone or in concert with others, has exceeded or is attempting to exceed the position limits established pursuant to Rule 411.

Rule 415. Liquidation Positions

(a) Whenever the Exchange shall find that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all options contracts or one or more classes or series traded on the Exchange in excess of the applicable position limit established pursuant to Rule 411, it may order all Members carrying a position in options contracts of such classes or series for such person or persons to liquidate such positions as expeditiously as possible, consistent with the maintenance of a fair and orderly market.

(b) Whenever such an order is given, no Member shall accept any order to purchase, sell or exercise any options contract for the account of the person or persons named in the order, unless and until the Exchange expressly approves such person or persons for options transactions.

Rule 416. Limit on Outstanding Uncovered Short Positions

(a) Whenever it is determined from the reports of uncovered short positions submitted pursuant to Rule 1401 (Reports of Uncovered Short Positions), viewed in light of current market conditions in options and in underlying securities, that there are outstanding an excessive number of uncovered short positions in options contracts of a given class traded on the Exchange or that an excessively high percentage of outstanding short positions in options contracts of a given class traded on the Exchange are uncovered, the Exchange may prohibit Members from any further opening writing transactions on any exchange in options contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short positions in one or more series of options of that class, as it deems appropriate in the interest of maintaining a fair and orderly market in options contracts or in underlying securities.

(b) The Exchange may exempt transactions of market makers from restrictions imposed under this Rule and it shall rescind such restrictions upon its determination that they are no longer appropriate.

Rule 417. Other Restrictions on Options Transactions and Exercises

(a) The Exchange may impose such restrictions on transactions or exercises in one or more series of options of any class traded on the Exchange as the Exchange in its judgment

deems advisable in the interests of maintaining a fair and orderly market in options contracts or in underlying securities, or otherwise deems advisable in the public interest or for the protection of investors.

(1) During the effectiveness of such restrictions, no Member shall, for any account in which it has an interest or for the account of any customer, engage in any transaction or exercise in contravention of such restrictions.

(2) Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, no restriction on exercise under this Rule may be in effect with respect to that series of options.

(b) Whenever the issuer of a security underlying a call option traded on the Exchange is engaged or proposes to engage in a public underwritten distribution ("public distribution") of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that the Exchange impose restrictions upon all opening writing transactions in such options at a "discount" where the resulting short position will be uncovered ("uncovered opening writing transactions").

(1) In addition to a request, the following conditions are necessary for the imposition of restrictions:

(i) less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;

(ii) the underwriters agree to notify the Exchange upon the termination of their stabilization activities; and

(iii) the underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a "minus" or "zero minus" tick.

(2) Upon receipt of such a request and determination that the conditions contained in paragraph (b)(1) are met, the Exchange shall impose the requested restrictions as promptly as possible but no earlier than fifteen (15) minutes after Members shall have been notified and shall terminate such restrictions upon request of the underwriters or when the Exchange otherwise discovers that stabilizing transactions by the underwriters has been terminated.

(3) For purposes of this paragraph (b), an uncovered opening writing transaction in a call option will be deemed to be effected at a "discount" when the premium in such transaction is either:

(i) in the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters' stabilization bid for the underlying security exceeds the

exercise price of such option; or

(ii) in the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters' stabilization bid in the underlying security at the subscription price exceeds the exercise price of such option.

CHAPTER 5

Securities Traded on the Exchange

Rule 500. Designation of Securities

Securities traded on the Exchange are options contracts, each of which is designated by reference to the issuer of the underlying security, expiration month, exercise price and type (put or call).

Rule 501. Rights and Obligations of Holders and Writers

The rights and obligations of holders and writers shall be set forth in the Rules of the Clearing Corporation.

Rule 502. Criteria for Underlying Securities

(a) Underlying securities with respect to which put or call options contracts are approved for listing and trading on the Exchange must meet the following criteria:

(1) the security must be registered and (i) listed on a national securities exchange; or (ii) traded through the facilities of a national securities association and reported as a "national market system" ("NMS") security as set forth in Rule 11Aa3-1 under the Exchange Act; and

(2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.

(b) In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the forgoing, however, absent exceptional circumstances, an underlying security will not be selected unless:

(1) There are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Exchange Act.

(2) There are a minimum of 2,000 holders of the underlying security.

(3) The issuer is in compliance with any applicable requirements of the

Exchange Act.

(4) Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.

(5) The market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

(c) *Securities of Restructured Companies*.

(1) Definitions. The following definitions shall apply to the provisions of this paragraph (c):

(i) "Restructuring Transaction" refers to a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

(ii) "Restructure Security" refers to an equity security that a company issues, or anticipates issuing, as the result of a Restructuring Transaction of the company.

(iii) "Original Equity Security" refers to a company's equity security that is issued and outstanding prior to the effective date of a Restructuring Transaction of the company.

(iv) "Relevant Percentage" refers to either:

(A) twenty-five percent (25%), when the applicable measure determined with respect to the Original Equity Security or the business it represents includes the business represented by the Restructure Security; or

(B) thirty-three and one-third percent (33-1/3%), when the applicable measure determined with respect to the Original Equity Security or the business it represents excludes the business represented by the Restructure Security.

(2) "Share" and "Number of Shareholder" Guidelines. In determining whether a Restructure Security satisfies the share guideline set forth in Rule 502(b)(1) (the "Share Guideline") or the number of holders guideline set forth in Rule 502(b)(2) (the "Number of Shareholders Guideline"), the Exchange may rely upon the facts and circumstances that it expects to exist on the option's intended listing date, rather than on the date on which the Exchange selects for options trading the underlying Restructure Security.

(i) The Exchange may assume that:

(A) both the "Share" and "Number of Shareholders" Guidelines are satisfied if, on the option's intended listing date, the Exchange expects no fewer than forty (40) million shares of the Restructure Security to be issued and outstanding; and

(B) either such Guideline is satisfied if, on the option's intended listing day, the Exchange expects the Restructure Security to be listed on an exchange or automatic quotation system that has, and is subject to, an initial listing requirement that is no less stringent that the Guideline in question.

(ii) The Exchange may not rely on any such assumption, however, if a reasonable Exchange investigation or that of another exchange demonstrates that either the Share Guideline or Number of Shareholders Guideline will not in fact be satisfied on an option's intended listing date.

(iii) In addition, in the case of a Restructuring Transaction in which the shares of a Restructure Security are issued or distributed to the holders of shares of an Original Equity Security, the Exchange may determine that either the Share Guideline or the Number of Shareholders Guideline is satisfied based upon the Exchange's knowledge of the outstanding shares or number of shareholders of the Original Equity Security.

(3) "Trading Volume" Guideline. In determining whether a Restructure Security that is issued or distributed to the holders of shares of an Original Equity Security (but not a Restructure Security that is issued pursuant to a public offering or rights distribution) satisfies the trading volume guideline set forth in Rule 502(b)(4) (the "Trading Volume Guideline"), the Exchange may consider the trading volume history of the Original Equity Security prior to the "ex-date" of the Restructuring Transaction if the Restructure Security satisfies the "Substantiality Test" set forth in subparagraph (c)(5) below.

(4) "Market Price" Guideline. In determining whether a Restructure Security satisfies the market price history guideline set forth in Rule 502(b)(5) (the "Market Price Guideline"), the Exchange may consider the market price history of the Original Equity Security prior to the "ex-date" of the Restructuring Transaction if:

(i) the Restructure Security satisfies the "Substantiality Test" set forth in subparagraph (c)(5) below; and

(ii) in the case of the application of the Market Price Guideline to a Restructure Security that is distributed pursuant to a public offering or a rights distribution:

(A) the Restructure Security trades "regular way" on an exchange or automatic quotation system for at least the five trading days immediately preceding the date of selection; and

(B) at the close of trading on each trading day on which the Restructure Security trades "regular way" prior to the date of selection, and the opening of trading on the date of selection, the market price of the Restructure Security was at least $7.50.

(5) The "Substantiality Test." A Restructure Security satisfies the "Substantiality Test" if:

(i) the Restructure Security has an aggregate market value of at least $500 million; or

(ii) at least one of the following conditions is met:

(A) the aggregate market value of the Restructure Security equals or exceeds the Relevant Percentage of the aggregate market value of the Original Equity Security;

(B) the aggregate book value of the assets attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the aggregate book value of the assets attributed to the business represented by the Original Equity Security; or

(C) the revenues attributed to the business represented by the Restructure Security equals or exceeds both $50 million and the Relevant Percentage of the revenues attributed to the business represented by the Original Equity Security.

(6) A Restructure Security's aggregate market value may be determined from "when issued" prices, if available.

(7) In calculating comparative aggregate market values for the purpose of assessing whether a Restructure Security qualifies to underlie an option, the Exchange shall use the Restructure Security's closing price on its primary market on the last business day prior to the selection date or the Restructure Security's opening price on its primary market on the selection date and shall use the corresponding closing or opening price of the related Original Equity Security.

(8) In calculating comparative asset values and revenues, the Exchange shall use (i) the issuer's latest annual financial statements or (ii) the issuer's most recently available interim financial statements (so long as such interim financial statements cover a period of not less than three months), whichever are more recent. Those financial statements may be audited or unaudited and may be pro forma.

(9) Except in the case of a Restructure Security that is distributed pursuant to a public offering or rights distribution, the Exchange may not rely upon the trading

volume or market price history of an Original Equity Security as this paragraph (c) permits for any trading day unless it relies upon both of those measures for that trading day.

(10) Once the Exchange commences to rely upon a Restructure Security's trading volume and market price history for any trading day, the Exchange may not rely upon the trading volume and market price history of the security's related Original Equity Security for any trading day thereafter.

(11) "When Issued" Trading Prohibited. The Exchange shall not list for trading options contracts that overlie a Restructure Security that is not yet issued and outstanding, regardless of whether the Restructure Security is trading on a "when issued" basis or on another basis that is contingent upon the issuance or distribution of shares.

(d) In considering underlying securities, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which the security is traded.

(e) The word "security" shall be broadly interpreted to mean any equity security, as defined in Rule 3a11-1 under the Exchange Act, which is appropriate for options trading, and the word "shares" shall mean the unit of trading of such security.

(f) Securities deemed appropriate for options trading shall include nonconvertible preferred stock issues and American Depositary Receipts ("ADRs") if they meet the criteria and guidelines set forth in this Rule 502 and if, in the case of ADRs:

(1) the Exchange has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded;

(2) the combined trading volume of the ADR and other related ADRs and securities (as defined below) occurring in the U.S. ADR market or in markets with which the Exchange has in place an effective surveillance sharing agreement represents (on a share equivalent basis) at least fifty percent (50%) of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock (together "other related ADRs and securities") over the three month period preceding the date of selection of the ADR for options trading;

(3) (i) the combined trading volume of the ADR and other related ADRs and securities occurring in the U.S. ADR market and in markets where the Exchange has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least twenty percent (20%) of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading, (ii) the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares, and (iii) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of the trading days for the three (3)

months preceding the date of selection of the ADR for options trading ("Daily Trading Volume Standard"); or

(4) the SEC otherwise authorizes the listing.

(g) Securities deemed appropriate for options trading shall include shares issued by registered closed-end management investment companies that invest in the securities of issuers based in one or more foreign countries ("International Funds") if they meet the criteria and guidelines set forth in this Rule 502 and either:

(1) the Exchange has a market information sharing agreement with the primary home exchange for each of the securities held by the fund, or

(2) the International Fund is classified as a diversified fund as that term is defined by section 5(b) of the Investment Company Act of 1940, as amended, and the securities held by the fund are issued by issuers based in five or more countries.

(h) A "market information sharing agreement" for purposes of this Rule is an agreement that would permit the Exchange to obtain trading information relating to the securities held by the fund including the identity of the member of the foreign exchange executing a trade. International Fund shares not meeting criteria of paragraph (h) shall be deemed appropriate for options trading if the SEC specifically authorizes the listing.

Rule 503. Withdrawal of Approval of Underlying Securities

(a) Whenever the Exchange determines that an underlying security previously approved for Exchange options transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and may prohibit any opening purchase transactions in series of options of that class previously opened to the extent it deems such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements regarding number of publicly held shares, number of shareholders, trading volume or market price, the Exchange may, in the interest of maintaining a fair and orderly market or for the protection of investors, determine to continue to open additional series of options contracts of the class covering that underlying security. When all options contracts with respect to any underlying security that is no longer approved have expired, the Exchange may make application to the SEC to strike from trading and listing all such options contracts.

(b) Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act.

(2) There are fewer than 1,600 holders of the underlying security.

(3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months.

(4) The market price per share of the underlying security closed below $5 on a majority of the business days during the preceding six (6) calendar months as measured by the highest closing price reported in any market in which the underlying security traded.

(5) The issuer has failed to make timely reports as required by applicable requirements of the Exchange Act, and such failure has not been corrected within thirty (30) days after the date the report was due to be filed.

(6) The issuer, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as an NMS security.

(7) If an underlying security is approved for options listing and trading under the provisions of Rule 502(c), the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including "when-issued" trading, may be taken into account in determining whether the trading volume and market price requirements of (3) and (4) of this paragraph (b), as well as the trading volume and market price requirements of paragraph (e) of this Rule, are satisfied.

(c) In connection with paragraph (b)(4) of this Rule, the Exchange shall not open for trading any additional series of options contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than $5, as measured by the highest closing price reported in any market in which the underlying security trades. Further, no series of options contracts will be opened with a strike price of less than $5 per share.

(d) In considering whether any of the events specified in paragraph (b) of this Rule have occurred with respect to an underlying security, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which such security is traded.

(e) Notwithstanding paragraph (b)(4) of this Rule, nor paragraph (c) of this Rule, the Exchange may continue to open for trading additional series of options contracts of a class covering an underlying security, provided:

(1) The aggregate market value of the underlying security equals or exceeds $50 million;

(2) Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all expiration months;

(3) Trading volume in the underlying security (in all markets in which the underlying security is trading) has been at least 2,400,000 shares in the preceding twelve (12) months; and

(4) The market price per share of the underlying security closed at $3 or above on a majority of the business days during the preceding six (6) calendar months, as measured by the highest closing price reported in any market in which the underlying security traded, and further provided the market price per share of the underlying security is at least $3 at the time such additional series are authorized for trading. During the next consecutive six (6) calendar month period, to satisfy this paragraph (e), the price of the underlying security as referenced in this paragraph (e)(4) shall be $4.

(f) If prior to the delisting of a class of options contracts covering an underlying security that has been found not to meet the Exchange's requirements for continued approval, the Exchange determines that the underlying security again meets the Exchange's requirements, the Exchange may open for trading additional series of options of that class and may lift any restriction on opening purchase transactions imposed by this Rule.

(g) Whenever the Exchange announces that approval of an underlying security has been withdrawn for any reason or that the Exchange has been informed that the issuer of an underlying security has ceased to be in compliance with SEC reporting requirements, each Member and Member Organization shall, prior to effecting any transaction in options contracts with respect to such underlying security for a customer, inform such customer of such fact and of the fact that the Exchange may prohibit further transactions in such options contracts to the extent it shall deem such action necessary and appropriate.

(h) If an ADR was initially deemed appropriate for options trading on the grounds that fifty percent (50%) or more of the worldwide trading volume (on a share-equivalent basis) in the ADR and other related ADRs and securities takes place in U.S. markets or in markets with which the Exchange has in place an effective surveillance sharing agreement, or if an ADR was initially deemed appropriate for options trading based on the daily trading volume standard Rule 502(f)(3), the Exchange may not open for trading additional series of options on the ADR unless:

(1) The percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which the Exchange has in place effective surveillance sharing agreements for any consecutive three (3) month period is either (i) at least thirty percent (30%) without regard to the average daily trading volume in the ADR, or (ii) at least fifteen percent (15%) when the average U.S. daily trading volume in the ADR for the previous three (3) months is at least 70,000 shares; or

(2) the Exchange then has in place an effective surveillance sharing agreement with the primary exchange in the home country where the security underlying the ADR is traded; or

(3) the SEC has otherwise authorized the listing.

Rule 504. Series of Options Contracts Open for Trading

(a) After a particular class of options has been approved for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that class. Only options contracts in series of options currently open for trading may be purchased or written on the Exchange. Prior to the opening of trading in a given series, the Exchange will fix the expiration month, year and exercise price of that series.

(b) At the commencement of trading on the Exchange of a particular class of options, the Exchange usually will open three (3) series of options for each expiration month in that class. The exercise price of each series will be fixed at a price per share, with at least one strike price above and one strike price below the price at which the underlying stock is traded in the primary market at about the time that class of options is first opened for trading on the Exchange.

(c) Additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves substantially from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened.

(d) The interval between strike prices of series of options on individual stocks will be:

(1) $2.50 or greater where the strike price is $25.00 or less;

(2) $5.00 or greater where the strike price is greater than $25.00; and

(3) $10.00 or greater where the strike price is greater than $200.00.

(e) The Exchange usually will open four (4) expiration months for each class of options open for trading on the Exchange: the first two (2) being the two (2) nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two (2) months of the quarterly cycle previously designated by the Exchange for that specific class. For example:

(1) If the Exchange listed in late April a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two (2) nearest term months (May and June) and the next two (2) expiration months of the cycle (July and October).

(2) When the May series expires, the Exchange would add a January series. When the June series expires, the Exchange would add an August series as the next nearest month and would not add an April series.

(f) New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until five (5) business days prior to expiration. Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter 9 (FLEX Equity Options), may be added on any business day prior to the expiration date.

(g) The options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than $50. The 200 options classes may be selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges. In addition to those options selected by the Exchange, the strike price interval may be $2.50 in any multiply-traded option once another exchange trading that option selects such option as part of this program. The Exchange and any of the other exchanges may also list strike prices of $2.50 on any options class that was previously selected by the NYSE.

Rule 505. Adjustments

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. When adjustments have been made, the Exchange will announce that fact, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

Rule 506. Long-Term Options Contracts

(a) Notwithstanding conflicting language in Rule 504, the Exchange may list long-term options contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed. There may be up to six (6) additional expiration months. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine (9) months.

(b) After a new long-term options contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

CHAPTER 6

Doing Business With the Public

Rule 600. Exchange Approval

An Electronic Access Member may be approved by the Exchange to transact business with the public only if such Member is also a member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d-2 under the Exchange Act pursuant to which such other exchange or association shall be the designated examining authority for the Member. Approval to transact business with the public shall be based on a Member's meeting the general requirements set forth in this Chapter and the net capital requirements set forth in Chapter 13 (Net Capital Requirements). Such approval may be withdrawn if any such requirements cease to be met.

Rule 601. Registration of Options Principals

(a) No Member shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the management of the Member's business pertaining to options contracts shall be designated as Options Principals.

(b) In connection with their registration, Options Principals shall file an application with the Secretary on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the options business, and shall sign an agreement to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that Options Principals of Members that are members of another national securities exchange or association that has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such Options Principals are approved by and registered with such other exchange or association.

(c) Termination of employment or affiliation of any Options Principal in such capacity shall be reported promptly to the Exchange together with a brief statement of the reason for such termination.

Rule 602. Registration of Representatives

(a) No Member shall be approved to transact business with the public until those persons associated with it who are designated Representatives have been approved by and registered with the Exchange.

(b) Persons who perform duties for the Member which are customarily performed by sales representatives or branch office managers shall be designated as Representatives of the Member.

(c) In connection with their registration, Representatives shall file an application on a form prescribed by the Exchange, shall successfully complete an examination prescribed by the Exchange for the purpose of demonstrating an adequate knowledge of the securities business, and shall sign an agreement to abide by the Constitution and Rules of the Exchange and the Rules of the Clearing Corporation; provided, however, that Representatives of Members that are members of another national securities exchange or association that has standards of approval acceptable to the Exchange may be deemed to be approved by and registered with the Exchange, so long as such Representatives are approved by and registered with such other exchange or association.

Rule 603. Termination of Registered Persons

(a) The discharge or termination of employment of any registered person, together with the reasons therefor, shall be reported by a Member immediately following the date of termination, but in no event later than thirty (30) days following termination, to the Exchange on a Uniform Termination Notice for Securities Industry Registration (Form U-5). A copy of said termination notice shall be provided concurrently to the person whose association has been terminated.

(b) The Member shall report to the Exchange, by means of an amendment to the Form U-5 filed pursuant to paragraph (a) above, in the event that the Member learns of facts or circumstances causing any information set forth in the notice to become inaccurate or incomplete. Such amendment shall be filed with the Exchange and provided concurrently to the person whose association has been terminated no later than thirty (30) days after the Member learns of the facts or circumstances giving rise to the amendment.

(c) Any filing or submission requirement under this Rule shall be deemed to be satisfied if such filing or submission is made with the North American Securities Administrators Association/National Association of Securities Dealers, Inc. Central Registration Depository ("CRD") within the prescribed time period.

Rule 604. Continuing Education for Registered Persons

(a) *Regulatory Element*. No Member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule.

(1) Persons who have been continuously registered for more than ten (10) years as of July 1, 1998, are exempt from the requirements of this Rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten (10) years

as enumerated in subsections (a)(3)(i)-(ii) of this Rule.

(i) However, persons delegated supervisory responsibility or authority pursuant to Rule 609 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten (10) years as of the effective date of this Rule and provided that such supervisory person has not been subject to any disciplinary action under subsections (a)(3)(i)-(ii) of this Rule.

(ii) In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsections (a)(3)(i)-(ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.

(2) Failure to Complete. Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(3) Re-Entry Into Program. Unless otherwise determined by the Exchange, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act,

(ii) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities SRO, or as imposed by any such regulatory organization in connection with a disciplinary proceeding, or

(iii) is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or securities SRO.

Re-entry shall commence with initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. The date that the disciplinary action becomes final will be deemed the person's initial registration

anniversary date for purposes of this Rule.

(b) *Firm Element*.

(1) Persons Subject to the Firm Element. The requirements of paragraph (b) of this Rule shall apply to any registered person who has direct contact with customers in the conduct of the Member's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively "covered registered persons").

(2) Standards.

(i) Each Member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skills and professionalism. At a minimum each Member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the Member's size, organizational structure and scope of business activities, as well as regulatory development and the performance of covered registered persons in the Regulatory Element. If a Member's analysis determines a need for supervisory training for persons with supervisory responsibilities, such training must be included in the Member's training plan.

(ii) Minimum Standards for Training Programs. Programs used to implement a Member's training plan must be appropriate for the business of the Member and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the Member:

(a) general investment features and associated risk factors;

(b) suitability and sales practice considerations; and

(c) applicable regulatory requirements.

(iii) Administration of Continuing Education Program. Each Member must administer its continuing education program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(3) Participation in the Firm Element. Covered registered persons included in a Member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the Member.

Supplementary Material to Rule 604

.01 For purposes of this Rule, the term "registered person" means any Member,

Representative or other person registered or required to be registered under the Rules, but does not include any such person whose activities are limited solely to the transaction of business on the Exchange with Members or registered broker-dealers.

.02 For purposes of this Rule, the term "customer" means any natural person or any organization, other than a registered broker or dealer, executing transactions in securities or other similar instruments with or through, or receiving investment banking services from, a Member.

.03 Any registered person who has terminated association with a registered broker or dealer and who has, within two (2) years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program as such intervals that apply (second registration anniversary and every three years thereafter) based on the initial registration anniversary date, rather than based on the date of reassociation in a registered capacity. Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two (2) years after termination as such will be required to satisfy the program's requirements in their entirety (second registration anniversary and every three years thereafter), based on the most recent registration date.

.04 A registration that is deemed inactive for a period of two (2) calendar years pursuant to paragraph (a)(2) of this Rule for failure of a registered person to complete the Regulatory Element, shall be terminated. A person whose registration is so terminated may become registered only by reapplying for registration and satisfying applicable registration and qualification requirements of the Exchange's Rules.

Rule 605. Other Affiliations of Registered Persons

Except with the express written permission of the Exchange, every registered person shall devote his entire time during business hours to the business of the Member employing him, or to the business of its affiliates that are engaged in the transaction of business as a broker or dealer in securities or commodities or in such other businesses as have been approved by the Member's designated examining authority.

Rule 606. Discipline, Suspension, Expulsion of Registered Persons

The Exchange may discipline, suspend or terminate the registration of any registered person for violation of the Constitution or Rules of the Exchange or the Rules of the Clearing Corporation.

Rule 607. Branch Offices

(a) Every Member approved to do options business with the public under this Chapter shall file with the Exchange and keep current a list of each of its branch offices showing the location of each such office and the name of the manager of each such office.

(b) No branch office of a Member shall transact options business with the public

unless the manager of such branch office has been qualified as an Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three (3) Representatives are located so long as the Member can demonstrate that the options activities of such branch offices are appropriately supervised by an Options Principal.

Rule 608. Opening of Accounts

(a) *Approval Required.* No Member shall accept an order from a customer to purchase or write an options contract unless the customer's account has been approved for options transactions in accordance with the provisions of this Rule.

(b) *Diligence in Opening Account.* In approving a customer's account for options transactions, a Member shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information, which shall be retained in accordance with Rule 609. Based upon such information, the branch office manager or other Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not an Options Principal, his approval shall within a reasonable time be confirmed by an Options Principal.

(1) In fulfilling its obligations under this paragraph with respect to options customers that are natural persons, a Member shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

(i) investment objectives (*e.g.*, safety of principal, income, growth, trading profits, speculation);

(ii) employment status (name of employer, self-employed or retired);

(iii) estimated annual income from all sources;

(iv) estimated net worth (exclusive of family residence);

(v) estimated liquid net worth (cash, securities, other);

(vi) marital status;

(vii) number of dependents;

(viii) age; and

(ix) investment experience and knowledge (*e.g.*, number of years, size, frequency and type of transactions for options, stocks and bonds, commodities, other).

(2) In addition to the information required in subparagraph (1) above, the

customer's account records shall contain the following information, if applicable:

(i) source or sources of background and financial information (including estimates) concerning the customer;

(ii) discretionary trading authorization, including agreement on file, name, relationship to customer and experience of person holding trading authority;

(iii) date(s) options disclosure document(s) furnished to customer;

(iv) nature and types of transactions for which account is approved (*e.g.*, buying, covered writing, uncovered writing, spreading, discretionary transactions);

(v) name of Representative;

(vi) name of Options Principal approving account;

(vii) date of approval; and

(viii) dates of verification of currency of account information.

(3) Refusal of a customer to provide any of the information called for in this paragraph shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

(c) *Verification of Customer Background and Financial Information.* The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, including all of the information required in paragraph (b)(2) of this Rule, unless the information is included in the customer's account agreement, shall be sent to the customer for verification or correction within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the Member shall also be sent to the customer for verification within fifteen (15) days after the Member becomes aware of any material change in the customer's financial situation. Absent advice from the customer to the contrary, the information will be deemed to be verified.

(d) *Agreements to Be Obtained.* Within fifteen (15) days after a customer's account has been approved for options transactions, a Member shall obtain from the customer a written agreement that the account shall be handled in accordance with the Rules of the Exchange and the Rules of the Clearing Corporation and that such customer, acting alone or in concert with others, will not violate the position or exercise limits set forth in Rules 411 and 413.

(e) *Options Disclosure Documents to Be Furnished.* At or prior to the time a customer's account is approved for options transactions, a Member shall furnish the customer

with one (1) or more current options disclosure documents in accordance with the requirements of Rule 616.

(f) Every Member transacting business with the public in uncovered options contracts shall develop, implement and maintain specific written procedures governing the conduct of such business that shall at least include the following:

(1) specific criteria and standards to be used in evaluating the suitability of a customer for uncovered short options transactions;

(2) specific procedures for approval of accounts engaged in writing uncovered short options contracts (which for the purposes of this Rule shall include combinations and any transactions that involve naked writing), including written approval of such accounts by an Options Principal;

(3) designation of the Senior Options Principal and/or Compliance Options Principal as the person responsible for approving accounts that do not meet the specific criteria and standards for writing uncovered short options transactions and for maintaining written records of the reasons for every account so approved;

(4) establishment of specific minimum net equity requirements for initial approval and maintenance of customer uncovered options accounts; and

(5) requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short options transactions, at or prior to the initial uncovered short options transaction pursuant to Rule 616(c).

Rule 609. Supervision of Accounts

(a) *Duty to Supervise-- Non-Member Accounts*. Every Member shall develop and implement a written program for the review of the its non-Member customer accounts and all orders in such accounts, insofar as such accounts and orders relate to options contracts.

(b) *Duty to Supervise-- Uncovered Short Options.* Every Member shall develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) options positions (which for the purposes of this Rule shall include combinations and any transactions that involve naked writing) and specifically providing for frequent supervisory review of such accounts.

(c) *Senior Options Principal.* Each Member shall designate a Senior Options Principal who is specifically identified to the Exchange and who is an officer (in the case of a corporation) or general partner (in the case of a partnership) or manager (in the case of a limited liability company) of the Member to supervise compliance with paragraphs (a) and (b) of this Rule. In meeting his responsibility for supervision of non-member customers' accounts and orders, the Senior Options Principal may delegate to qualified employees responsibility and authority for supervision and control of each branch office handling options transactions, provided that the Senior Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

(d) *Compliance Options Principal.* Every Member shall designate and specifically identify to the Exchange a Compliance Options Principal (who may be the Senior Options Principal), who shall have no sales functions and shall be responsible to review, and to propose appropriate action to secure, the Member's compliance with securities laws and regulations and Exchange Rules with respect to its options business.

(1) The Compliance Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Options Principal is not himself the compliance officer) and to other senior management of the Member.

(2) The requirement that the Compliance Options Principal shall have no sales functions does not apply to a Member that has received less than $1 million in gross commissions on options business as reflected in its FOCUS reports for either of the preceding two (2) fiscal years or that currently has ten (10) or fewer Representatives.

(e) *Maintenance of Customer Records.* Background and financial information of customers who have been approved for options transactions shall be maintained at the principal supervisory office having jurisdiction over the office servicing a customer's account, or shall have readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

(1) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

(2) the size and frequency of options transactions;

(3) commission activity in the account;

(4) profit or loss in the account;

(5) undue concentration in any options class or classes; and

(6) compliance with the provisions of Regulation T of the Federal Reserve Board.

Rule 610. Suitability of Recommendations

(a) Every Member, Options Principal or Representative who recommends to a customer the purchase or sale (writing) of any options contract shall have reasonable grounds for believing that the recommendation is not unsuitable for such customer on the basis of the information furnished by such customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by such Member, Options Principal or Representative.

(b) No Member, Options Principal or Representative shall recommend to a customer an opening transaction in any options contract unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the options contract.

Rule 611. Discretionary Accounts

(a) *Authorization and Approval Required.* No Member shall exercise any discretionary power with respect to trading in options contracts in a customer's account unless such customer has given prior written authorization and the account has been accepted in writing by an Options Principal.

(1) The Senior Options Principal shall review the acceptance of each discretionary account to determine that the Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and the Senior Options Principal shall maintain a record of the basis for his determination.

(2) Each discretionary order shall be approved and initialled on the day entered by the branch office manager or other Options Principal, provided that if the branch office manager is not an Options Principal, his approval shall be confirmed within a reasonable time by an Options Principal.

(3) Every discretionary order shall be identified as discretionary on the order at the time of its entry into the System.

(4) Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Options Principal.

(b) *Record of Transactions.* A record shall be made of every options transaction for an account with respect to which a Member is vested with any discretionary power, such record to include the name of the customer, options class and series, number of contracts, premium, and date and time when such transaction took place.

(c) *Excessive Transactions Prohibited.* No Member shall effect with or for any customer's account with respect to which such Member is vested with any discretionary power any transactions of purchase or sale of options contracts that are excessive in size or frequency in view of the financial resources and character of such account.

(d) *Options Programs.* Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation (meeting the requirements of Rule 623) of the nature and risks of such programs.

Rule 612. Confirmation to Customers

(a) Every Member shall promptly furnish to each customer a written confirmation of each transaction in options contracts that shows the underlying security, type of options, expiration month, exercise price, number of options contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.

(b) The confirmation shall, by appropriate symbols, distinguish between Exchange Transactions and other transactions in options contracts.

Rule 613. Statement of Accounts to Customers

(a) Every Member shall send to its customers a statement of account showing security and money positions, entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations.

(b) With respect to options customers having a general (margin) account, the customer statement shall also provide the mark-to-market price and market value of each

options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity.

(1) For purposes of this paragraph, general (margin) account equity shall be computed by subtracting the total of the short security values and any debit balance from the total of the long security values and any credit balance.

(c) The customer statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed options transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

(d) Customer statements shall bear a legend requesting that the customer promptly advise the Member of any material change in the customer's investment objectives or financial situation.

(e) Customer statements shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and at least monthly to all accounts having an entry during the preceding month.

Rule 614. Statements of Financial Condition to Customers

Every Member shall send to each of its customers statements of the Member's financial condition as required by Rule 17a-5 under the Exchange Act.

Rule 615. Addressing of Communications to Customers

No Member shall address any communications to a customer in care of any other person unless either (i) the customer, within the preceding twelve (12) months, has instructed the Member in writing to send communications in care of such other persons, or (ii) duplicate copies are sent to the customer at some other address designated in writing by him.

Rule 616. Delivery of Current Options Disclosure Documents and Prospectus

(a) *Options Disclosure Documents.* Every Member shall deliver a current options disclosure document to each customer at or prior to the time such customer's account is approved for options transactions. Where a customer is a broker or dealer, the Member shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of current options disclosure documents, as requested by the broker or dealer, to enable it to comply with the requirements of this Rule.

(1) The term "current options disclosure document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Exchange Act.

(2) A copy of each amendment to an options disclosure document shall be furnished to each customer who was previously furnished the options disclosure document to which the amendment pertains, not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such customer. The Exchange will advise Members when an options disclosure document is amended.

(b) *Prospectus.* Every Member shall furnish a copy of the current prospectus of the Clearing Corporation to each customer who requests one. The Exchange will advise Members when a new prospectus is available. The term "current prospectus of Clearing Corporation" means the prospectus portion of the most recent Form S-20, which prospectus portion then meets the delivery requirements of Rule 153b under the Securities Act.

(c) The written description of risks required by Rule 608(f)(5) shall be in a format prescribed by the Exchange or in a format developed by the Member, provided it contains substantially similar information as the prescribed Exchange format and has received prior written approval of the Exchange.

(d) Sample risk description for use by Members to satisfy the requirements of paragraph (c) of this Rule.

Special Statement for Uncovered Options Writers

There are special risks associated with uncovered options writing which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

1. The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

2. As with writing uncovered calls, the risk of writing uncovered put options is substantial. The writer of an uncovered put option bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

3. Uncovered options writing is thus suitable only for the knowledgeable investor who understands the risks, has the financial capacity and willingness to incur potentially *substantial* losses, and has sufficient liquid assets to meet applicable margin requirements. In this regard, if the value of

the underlying instrument moves against an uncovered writer's options position, the investor's broker may request significant additional margin payments. If an investor does not make such margin payments, the broker may liquidate stock or options positions in the investor's account with little or no prior notice in accordance with the investor's margin agreement.

4. For combination writing, where the investor writes both a put and a call on the same underlying instrument, the potential risk is unlimited.

5. If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an options writer would remain obligated until expiration or assignment.

6. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

NOTE: It is expected that you will read the booklet entitled CHARACTERISTICS AND RISKS OF STANDARDIZED OPTIONS available from your broker. In particular, your attention is directed to the chapter entitled Risks of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

Rule 617. Restrictions on Pledge and Lending of Customers' Securities

(a) No Member shall lend, either to itself or to others, securities carried for the account of any customer, unless such Member shall first have obtained a separate written authorization from such customer permitting the lending of the securities.

(b) Regardless of any agreement between a Member and a customer authorizing the Member to lend or pledge such securities, no Member shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer to such Member, except such lending as may be specifically authorized under paragraph (c) of this Rule.

(c) No Member shall lend securities carried for the account of any customer that have been fully paid for, or that are in excess of the amount that may be loaned in view of the indebtedness of the customer, unless such Member first obtains from such customer a separate written authorization designating the particular securities to be loaned.

(d) No Member shall hold securities carried for the account of any customer that have been fully paid for, or that are in excess of the amount that may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method that clearly indicates the interest of such customer in those securities.

Rule 618. Transactions of Certain Customers

(a) No Member shall execute any transaction in securities or carry a position in any security in which:

(1) an officer or employee of the Exchange, or any other national securities exchange that is a participant of the Clearing Corporation, or an officer or employee of a corporation in which the Exchange or such other exchange owns the majority of the capital stock, is directly or indirectly interested, without the prior written consent of the Exchange; or

(2) a partner, officer, director, principal shareholder or employee of another Member is directly or indirectly interested, without the consent of such other Member.

(b) Where the required consent has been granted, duplicate reports of the transaction and position shall promptly be sent to the Exchange or Member, as the case may be.

Rule 619. Guarantees

No Member shall guarantee a customer against loss in his account or in any transaction effected with or for such customer.

Rule 620. Profit Sharing

(a) No Member, Options Principal, Representative, officer, partner or branch office manager of the Member shall share directly or indirectly in the profits or losses in any customer's account, whether carried by such Member, or any other Member, without the prior written consent of the Member carrying the account.

(b) Where such consent is obtained, the Member, Options Principal, Representative, officer, partner or branch office manager shall share in the profits or losses in such account only in direct proportion to the financial contribution made to the account by such person.

Rule 621. Assuming Losses

No Member shall assume for its own account any position established for a customer in a security traded on the Exchange after a loss to the customer has been established or ascertained, unless the position was created by the Member's mistake or unless approval of the Exchange has first been obtained.

Rule 622. Transfer of Accounts

(a) When a customer whose securities account is carried by a Member (the "Carrying Member") wants to transfer the entire account to another Member (the "Receiving Member") and gives written notice of that fact to the Receiving Member, both Members must expedite and coordinate activities with respect to the transfer. For purposes of this Rule, the term "securities account" shall be deemed to include any and all of the account's money market fund positions or the redemption value thereof.

(b)(1) Upon receipt from the customer of a signed broker-to-broker transfer instruction to receive such customer's securities account, the Receiving Member will immediately submit such instruction to the Carrying Member. The Carrying Member must, within five (5) business days following receipt of such instruction, (i) validate and return the transfer instruction (with an attachment reflecting all positions and money balances as shown on its books) to the Receiving Member, or (ii) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the Receiving Member of the exception taken.

(2) The Carrying Member and the Receiving Member must promptly resolve any exceptions taken to the transfer instruction.

(3) Within five (5) business days following the validation of a transfer instruction, the Carrying Member must complete the transfer of the customer's securities account to the Receiving Member. The Carrying Member and the Receiving Member must establish fail to receive and fail to deliver contracts at then current market values upon their respective books of account against the long/short positions (including options) in the customer's securities account that have not been physically delivered/received and the Receiving/Carrying Member must debit/credit the related money account. The customer's securities account shall thereupon be deemed transferred.

(c) Any fail contracts resulting from this account transfer procedure must be closed out within ten (10) business days after their establishment.

(d) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's securities account must be resolved promptly.

(e) When both the Carrying Member and the Receiving Member are participants in a clearing corporation having automated customer securities account transfer capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this Rule and pursuant to the rules of and through the clearing corporation.

(f) The Exchange may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (i) any Member or type of Members, or (ii) any type of account, security or financial instrument.

(g) Unless an exemption has been granted pursuant to paragraph (f) of this Rule,

the Exchange may impose upon a Member a fee of up to $100 per securities account for each day such Member fails to adhere to the time frames or procedures required by this Rule.

(h) Transfer instructions and reports required by this Rule shall be in such form as may be prescribed by the Exchange.

Rule 623. Communications to Customers

(a) *General Rule.* No Member or person associated with a Member shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options that:

(1) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(2) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events that are unwarranted or that are not clearly labeled as forecasts;

(3) contains hedge clauses or disclaimers that are not legible, that attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or that are otherwise inconsistent with such communication; or

(4) would constitute a prospectus as that term is defined in the Securities Act, unless it meets the requirements of Section 10 of the Securities Act.

(b) *Definitions.* For purposes of this Rule, the following definitions shall apply:

(1) The term "advertisement" shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, telecommunications device, electronic communications device, billboards, signs or through written sales communications to customers or the public that are not required to be accompanied or preceded by one or more current options disclosure documents.

(2) The term "educational material" shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the standardized options markets or one or more strategies.

(3) The term "sales literature" shall include any written communication (not defined as an "advertisement" or as "educational material") distributed or made

generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar events. "Sales literature" also includes telemarketing scripts.

(c) *Approval by Compliance Options Principal.* All advertisements, sales literature (except completed worksheets), and educational material issued by a Member pertaining to options shall be approved in advance by the Compliance Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the Member and kept at an easily accessible place for examination by the Exchange for a period of three (3) years.

(d) *Exchange Approval Required for Options Advertisements and Educational Material.* In addition to the approval required by paragraph (c) of this Rule, every advertisement and all educational material of a Member pertaining to options shall be submitted to the Exchange at least ten (10) days prior to use (or such shorter period as the Exchange may allow in particular instances) for approval, and if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made or, in the event of disapproval, until the advertisement or educational material has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(1) advertisements or educational material submitted to another SRO having comparable standards pertaining to such advertisements or educational material, and

(2) advertisements in which the only reference to options is contained in a listing of the services of a Member.

(e) Except as otherwise provided in this Rule, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received one (1) or more current options disclosure documents.

(f) The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature that discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications concerning options, the following guidelines shall be observed:

(1) Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as

"with options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

(2) It shall not be suggested that options are suitable for all investors.

(3) Statements suggesting the certain availability of a secondary market for options shall not be made.

(g) Advertisements pertaining to options shall conform to the following standards:

(1) Advertisements may only be used (and copies of the advertisements may not be sent to persons who have not received one or more options disclosure documents) if the material meets the requirements of Rule 134 under the Securities Act, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person or persons from whom the current options disclosure document(s) may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of The Options Clearing Corporation, including a discussion of how the price of an option is determined on such exchange(s).

(ii) The advertisement may include any statement required by any state law or administrative authority.

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering, as well as attention-getting headlines and photographs and other graphics, may be used, provided such material is not misleading.

(2) The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

(h) Educational material, including advertisements, pertaining to options may be used if the material meets the requirements of Rule 134a under the Securities Act. Those requirements are as follows:

(1) The potential risks related to options trading generally and to each strategy addressed must be explained.

(2) No past or projected performance figures, including annualized rates of return may be used.

(3) No recommendation to purchase or sell any options contract may be made.

(4) No specific security may be identified other than:

(i) a security which is exempt from registration under the Act, or an option on such exempt security, or

(ii) an index option, including the component securities of the index, or

(iii) a foreign currency option.

(5) The material contains the name and address of a person or persons from whom the appropriate current Options Disclosure Document(s), as defined in Rule 9b-1 of the Exchange Act, may be obtained.

(i) Sales literature pertaining to options shall conform to the following standards:

(1) Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of the options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(2) Such communications may contain projected performance figures (including projected annualized rates of return), provided that:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (*e.g.*, to indicate the exercise price of an options contract, the purchase price of the underlying stock and the options contract's market price, premium, anticipated dividends, etc.);

(iii) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;

(iv) such projections are plausible and intended as a source of reference or a comparative device to be used in the development of a recommendation;

(v) all material assumptions made in such calculations are clearly identified (*e.g.*, "assume option expires," "assume option unexercised," "assume option exercised," etc.);

(vi) the risks involved in the proposed transactions are also discussed; and

(vii) in communications relating to annualized rates of return, such returns are not based upon any less than a sixty (60) day experience, any formulas used in making calculations are clearly displayed and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(3) Such communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(i) any such portrayal is done in a balanced manner and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent twelve (12) month period;

(ii) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics in lieu of the complete record, there may be included in the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(iii) such communications disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;

(iv) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (*e.g.*, comparison to an index) is valid;

(v) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(vi) an Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(4) In the case of an options program (*i.e.*, an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(5) Standard forms of options worksheets utilized by Members, in addition to complying with the requirements applicable to sales literature, must be uniform within a Member for each product type (*e.g.*, equity, index, interest rate, etc.).

(6) If a Member has adopted a standard form of worksheet for a particular options strategy, nonstandard worksheets for that strategy may not be used.

(7) Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Rule 624. Brokers' Blanket Bond

(a) Every Electronic Access Member approved to transact business with the public under this Chapter and every Clearing Member shall carry Brokers' Blanket Bonds covering officers and employees of the Member in such form and in such amounts as the Exchange may require.

(b) All Members subject to paragraph (a) of this Rule shall maintain Brokers' Blanket Bonds as follows:

(1) Maintain a Brokers' Blanket Bond similar to the standard form established by the Surety Association of America, covering officers and employees which provides against loss and has agreements covering at least the following:

(i) Fidelity;

(ii) On Premises;

(iii) In Transit;

(iv) Misplacement;

(v) Forgery and Alteration (including check forgery);

(vi) Securities Loss (including securities forgery);

(vii) Fraudulent Trading; and

(viii) A Cancellation Rider providing that the insurance carrier will promptly notify the Exchange of cancellation, termination or substantial modification of the Bond.

(2) In determining the initial minimum coverage, the Member is to use the highest required net capital during the twelve (12) month period immediately preceding the issuance of the Brokers' Blanket Bond. Thereafter, a review for adequacy of coverage shall be made at least annually as of the anniversary date of issuance of the subject Bond, and the minimum requirement for the next twelve (12) months shall be established by reference to the highest net capital in the preceding twelve (12) months. Any necessary adjustments shall be made not more than thirty (30) days following the anniversary.

(c) The minimum required coverage for fraudulent trading shall be the greater of $25,000 or fifty percent (50%) of the coverage required in paragraph (b)(2) up to a maximum of $500,000.

(d) The minimum required coverage for securities forgery shall be the greater of $25,000 or twenty-five percent (25%) of the coverage required in paragraph (b)(2) up to a maximum of $250,000.

(e) A deductible provision of up to $5,000 or ten percent (10%) of the minimum coverage requirement, whichever is greater, may be included in the Bond.

(1) A Member may choose to maintain coverage in excess of the minimum requirements as set forth above in paragraph (b)(2) of this Rule, and in such case, a deductible provision of up to $5,000 or ten percent (10%) of the amount of the Blanket Bond coverage, whichever is greater, may be included in the Bond purchased. However, the excess of this greater deductible amount over the maximum permissible deductible amounts as described in this paragraph must be subtracted from the Member's net worth in the calculation of the Member's net capital under SEC Rule 15c3-1.

(2) Each Member shall report the cancellation, termination or substantial modification of the Bond to the Exchange within ten (10) business days of such occurrences.

(f) Members with no employees shall be exempt from this Rule.

(g) Members subject to a bonding rule of another registered national securities exchange, the SEC, or a registered national securities association that imposes requirements that are equal to or greater than the requirements imposed by the Rule shall be deemed to be in compliance with the provisions of this Rule.

Rule 625. Customer Complaints

(a) Every Member conducting a non-member customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved.

(b) The term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options.

(c) The central file shall be located at the principal place of business of the Member or such other principal office as shall be designated by the Member.

(1) Each options-related complaint received by a branch office of a Member shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office.

(2) A copy of every options-related complaint shall be maintained at the branch office that is the subject of a complaint.

(d) At a minimum, the central file shall include:

(1) identification of complainant;

(2) date complaint was received;

(3) identification of the Representative servicing the account, if applicable;

(4) a general description of the subject of the complaint; and

(5) a record of what action, if any, has been taken by the Member with respect to the complaint.

Rule 626. Telephone Solicitation

(a) No Member or associated person shall make an outbound telephone call to any person's residence for the purpose of soliciting the purchase of securities or related services ("telemarketing" or "cold-calling") at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without that person's prior consent.

(b) No Member or associated person shall make an outbound telephone call to any person for the purpose of telemarketing without disclosing promptly and in a clear and

conspicuous manner to the called person the following information:

(1) the identity of the caller and the Member firm;

(2) the telephone number or address at which the caller may be contacted; and

(3) that the purpose of the call is to solicit the purchase of securities or related services.

(c) The prohibitions of paragraphs (a) and (b) do not apply to telephone calls by an associated person (whether acting alone or at the direction of another associated person) who controls or has been assigned to a Member's existing customer account for the purpose of maintaining and servicing that account, provided that the call is to:

(1) an existing customer who, within the preceding twelve (12) months, has made a securities transaction in or has deposited funds or securities into an account, that was under the control of or assigned to that associated person at the time of the transaction or deposit;

(2) an existing customer whose account has earned interest or dividend income during the preceding twelve (12) months, and who previously has made a securities transaction in or has deposited funds or securities into an account, that was under the control of or assigned to the associated person at the time of the transaction or deposit; or

(3) a broker or dealer.

(d) For purposes of paragraph (c) above, the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on its behalf, carries on account. The scope of this Rule 626 is limited to the telemarketing calls described herein. The terms of this Rule do not impose, expressly or by implication, any additional requirements on Members with respect to the relationship between a Member and a customer or between an associated person and a customer.

(e) Each Member shall make and maintain a centralized list of persons who have informed the Member, or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on such list.

(f) Each Member or associated person engaged in telemarketing shall have a customer's express written authorization in order to obtain or submit for payment a check, draft, or other form of negotiable instrument drawn on a customer's checking, savings, share or similar account. Written authorization may include the customer's signature on the

negotiable instrument. The authorization must be retained for at least three (3) years. This provision does not require maintenance of copies of negotiable instruments signed by customers.

(g) Members and associated persons that engage in telemarketing also are subject to the requirements of the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers.

CHAPTER 7

DOING BUSINESS ON THE EXCHANGE

Rule 700. Days and Hours of Business

The Board shall determine the days the Exchange shall be open for business (referred to as "business days") and the hours of such days during which transactions may be made on the Exchange. No Member shall make any bid, offer, or transaction on the Exchange before or after such hours.

(a) Except for unusual conditions as may be determined by the Board, hours during which transactions in options on individual stocks may be made on the Exchange shall correspond to the normal business days and hours for business set forth in the rules of the primary market trading the stocks underlying Exchange options; provided, however, that transactions may be effected in an options class on the Exchange until two (2) minutes after the primary market on which the underlying stock trades closes for trading.

(b) The Exchange shall not be open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.

Rule 701. Trading Rotations

(a) *General Rules.* A "trading rotation" is a process by which the Primary Market Maker initiates trading in a specified options class.

(1) The Exchange may direct that one or more trading rotations be employed on any business day to aid in producing a fair and orderly market.

(2) For each rotation so employed, except as the Exchange may direct, rotations shall be conducted in the order and manner the Primary Market Maker determines to be appropriate under the circumstances.

(3) The Primary Market Maker, with the approval of the Exchange, shall have the authority to determine the rotation order and manner or deviate from the rotation procedures. Such authority may be exercised before and during a trading rotation.

(4) Two (2) or more trading rotations may be employed simultaneously, if the Primary Market Maker, with the approval of the Exchange, so determines.

(b) *Opening Rotations*. Trading rotations shall be employed at the opening of the

Exchange each business day.

(1) For each class of options contracts that has been approved for trading, the opening rotation shall be conducted by the Primary Market Maker appointed to such class of options.

(2) The opening rotation in each class of options shall be held promptly following the opening of the underlying security in the primary market where it is traded. An underlying security shall be deemed to be opened on the primary market where it is traded if such market has (i) reported a transaction in the underlying security, or (ii) disseminated opening quotations for the underlying security and not given an indication of a delayed opening, whichever first occurs.

(3) In the event the underlying security has not opened within a reasonable time after 9:30 a.m. Eastern time, the Primary Market Maker shall report the delay to the Exchange and an inquiry shall be made to determine the cause of the delay. The opening rotation for options contracts in such security shall be delayed until the underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts.

(4) The Exchange may delay the commencement of the opening rotation in any class of options in the interests of a fair and orderly market.

(c) *Rotations After Trading Hours*. Normally, the close of trading for options classes shall occur two (2) minutes after the primary market on which the underlying stock trades closes for trading. However, as provided below transactions may be effected in a class of options after the end of normal trading hours in connection with a trading rotation.

(1) A trading rotation may be employed whenever the Exchange concludes that such action is appropriate in the interests of a fair and orderly market. The factors that may be considered include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a "fast market" pursuant to Rule 704, or a need for a rotation in connection with expiring individual stock options, an end of the year rotation, or the restart of a rotation which is already in progress.

(2) The decisions to employ a trading rotation in non-expiring options shall be disseminated prior to the commencement of such rotation. In general, no more than one trading rotation will be commenced after the normal close of trading.

(3) If a trading rotation is in progress and the Exchange determines that a final trading rotation is needed to assure a fair and orderly market close, the rotation in progress shall be halted and a final rotation begun as promptly as possible.

(4) Any trading rotation in non-expiring options conducted after the normal close of trading may not begin until five (5) minutes after news of such rotation is disseminated by the Exchange.

Rule 702. Trading Halts

(a) *Halts.* The Exchange may halt trading in any stock option in the interests of a fair and orderly market.

(1) The following are among the factors that may be considered in determining whether the trading in a stock option should be halted:

(i) trading in the underlying security has been halted or suspended in the primary market.

(ii) the opening of such underlying security has been delayed because of unusual circumstances.

(iii) other unusual conditions or circumstances are present.

(2) The Exchange will halt trading (including a rotation) for a class or classes of options contracts whenever there is a halt of trading in an underlying security in the primary market. In such event, without the need for action by the Primary Market Maker, all trading in the effected class or classes of options shall be halted. The Exchange shall disseminate through its trading facilities and over OPRA a symbol in respect of such class or classes of options indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.

(3) No Member or person associated with a Member shall effect a trade on the Exchange in any options class in which trading has been halted under the provisions of this Rule during the time in which the halt remains in effect.

(b) *Resumptions.* Trading in a stock option that has been the subject of a halt under paragraph (a)(1) above may be resumed upon the determination by the Exchange that the conditions which led to the halt are no longer present or that the interests of a fair and orderly market are best served by a resumption of trading.

Rule 703. Trading Halts Due To Extraordinary Market Volatility

The Exchange shall halt trading in all options whenever a marketwide trading halt (commonly known as a circuit breaker) is initiated on the New York Stock Exchange in response to extraordinary market conditions.

Rule 704. Unusual Market Conditions

(a) Whenever the Exchange determines, because of an influx of orders or other unusual conditions or circumstances and the interest of maintaining a fair and orderly market so requires, the Exchange may declare the market in one or more classes of options contracts to be "fast."

(b) If a market is declared fast, the Exchange shall have the power to: (i) direct that one or more trading rotations be employed pursuant to Rule 701; (ii) suspend the minimum size requirement of Rule 804(b); or (iii) take such other actions as are deemed in the interest of maintaining a fair and orderly market.

(c) Regular trading procedures shall be resumed when the Exchange determines that the conditions supporting a fast market declaration no longer exist.

(d) If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures contained in paragraph (b) of this Rule, then the Exchange shall halt trading in the class or classes so affected.

Rule 705. Limitation of Liability

(a) The Exchange, its Directors, officers, committee members, employees, contractors or agents shall not be liable to Members nor any persons associated with Members for any loss, expense, damages or claims arising out of the use of the facilities, systems or equipment afforded by the Exchange, nor any interruption in or failure or unavailability of any such facilities, systems or equipment, whether or not such loss, expense, damages or claims result or are alleged to result from negligence or other unintentional errors or omissions on the part of the Exchange, its Directors, officers, committee members, employees, contractors, agents or other persons acting on its behalf, or from systems failure, or from any other cause within or outside the control of the Exchange.

(b) The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to, reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data.

(c) No Member or person associated with a Member shall institute a lawsuit or other legal proceeding against the Exchange or any Director, officer, employee, contractor, agent or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary, except to the extent such actions or omissions constitution violations of the federal securities laws for which a private right of action exists. This provision shall not apply to appeals of disciplinary actions or other actions by the Exchange as provided for in the Rules.

Rule 706. Admission to and Conduct on the Exchange

(a) *Admission to Enter Orders.* Unless otherwise provided in the Rules, no one but a Member or a person associated with a Member shall effect any Exchange Transactions.

(b) *Exchange Conduct.* Members and persons employed by or associated with any Member, while using the facilities of the Exchange, shall not engage in conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; or (iii) inconsistent with the ordinary and efficient conduct of business. Any action taken by the Exchange hereunder shall not preclude further disciplinary action under Chapter 16 (Discipline). Activities that may violate the provisions of this paragraph (b) include, but are not limited to, the following:

(1) failure of a market maker to provide quotations in accordance with Rule 804;

(2) failure of a market maker to bid or offer within the ranges specified by Rule 803(b)(4);

(3) failure of a Member to supervise a person employed by or associated with such Member adequately to ensure that person's compliance with this paragraph (b);

(4) failure to abide by a determination of the Exchange;

(5) refusal to provide information requested by the Exchange; and

(6) failure to abide by the provisions of Rule 717.

(c) Non-member joint venture participants are subject to the provisions of paragraphs (a) and (b) above.

Rule 707. Clearing Member Give Up

A Member must give up the name of the Clearing Member through whom the transaction will be cleared. If there is a subsequent change in identity of the Clearing Member through whom a transaction will be cleared, the Member must, as promptly as possible, report such change to the Exchange.

Rule 708. Units of Trading

The unit of trading in each series of options traded on the Exchange shall be the unit of trading established for that series by the Clearing Corporation pursuant to the rules of the Clearing Corporation and the agreements of the Exchange with the Clearing Corporation.

Rule 709. Meaning of Premium Quotes and Orders

(a) *General.* Except as provided in paragraph (b), orders and quotations shall be

expressed in terms of dollars per unit of the underlying security. For example, a bid of "5" shall represent a bid of $500 for an options contract having a unit of trading consisting of 100 shares of an underlying security, or a bid of $550 for an options contract having a unit of trading consisting of 110 shares of an underlying security.

(b) *Special Cases.* Orders and quotations for an options contract for which the Exchange has established an adjusted unit of trading in accordance with Rule 708 shall be expressed in terms of dollars per 1/100 part of the total securities and/or other property constituting such adjusted unit of trading. For example, an offer of "3" shall represent an offer of $300 for an options contract having a unit of trading consisting of 100 shares of an underlying security plus ten (10) rights.

Rule 710. Minimum Fractional Changes

(a) The Board may establish minimum trading increments for options traded on the Exchange. Such changes by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Rule 710 within the meaning of subparagraph (3)(A) of Section 19(b) of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing. Until such time as the Board makes a change in the increments, the following principles shall apply:

(1) if the options contract is trading at less than $3.00 per option, one-sixteenth point; and

(2) if the options contract is trading at $3.00 per option or higher, one-eighth point.

(b) Minimum fractional changes for dealings in options contracts other than those specified in paragraph (a) may be fixed by the Exchange from time to time for options contracts of a particular series.

(c) Notwithstanding the above, the Exchange may trade in the minimum variation of the primary market in the underlying security.

Rule 711. Acceptance of Quotes and Orders

All bids or offers made and accepted on the Exchange in accordance with the Rules shall constitute binding contracts, subject to applicable requirements of the Constitution and the Rules and the rules of the Clearing Corporation.

Rule 712. Submission for Clearance

(a) All transactions made on the Exchange shall be submitted for clearance to the Clearing Corporation, and all such transactions shall be subject to the rules of the Clearing Corporation. Every Clearing Member shall be responsible for the clearance of the Exchange Transactions of such Clearing Member and of each Member who gives up such Clearing Member's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such Clearing Member to such Member, which authorization must be submitted to the Exchange.

(b) On each business day at or prior to such time as may be prescribed by the Clearing Corporation, the Exchange shall furnish the Clearing Corporation a report of each Clearing Member's matched trades.

Rule 713. Priority of Quotes and Orders

(a) *Definitions*. As provided in Rule 100(a)(4) and (a)(21), a "bid" is a quotation or limit order to buy options contracts and an "offer" is a quotation or limit order to sell options contracts. "Quotations" are defined in Rule 100(a)(32), and may only be entered on the Exchange by market makers in the options classes to which they are appointed under Rule 802. Limit orders may be entered by market makers in certain circumstances as provided in the Rules and Electronic Access Members (either as agent or as principal). "Non-Customer Orders" are defined in Rule 100(a)(20) and include, among others, limit orders for the account of Electronic Access Members and market makers on the Exchange.

(b) *Priority on the Exchange.* The highest bid and lowest offer shall have priority on the Exchange.

(1) In the case where the lowest offer for any options contract is 1/16, no Member shall enter a market order to sell that series.

(2) Wherever this condition occurs, any such market order shall be considered a limit order to sell at a price of 1/16.

(c) *Priority of Public Customer Orders*. Public Customer Orders on the Exchange shall have priority over Non-Customer Orders and market maker quotes at the same price in the same options series.

(d) *Precedence of Public Customer Orders*. If there are two (2) or more Public Customer Orders for the same options series at the same price on the Exchange, priority shall be afforded to such Public Customer Orders in the sequences in which they are received by the Exchange (*i.e.*, in time priority).

(e) *Precedence of Non-Customer Orders and Market Maker Quotes.* If there are two (2) or more Non-Customer Orders or market maker quotes at the Exchange's best bid or offer, after all Public Customer Orders (if any) at that price have been filled, executions at that price will be allocated between the Non-Customer Orders and market maker quotes pursuant to

an allocation procedure to be determined by the Exchange from time to time; provided, however, that if the Primary Market Maker is quoting at the Exchange's best bid or offer, it shall have precedence over Non-Customer Orders and Competitive Market Maker quotes for execution of orders that are for a specified number of contracts or fewer, which number shall be determined by the Exchange from time to time.

(f) *Priority on Split Price Transactions*. If a Member purchases (sells) one (1) or more options contracts of a particular series at a particular price, he shall at the next lower (higher) price at which a Non-Customer is bidding (offering), have priority over such Non-Customers in purchasing (selling) up to the equivalent number of options contracts of the same series that he purchased (sold) at the higher (lower) price, but only if the purchase (sale) so effected represents the opposite side of a transaction with the same offer (bid) as the earlier purchase (sale).

Rule 714. Automatic Execution of Public Customer Orders

(a) Public Customer Orders to buy or sell options contracts on the Exchange will not be automatically executed by the System at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified in the System.

(b) Paragraph (a) shall not apply to fill-or-kill orders or in circumstances where a "fast market" in the options series has been declared on the Exchange, or where a "fast market" in the options series has been declared in other markets or where quotations in other markets are otherwise not firm.

Rule 715. Types of Orders

(a) *Market Orders.* A market order is an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange.

(b) *Limit Orders*. A limit order is an order to buy or sell a stated number of options contracts at a specified price or better.

(1) *Marketable Limit Orders.* A marketable limit order is a limit order to buy (sell) at or above (below) the best offer (bid) on the Exchange.

(2) *Fill-or-Kill Orders.* A fill-or-kill order is a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled.

(3) *Immediate-or-Cancel Orders.* An immediate-or-cancel order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled.

Rule 716. Block Trades

(a) *Block-Size Orders.* Block-size orders are orders for fifty (50) contracts or more.

(b) *Block Order Mechanism*. The Block Order Mechanism is a process by which an Electronic Access Member can solicit indications of the prices and sizes at which market makers quoting in the options series and other Members with proprietary orders at the inside bid or offer would be willing to trade with block-size orders.

(1) Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as market maker bids (offers) in response the solicitation of interest that are priced higher (lower) than the execution price, will be executed at the block execution price.

(2) Notwithstanding Rule 714(a), Public Customer block-size orders executed through this mechanism will be executed without consideration of any prices that might be available on other exchanges trading the same options contract.

(c) *Facilitation Mechanism.* An Electronic Access Member will be assured of executing as principal a minimum portion of block-size Public Customer limit orders, after executable Public Customer Orders on the Exchange have been satisfied, through the Exchange's Facilitation Mechanism.

(1) An Electronic Access Member can solicit indications of the prices and sizes at which market makers quoting in the options series and other Members with proprietary orders at the inside bid or offer would be willing to trade with block-size orders.

(2) Responses to the solicitation must be priced at the price of the order to be facilitated and must not exceed the size of the order to be facilitated.

(3) Members that receive a request for indications may enter orders or change their quotes in a manner that would improve upon the facilitation price, but must do so as least ten (10) seconds prior to the expiration of the request for indications.

(4) After executable Public Customer Orders and superior-priced Non-Customer Orders and quotes in the System are satisfied, precedence of Non-Customer Orders and quotes, as well as Member's bids/offers in response to the Facilitation Mechanism's solicitation of interest, will be determined according to a procedure whereby the facilitating Electronic Access Member executes at least fifty percent (50%) of the remaining size of the order.

(5) Bids/offers on the Exchange at the time the block is executed that are priced better than the block execution price will be executed at the block execution price.

Rule 717. Limitations on Orders

(a) *Market Orders and Marketable Limit Orders.*

Electronic Access Members shall not enter into the System, as principal or agent, Non-Customer market orders. An Electronic Access Member may not enter into the System, as principal or agent, Non-Customer limit orders that cross the market by more than two (2) minimum variations unless there is sufficient size at the best offer (bid) to satisfy the entire order.

(b) *Limit Orders*.

Electronic Access Members shall not enter into the System, as principal or agent, limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the Electronic Access Member or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis. In determining whether an Electronic Access Member or beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same options contract; the multiple acquisition and liquidation of positions in the same options series during the same day; and the entry of multiple limit orders at different prices in the same options series.

(c) *Order Size.*

(1) Electronic Access Members are prohibited from entering into the System, as principal or agent, multiple orders for a single trading interest if one or more orders is for fewer than ten (10) contracts.

(2) Non-Customer Orders for fewer than ten (10) contracts will be rejected or cancelled automatically if such orders would cause the size of the Exchange's best bid or offer to be fewer than ten (10) contracts.

(d) *Principal Transactions*.

Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least two (2) minutes, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least two (2) minutes prior to receiving an agency order that is executable against such bid or offer, or (ii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(c).

(e) *Solicitation Orders*.

Electronic Access Members must expose orders they represent as agent on the Exchange for at least two (2) minutes before they may be executed in whole or in part by orders solicited from Members and non-member broker-dealers to transact with such orders.

(f) *Electronic Orders*.

Members may not enter, nor permit the entry of, orders created and communicated electronically without manual input (*i.e.*, order entry by Public Customers or associated persons of Members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent). Nothing in this paragraph, however, prohibits Electronic Access Members from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems (*e.g.*, Internet gateways, online networks, etc.).

(g) *Orders for the Account of Another Member*.

Absent an exemption from the Exchange, Electronic Access Members shall not cause the entry of orders for another Member.

Rule 718. Accommodation Liquidations (Cabinet Trades)

Cabinet trading under the following terms and conditions shall be available in each series of options contracts open for trading on the Exchange:

(a) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein.

(b) Limit orders valued at a price of $1 per options contract must be placed on the Exchange using the Cabinet Trading Mechanism.

(c) Opening transactions at a value of $1 per options contact may be placed on the Exchange using the Cabinet Trading Mechanism only to the extent that the order book in Cabinet Trades contains unexecuted contract closing orders with which the opening orders immediately may be matched.

(d) Orders in Cabinet Trades may be placed for Public Customer accounts, with priority based upon the sequence in which such orders are placed on the Exchange.

(e) Primary Market Makers shall not be subject to the requirements of Rule 803 for orders placed pursuant to this Rule.

Rule 719. Transaction Price Binding

The price at which an order is executed shall be binding notwithstanding that an erroneous report in respect thereto may have been rendered, or no report rendered. A report shall not be binding if an order was not actually executed but was reported to have been executed in error.

CHAPTER 8

MARKET MAKERS

Rule 800. Registration of Market Makers

(a) A market maker is an individual Member or Member Organization with Designated Trading Representatives registered pursuant to Rule 801. Market makers are registered with the Exchange for the purpose of making transactions as dealer-specialist in accordance with the provisions of this Chapter.

(b) To register as a Competitive or Primary Market Maker, a Member shall file an application in writing on such forms as the Exchange may prescribe. Applications shall be reviewed by the Exchange, which shall consider an applicant's market making ability and such other factors as the Exchange deems appropriate. After reviewing the application, the Exchange shall either approve or disapprove the applicant's registration as a Competitive or Primary Market Maker.

(c) The registration of any Member as a Competitive or Primary Market Maker may be suspended or terminated by the Exchange upon a determination that such Member has failed to properly perform as a market maker.

Rule 801. Designated Trading Representatives

(a) Market maker quotations and orders may be submitted to the Exchange's System only by Designated Trading Representatives ("DTRs"). A DTR is permitted to enter quotes and orders only for the account of the market maker for which he is registered.

(b) *Registration of Designated Trading Representatives.* The Exchange may, upon receiving an application in writing from a market maker on a form prescribed by the Exchange, register a person as a DTR.

(1) DTRs may be:

(i) individual Members registered with the Exchange as market makers, or

(ii) officers, partners, employees or associated persons of Member Organizations that are registered with the Exchange as market makers.

(2) To be eligible for registration as a DTR, a person must demonstrate knowledge of the Rules of the Exchange by passing an examination conducted by the Exchange.

(3) The Exchange may require a market maker to provide additional

information the Exchange considers necessary to establish whether registration should be granted.

(4) The Exchange may grant a person a conditional registration as a DTR subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(c) *Suspension or Withdrawal of Registration*.

(1) The Exchange may suspend or withdraw the registration previously given to a person to be a DTR if the Exchange determines that:

(i) the person has caused the market maker to fail to comply with the Rules of the Exchange;

(ii) the person is not properly performing the responsibilities of a DTR;

(iii) the person has failed to meet the conditions set forth under paragraph (b) above; or

(iv) the Exchange believes it is in the best interest of fair and orderly markets.

(2) If the Exchange suspends the registration of a person as a DTR, the market maker must not allow the person to submit quotes and orders into the Exchange's System.

(3) The registration of a DTR will be withdrawn upon the written request of the Member for which the DTR is registered. Such written request shall be submitted on the form prescribed by the Exchange.

Rule 802. Appointment of Market Makers

(a) The Exchange shall appoint market makers to one or more classes of options contracts traded on the Exchange. In making such appointments the Exchange shall consider (i) the financial resources available to the market maker, (ii) the market maker's experience and expertise in market making or options trading, and (iii) the maintenance and enhancement of competition among market makers in each class of options contracts to which they are appointed.

(b) The Exchange will allocate options classes into groupings ("Groups" of options) and will make appointments to those Groups rather than individual classes, except as provided in paragraph (f) below. Absent an exemption by the Exchange, an appointment of a market maker shall be limited to the options classes trading in no more than one Group for each Membership held by the market maker.

(c) The Exchange shall appoint one Primary Market Maker and at least two (2) Competitive Market Makers to each options class traded on the Exchange.

(d) No appointment of a market maker shall be without the market maker's consent to such appointment, provided that refusal to accept an appointment may be deemed sufficient cause for termination or suspension of a market maker's registration.

(e) The Exchange may suspend or terminate any appointment of a market maker under this Rule and may make additional appointments or change the options classes included in a market maker's appointed Group whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.

(f) The Exchange shall periodically conduct an evaluation of market makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among market makers, observance of ethical standards, and administrative factors. The Exchange may consider any relevant information, including but not limited to the results of a market maker evaluation questionnaire, trading data, a market maker's regulatory history and such other factors and data as may be pertinent in the circumstances. A finding by the Exchange that a market maker has failed to meet minimum performance standards may result in, among other things: (1) suspension, termination or restriction of an appointment to one or more of the options classes within the market maker's appointed Group; (2) restriction of appointments to additional options classes in the market maker's appointed Group; or (3) suspension, termination, or restriction of the market makers registration.

Rule 803. Obligations of Market Makers

(a) *General*. Transactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and market makers should not make bids or offers or enter into transactions that are inconsistent with such a course of dealings. Ordinarily, market makers are expected to:

(1) Except in unusual market conditions, refrain from purchasing a call option or a put option at a price more than $0.25 below parity. In the case of calls, parity is measured by the bid in the underlying security, and in the case of puts, parity is measured by the offer in the underlying security.

(2) Not bid more than $1 lower or offer more than $1 higher than the last preceding transaction price for the particular options contract, plus or minus the aggregate change in the last sale price of the underlying security since the time of the last preceding transaction for the particular options contract. This provision applies from one day's close to the next day's opening and from one transaction to the next in intra-day transactions. With respect to inter-day transaction this provision applies if the closing transaction occurred within one hour of the close and the opening transaction occurred within one hour after the opening. With respect to intra-day transactions, this provision applies to transactions occurring within one hour of one another.

(b) *Appointment*. With respect to each options class to which a market maker is

appointed under Rule 802, the market maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular options contract, or a temporary distortion of the price relationships between options contracts of the same class. Without limiting the foregoing, a market maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

(1) To compete with other market makers to improve the market in all series of options classes to which the market maker is appointed.

(2) To make markets that, absent changed market conditions, will be honored for the number of contracts entered into the Exchange's System in all series of options classes to which the market maker is appointed.

(3) To update market quotations in response to changed market conditions in all series of options classes to which the market maker is appointed.

(4) To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than 1/4 of $1 between the bid and offer for each options contract for which the bid is less than $2, no more than 3/8 of $1 where the bid is at least $2 but does not exceed $5, no more than 1/2 of $1 where the bid is more than $5 but does not exceed $10, no more than 3/4 of $1 where the bid is more than $10 but does not exceed $20, and no more than $1 where the bid is $20 or greater, provided that the Exchange may establish differences other than the above for one or more options series. The bid/offer differentials stated above shall not apply to in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

(c) *Primary Market Makers.* In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, he shall have the responsibility to:

(1) Assure that each disseminated market quotation in each series of options is for a minimum of ten (10) contracts, or such other minimum number as the Exchange shall set from time to time. When the best bid (offer) on the Exchange represents one or more Public Customer Orders for less than a total of ten (10) contracts at that price, the Primary Market Maker is obligated to buy (sell) at that price the number of contracts needed to make the disseminated quote firm for ten contracts.

(2) Address Public Customer Orders that are not automatically executed because there is a displayed bid or offer on another exchange trading the same options contract that is better than the best bid or offer on the Exchange.

(3) Initiate trading in each series pursuant to Rule 701.

(d) *Classes of Options To Which Not Appointed*. With respect to classes of options to which a market maker is not appointed, he should not engage in transactions for an account in which he has an interest that are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (b) above with respect to those classes of options to which he is appointed. Market makers should not:

(1) Individually or as a group, intentionally or unintentionally, dominate the market in options contracts of a particular class, or

(2) Effect purchases or sales on the Exchange except in a reasonable and orderly manner.

Rule 804. Market Maker Quotations

(a) *Options Classes.* A quotation only may be entered by a market maker, and only in the options classes to which the market maker is appointed under Rule 802.

(b) *Size Associated with Quotes.* A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts the market maker is willing to buy or sell at that price. Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not enter a bid or offer for less than ten (10) contracts. Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price.

(c) *Two-Sided Quotes.* A market maker that enters a bid (offer) on the Exchange must enter an offer (bid) within the spread allowable under Rule 803(b)(4).

(d) *Firm Quotes.* (1) With respect to Public Customer Orders, market maker bids and offers are firm for the number of contracts associated with each, unless:

(i) the Exchange determines that an exception is warranted, on a case by case basis, because of an obvious error; or

(ii) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner.

(2) With respect to Non-Customer Orders, market makers must either buy or sell the number of contracts specified in their quotes or change their quotes to reflect that the previously displayed quote is no longer available.

(e) *Continuous Quotes*. A market maker must enter continuous quotations for the options classes to which he is appointed pursuant to the following:

(1) Primary Market Makers. Primary Market Makers must enter

continuous quotations and enter into any resulting transactions in all of the options classes to which he is appointed on a daily basis.

(2) Competitive Market Makers. (i) On any given day, a Competitive Market Maker must participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in at least sixty percent (60%) of the options classes and all the series of such options classes for the Group to which the Competitive Market Maker is appointed.

(ii) Whenever a Competitive Market Maker enters a quote or order in an options class to which he is appointed, he must maintain continuous quotations for all series within the same expiration month until the close of trading that day; provided, however, if such quote or order is entered in an options series during the month in which such series expires, the Competitive Market Maker must participate in the opening rotation and maintain continuous quotations for all series in that month each day through their expiration.

(iii) A Competitive Market Maker may be called upon by the Exchange to submit a single quote or maintain continuous quotes in one or more of the series of an options class to which the Competitive Market Maker is appointed whenever, in the judgment of the Exchange, it is necessary to do so in the interest of fair and orderly markets.

(f) *Temporary Withdrawal of Quotations by Primary Market Makers.* A Primary Market Maker may apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Primary Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such a request, and, if the request is granted, the Exchange will temporarily reassign the options class to another Primary Market Maker.

Rule 805. Market Maker Orders

(a) *Options Classes to Which Appointed*. Market makers may not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than immediate-or-cancel orders. Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(ii) upon the entry of such orders if they were not previously quoting in the series.

(b) *Options Classes Other Than Those to Which Appointed*.

(1) A market maker may enter limit orders and immediate-or-cancel orders to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, provided that:

(i) market maker orders are subject to the limitations contained in Rule 717(c) and (f) as those paragraphs apply to principal orders entered by

Electronic Access Members;

(ii) the spread between a limit order to buy and a limit order to sell the same options contract complies with the parameters contained in Rule 803(b)(4); and

(iii) the market maker does not enter orders in options classes to which its Member Organization is otherwise appointed, either as a Competitive or Primary Market Maker.

(2) Competitive Market Makers. The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Competitive Market Maker Membership.

(3) Primary Market Makers. The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership.

Rule 806. Trade Reporting and Comparison

The details of each trade executed on the Exchange are automatically reported at the time of execution. Members need not separately report their transactions for trade comparison purposes.

Rule 807. Securities Accounts and Orders of Market Makers

(a) *Identification of Accounts*. In a manner prescribed by the Exchange, each market maker shall file with the Exchange and keep current a list identifying all accounts for stock, options and related securities trading in which the market maker may, directly or indirectly, engage in trading activities or over which he exercises investment direction. No market maker shall engage in stock, options or related securities trading in an account which has not been reported pursuant to this Rule.

(b) *Reports of Orders*. Each market maker shall, upon the request of the Exchange and in the prescribed form, report to the Exchange every order entered by the market maker for the purchase or sale of (i) a security underlying options traded on the Exchange, or (ii) a security convertible into or exchangeable for such underlying security, as well as opening and closing positions in all such securities held in each account reported pursuant to paragraph (a) of this Rule. The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times report of execution were received and, if all or part of the order was executed, the quantity and execution price.

(c) *Joint Accounts*. No market maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any options contract unless each

participant in such joint account is a Member or Member Organization and unless such account is reported to and not disapproved by the Exchange. Such reports in a form prescribed by the Exchange shall be filed with the Exchange before any transaction is effected on the Exchange for such joint account. A participant in a joint account must:

(1) Be either a market maker or a Clearing Member that carries the joint account.

(2) File and keep current a completed application on such form as is prescribed by the Exchange.

(3) Be jointly and severally responsible for assuring that the account complies with all the Rules of the Exchange.

(4) Not be a market maker appointed to the same options classes to which the joint account holder is also appointed as a market maker.

Rule 808. Letters of Guarantee

(a) *Required of Each Market Maker.* No market maker shall make any transactions on the Exchange unless a Letter of Guarantee has been issued for such Member by a Clearing Member and filed with the Exchange, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Rule.

(b) *Terms of Letter of Guarantee.* A Letter of Guarantee shall provide that the issuing Clearing Member accepts financial responsibilities for all Exchange Transactions made by the guaranteed Member.

(c) *Revocation of Letter of Guarantee.* A Letter of Guarantee filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. A revocation shall in no way relieve a Clearing Member of responsibility for transactions guaranteed prior to the effective date of such revocation.

Rule 809. Financial Requirements for Market Makers

(a) *Primary Market Makers.* Every Primary Market Maker shall maintain a cash or liquid asset position equal to the greater of $5,000,000 or an amount sufficient to assume a position of twenty (20) options contracts of each class in which such Primary Market Maker is appointed (as computed on the basis of that series within each such class having the highest current premium).

(b) *Competitive Market Makers*. Every Competitive Market Maker shall maintain a cash or liquid asset position equal to the greater of $1,000,000 or an amount sufficient to assume a position of ten (10) options contracts in each class of options to which the Competitive Market Maker is appointed (as computed on the basis of that series within each such class having the highest current premium).

(c) Each market maker that makes an arrangement to finance his transactions as a market maker must identify to the Exchange the source of the financing and its terms. The Exchange must be informed immediately of the intention of any party to terminate or change any such arrangement.

Rule 810. Limitations on Dealings

(a) *General Rule.* A market maker on the Exchange may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is a Chinese Wall between the market making activities and the Other Business Activities. "Other Business Activities" mean:

(1) conducting an investment or banking or public securities business;

(2) making markets in the stocks underlying the options in which it makes markets; or

(3) functioning as an Electronic Access Member.

(b) *Chinese Wall.* For the purposes of this rule, a Chinese Wall is an organizational structure in which:

(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between DTRs and persons conducting the Other Business Activities. However, upon request and not on his own initiative, a DTR performing the function of a market maker may furnish to a person performing the function of an Electronic Access Member or other persons at the same firm or an affiliated firm ("affiliated persons"), the same sort of market information that the DTR would make available in the normal course of its market making activity to any other person. The DTR must provide such information to affiliated persons in the same manner that he would make such information available to a non-affiliated person.

(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the wall from influencing the conduct of persons on the other side of the wall. These procedures, at a minimum, must provide that:

(i) the DTR performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and

(ii) all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Chinese Wall.

(3) Persons on one side of the wall may not exercise influence or control over persons on the other side of the wall, provided that:

(i) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities under the Rules of the Exchange; and

(ii) the same person or persons (the "Supervisor") may be responsible for the supervision of the market making and Electronic Access Member functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:

(A) actually perform the function either of market maker or Electronic Access Member;

(B) provide to any person performing the function of an Electronic Access Member any information relating to market making activity beyond the information that a DTR performing the function of a Primary Market Maker may provide under subparagraph (b)(1), above; nor

(C) provide a DTR performing the function of market maker with specific information regarding the firm's pending transactions or order flow arising out of its Electronic Access Member activities.

(c) *Documenting and Reporting of Chinese Wall Procedures.* A Member implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it proposes to implement to ensure that the Chinese Wall is maintained;

(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;

(3) A commitment to provide the Exchange with such information and reports as the Exchange may request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the Member's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and that it recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a market maker, in the event of such a violation;

(5) Whether the Member or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Member's Chinese Wall, which procedures, at a minimum, must be the same as those used by the Member or the affiliate to clear for unaffiliated third parties; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b-5 and 14e-3 under the Exchange Act or one or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Exchange, and that the Exchange intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.

(d) *Exchange Approval of Chinese Wall Procedures.* The written statement required by paragraph (c) of this Rule must detail the internal controls that the Member will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the Member are acceptable under this Rule, the Exchange shall so inform the Member, in writing. Absent the Exchange finding a Member's Chinese Wall procedures acceptable, a market maker may not conduct Other Business Activities.

(e) *Clearing Arrangements.* Subparagraph (c)(5) permits a Member or an affiliate of the Member to clear the Member's market maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Chinese Wall. In this regard:

(1) The procedures must provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.

(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the Exchange's Rules.

CHAPTER 9

[Reserved for Flexible Options]

CHAPTER 10

Closing Transactions

Rule
1000. Contracts of Suspended Members

(a) When a Member, other than a Clearing Member, is suspended pursuant to Chapter 15 (Summary Suspension), all open short positions of the suspended Member in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the rules of the Clearing Corporation, shall be closed without unnecessary delay by all Member Organizations carrying such positions for the account of the suspended Member; provided that the Exchange may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Members of the Exchange.

(b) No temporary waiver hereunder by the Exchange shall relieve the suspended Member of its obligations or of damages, nor shall it waive the close out requirements of any other Rules.

(c) When a Clearing Member is suspended pursuant to Chapter 15 (Summary Suspension) of these Rules, the positions of such Clearing Member shall be closed out in accordance with the rules of the Clearing Corporation.

Rule 1001. Failure to Pay Premium

(a) When the Clearing Corporation shall reject an Exchange transaction because of the failure of the Clearing Member acting on behalf of the purchaser to pay the aggregate premiums due thereon as required by the Rules of the Clearing Corporation, the Member acting as or on behalf of the writer shall have the right either to cancel the transaction by giving notice thereof to the Clearing Member or to enter into a closing writing transaction in respect of the same options contract that was the subject of the rejected Exchange transaction for the account of the defaulting Clearing Member.

(b) Such action shall be taken as soon as possible, and in any event not later than 10:00 A.M. on the business day following the day the Exchange transaction was rejected by the Clearing Corporation.

CHAPTER 11

Exercises and Deliveries

Rule 1100. Exercise of Options Contracts

(a) Subject to the restrictions set forth in Rule 413 (Exercise Limits) and to such restrictions as may be imposed pursuant to Rule 417 (Other Restrictions on Options Transactions and Exercises) or pursuant to the Rules of the Clearing Corporation, an outstanding options contract may be exercised during the time period specified in the Rules of the Clearing Corporation by the tender to the Clearing Corporation of an exercise notice in accordance with the Rules of the Clearing Corporation. An exercise notice may be tendered to the Clearing Corporation only by the Clearing Member in whose account such options contract is carried with the Clearing Corporation.

(b) The exercise cutoff time for all noncash-settled options shall be 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date. This is the latest time at which an exercise instruction for expiring noncash-settled options positions may be:

(1) prepared by a Clearing Member Organization for positions in its proprietary trading account;

(2) submitted to a Clearing Member Organization by a market maker or broker for positions in the market maker's account or the broker's error account; or

(3) accepted by a Member Organization from any customer for its positions in the customer's account.

(c) Notwithstanding the foregoing, Member Organizations may receive and Members may submit exercise instructions after the exercise cutoff time but prior to expiration in the circumstances listed below. A memorandum setting forth the circumstance giving rise to instructions after the exercise cutoff time shall be maintained by the Member Organization and a copy thereof shall be promptly filed with the Exchange. An exercise instruction after the exercise cutoff may be received or submitted:

(1) in order to remedy mistakes or errors made in good faith;

(2) where exceptional circumstances relating to a customer's or Member's ability to communicate exercise instructions to the Member Organization (or the Member Organization's ability to receive exercise instructions) prior to such cutoff time warrant such action.

(d) Submitting or preparing an exercise instruction after the exercise cutoff time in any expiring options on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade.

(e) For purposes of this Rule with respect to any Member Organization, the word "customer" shall mean every person or organization other than a market maker, broker or the Member Organization itself. The term "exercise instruction," with respect to a market maker, broker and Clearing Member, shall also mean a notice either not to exercise an options position which would otherwise be exercised, or to exercise an options position which would otherwise not be exercised, by operation of the Rules of the Clearing Corporation, or to modify or withdraw a previously submitted instruction. All exercise instructions must be time stamped at the time they are prepared.

(f) No Member or Member Organization may prepare, time stamp or submit an exercise instruction prior to the purchase of the exercised contracts if the Member or Member Organization knew or had reason to know that the contracts had not yet been purchased.

(g) Clearing Members must follow the procedures of the Clearing Corporation when exercising expiring noncash-settled equity options contracts. Members must also follow the procedures set forth below with respect to the exercise of noncash-settled equity options contracts which would otherwise not be exercised, or the nonexercise of contracts which otherwise would be exercised, by operation of Clearing Corporation Rule 804:

(1) For all contracts so exercised or not exercised, a "contrary exercise advice," must be delivered by the market maker, broker or clearing firm, as applicable, in such form or manner prescribed by the Exchange no later than 5:30 p.m. Eastern Time.

(2) Subsequent to the delivery of a "contrary exercise advice," should the market maker, broker, customer or firm determine to act other than as reflected on the original advice form, the market maker, broker, or clearing firm, as applicable, must also deliver an "advice cancel," in such form or manner prescribed by the Exchange no later than 5:30 p.m. Eastern Time.

(3) Members shall properly communicate to the Exchange final exercise decisions in respect of positions for which they are responsible.

(4) The preparation, time stamping or submission of a "contrary exercise advise" prior to the purchase of the contracts to be exercised or not exercised shall be deemed a violation of this Rule.

(5) All of the above procedures of this paragraph (g) are in full force and effect whether or not the Clearing Corporation waives the exercise by exception provisions of its Rule 804; in the event of such waiver the procedures of this paragraph shall be followed as if such provisions of Clearing Corporation Rule 804 were in full force and effect. The Clearing Corporation rules may require the submission of an affirmative exercise notice even in circumstances where a contrary exercise advise is not submitted;

(6) The failure of any Member to follow the procedures in this paragraph (g) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.

Rule 1101. Allocation of Exercise Notices

(a) Each Member Organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in such Member Organization's customers' accounts. The allocation shall be on a "first in, first out," or automated random selection basis that has been approved by the Exchange, or on a manual random selection basis that has been specified by the Exchange. Each Member Organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' account, explaining its manner of operation and the consequences of that system.

(b) Each Member Organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no Member Organization shall change its method of allocation unless the change has been reported to and approved by the Exchange. The requirements of this paragraph shall not be applicable to allocation procedures submitted to and approved by another SRO having comparable standards pertaining to methods of allocation.

(c) Each Member Organization shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

Rule 1102. Delivery and Payment

(a) Delivery of the underlying security upon the exercise of an options contract, and payment of the aggregate exercise price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation.

(b) As promptly as possible after the exercise of an options contract by a customer, the Member Organization shall require the customer to make full cash payment of the aggregate exercise price in the case of a call options contract, or to deposit the underlying security in the case of a put options contract, or to make the required margin deposit in respect thereof if the transaction is effected in a margin account, in accordance with the Rules of the Exchange and the applicable regulations of the Federal Reserve Board.

(c) As promptly as practicable after the assignment to a customer of an exercise notice the Member Organization shall require the customer to deposit the underlying security in the case of a call options contract if the underlying security is not carried in the customer's account, or to make full cash payment of the aggregate exercise price in the case of a put options contract, or in either case to deposit the required margin in respect thereof if the

transaction is effected in a margin account, in accordance with the Rules of the Exchange and the applicable regulations of the Federal Reserve Board.

CHAPTER 12

Margins

Rule 1200. General Rule

No Member may effect a transaction or carry an account for a customer, whether a Member or non-member of the Exchange, without proper and adequate margin in accordance with this Chapter 12 and Regulation T.

Rule 1201. Time Margin Must Be Obtained

The amount of margin required by this Chapter shall be obtained as promptly as possible and in any event within a reasonable time.

Rule 1202. Margin Requirements

(a) A Member Organization must elect to be bound by the initial and maintenance margin requirements of either the Chicago Board of Options Exchange or the New York Stock Exchange as the same may be in effect from time to time.

(b) Such election shall be made in writing by a notice filed with the Exchange.

(c) Upon the filing of such election, a Member Organization shall be bound to comply with the margin rules of the Chicago board of Options Exchange or the New York Stock Exchange, as applicable, as though said rules were part of these Rules.

Rule 1203. Meeting Margin Calls by Liquidation Prohibited

(a) No Member Organization shall permit a customer to make a practice of effecting transactions requiring initial or additional margin or full cash payment and then furnishing such margin or making such full cash payment by liquidation of the same or other commitments.

(b) The provisions of this Rule shall not apply to any account maintained for another broker or dealer in which are carried only the commitments of customers of such other broker or dealer, exclusive of the partners, officers and directors of such other broker or dealer, provided such other broker or dealer is a Member Organization of the Exchange or has agreed in good faith with the Member Organization carrying the account that he will maintain a record equivalent to that referred to in Rule 1205.

Rule 1204. Margin Required Is Minimum

(a) The amount of margin prescribed by these Rules is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby; but nothing in these Rules shall be construed to prevent a Member Organization from requiring margin in an amount greater than that specified.

(b) The Exchange may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

CHAPTER 13

Net Capital Requirements

Rule 1300. Minimum Requirements

Each Member subject to Rule 15c3-1 under the Exchange Act shall comply with the capital requirements prescribed therein and with the additional requirements of this Chapter 13. Market makers must also comply with the minimum financial requirements contained in Rule 809.

Rule 1301. "Early Warning" Notification Requirements

Every Member subject to the reporting or notification requirements of Rule 17a-11 under the Exchange Act or the "early warning" reporting, business restriction or business reduction requirements of another national securities exchange, registered securities association or registered securities clearing organization shall promptly notify the Exchange in writing and shall thereafter file with the Exchange such reports and financial statements as may be required by the Exchange.

Rule 1302. Power of President to Impose Restrictions

Whenever it shall appear to the President of the Exchange that a Member Organization obligated to give notice to the Exchange under Rule 1301 is unable within a reasonable period to reduce the ratio of its aggregate indebtedness to net capital, or to increase its net capital, to a point where it is no longer subject to such notification obligations, or that such Member is engaging in any activity which casts doubt upon its continued compliance with the net capital requirements, the President may impose such conditions and restrictions upon the operations, business and expansion of such Member and may require the submission of, and adherence to, such plan or program for the correction of such situation as he determines to be necessary or appropriate for the protection of investors, other Members and the Exchange.

CHAPTER 14

Records, Reports and Audits

Rule

1400. Maintenance, Retention and Furnishing of Books, Records and Other Information

(a) Each Member shall make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

(b) No Member shall refuse to make available to the Exchange such books, records or other information as may be called for under the Rules of the Exchange or as may be requested in connection with an investigation by the Exchange.

Rule 1401. Reports of Uncovered Short Positions

(a) Upon request of the Exchange, each Member shall submit a report of the total uncovered short positions in each options contract of a class dealt in on the Exchange showing (i) positions carried by such Member for its own account and (ii) positions carried by such Member for the accounts of customers; provided that the Members shall not report positions carried for the accounts of other Members where such other Members report the positions themselves.

(b) Such report shall be submitted not later than the second business day following the date the request is made.

Rule 1402. Financial Reports

Each Member shall submit to the Exchange answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange.

Rule 1403. Audits

(a) Each Member Organization approved to do business with the public in accordance with Chapter 6 of the Rules and each registered market maker shall file a report of its financial condition as of the date, within each calendar year, prepared in accordance with the requirements of Rule 17a-5 and Form X-17A-5 under the Exchange Act and containing the information called for by that form.

(1) The report of each Member approved to do business with the public shall be certified by an independent public accountant, and on or before January 10 of each year, each such Member shall notify the Exchange of the name of

the independent public accountant appointed for that year and the date as of which the report will be made.

(2) Such report of financial condition, together with answers to an Exchange financial questionnaire based upon the report, shall be filed with the Exchange no later than sixty (60) days after the date as of which the financial condition of the Member is reported, or such other period as the Exchange may individually require.

(b) A Member may file, in lieu of the report required in paragraph (a) of this Rule, a copy of any financial statement which he is or has been required to file with any other national securities exchange or national securities association of which he is a member, or with any agency of any State as a condition of doing business in securities therein, and which is acceptable to the Exchange as containing substantially the same information as Form X-17A-5.

(c) In addition to the annual report required of certain Members pursuant to paragraph (a) of this Rule, the Exchange may require any Member to cause an audit of its financial condition to be made by an independent public accountant in accordance with the audit requirements of Form X-17A-5 as of the date of an answer to a financial questionnaire, and to file a statement to the effect that such audit has been made and whether it is in accord with the answers to the questionnaire.

(1) Such statement shall be signed by two general partners in the case of a Member Organization, by two executive officers in the case of a Member corporation or by an individual Member and it shall be attested to by the independent public accountant who certified the audit.

(2) The original report of the audit signed by the independent public accountant shall be retained as part of the books and records of the Member.

Rule 1404. Automated Submission of Trade Data

A Member or Member Organization shall submit requested trade data elements, in such automated format as may be prescribed by the Exchange from time to time, in regard to a transaction(s) that is the subject of the particular request for information.

(a) If the transaction was a proprietary transaction effected or caused to be effected by the Member or Member Organization for any account in which such Member or Member Organization, or any approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, the Member shall submit or cause to be submitted, any or all of the following information as requested by the Exchange:

(1) Clearing house number or alpha symbol as used by the Member or the Member Organization submitting the data;

(2) Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the Member(s) or Member Organization(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security and where applicable for the options month and series symbols;

(4) Date transaction was executed;

(5) Number of option contracts for each specific transaction and whether each transaction was an opening or closing purchase or sale, as well as:

(i) the number of shares traded or held by accounts for which options data is submitted;

(ii) where applicable, the number of shares for each specific transaction and whether each transaction was a purchase, sale or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the Member Organization for any customer account, such Member Organization shall submit or cause to be submitted any or all the following information as requested by the Exchange:

(1) Data elements (1) through (8) of paragraph (a) above;

(2) Customer name, address(es), branch office number, Representative number, whether the order was discretionary, solicited or unsolicited, date the account was opened and employer name and tax identification number(s); and

(3) If the transaction was effected for a Member broker-dealer customer, whether the broker-dealer was acting as a principal or agent on the transaction or transactions that are the subject of the Exchange's request.

(c) In addition to the above trade data elements, a Member or Member Organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.

Rule 1405. Risk Analysis of Market Maker Accounts

(a) Each Clearing Member that clears or guarantees the transactions of market makers pursuant to Rule 808, shall establish and maintain written procedures for assessing and monitoring the potential risks to the Member Organization's capital over a specified range of possible market movements of positions maintained in such market maker accounts and such related accounts as the Exchange shall from time to time direct.

(1) Current procedures shall be filed and maintained with the Exchange.

(2) The procedures shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained and the position(s) within the organization responsible for the risk management.

(b) Each affected Member shall at a minimum assess and monitor its potential risk of loss from options market maker accounts each business day as of the close of business the prior day through use of an Exchange-approved computerized risk analysis program, which shall comply with at least the minimum standards specified below and such other standards as from time to time may be prescribed by the Exchange:

(1) The estimated loss to the Clearing Member for each market maker account (potential account deficit) shall be determined given the impact of broad market movements in reasonable intervals over a range from negative fifteen percent (15%) to positive fifteen percent (15%).

(2) The Member shall calculate volatility using a method approved by the Exchange, with volatility updated at least weekly. The program must have the capability of expanding volatility when projecting losses throughout the range of broad market movements.

(3) Options prices shall be estimated through use of recognized options pricing models such as, but not limited to, Black-Scholes and Cox-Reubenstein.

(4) At a minimum, written reports shall be generated which describe for each market scenario:

(i) projected loss per options class by account;

(ii) projected total loss per options class for all accounts; and

(iii) projected deficits per account and in aggregate.

(c) Upon direction by the Exchange, each affected Member Organization shall provide to the Exchange such information as it may reasonably require with respect to the Member Organization's risk analysis for any or all of its market maker accounts.

Rule 1406. Regulatory Cooperation

(a) The Exchange may enter into agreements that provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes, with domestic SROs and foreign self-regulatory organizations, as well as associations and contract markets and the regulators of such markets.

(b) No Member, partner, officer, director or other person associated with a Member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to paragraph (a) of this Rule, including but not limited to members and affiliate of the Intermarket Surveillance Group. The requirements of this paragraph (b) shall apply regardless whether the Exchange has itself initiated a form investigation or disciplinary proceeding.

(c) Whenever information is requested by the Exchange pursuant to this Rule, the Member or person associated with a Member from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Member or person would have in the case of any other request for information initiated by the Exchange pursuant to Rule 1601(d).

CHAPTER 15

Summary Suspension

Rule 1500. Imposition of Suspension

(a) A Member or person associated with a Member that has been expelled or suspended from any SRO or barred or suspended from being associated with a member of any SRO, or a Member that is in such financial or operating difficulty that the Exchange determines that the Member cannot be permitted to continue to do business as a Member with safety to investors, creditors, other Members, or the Exchange, may be summarily suspended.

(b) The Exchange may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is a Member, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Members or the Exchange.

(c) In the event a determination is made to take summary action pursuant to this Rule, notice thereof will be sent to the SEC.

(d) Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter 17 (Hearing and Review).

(e) A summary suspension or other action taken pursuant to this Chapter shall not be deemed to be disciplinary action under Chapter 16 (Discipline). The provisions of Chapter 16 shall be applicable regardless of any action taken pursuant to this Chapter.

Rule 1501. Investigation Following Suspension

(a) Every Member or person associated with a Member against which action has been taken in accordance with the provisions of this Chapter shall immediately afford every facility required by the Exchange for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in Exchange options contracts maintained by the Member and each of his or its customers.

(b) Paragraph (a) includes, without limitation, the furnishing of such books and records of the Member or person associated with a Member and the giving of such sworn testimony as may be requested by the Exchange.

Rule 1502. Reinstatement

(a) *General.*

(1) A Member, person associated with a Member or other person suspended or limited or prohibited with respect to access to services offered by the Exchange under the provisions of this Chapter may apply for reinstatement within the time period set forth below.

(2) Notice of an application for reinstatement shall be given by the Secretary to the Membership and shall be posted by the Exchange at least five (5) business days prior to the consideration by the Exchange of said application.

(3) The Exchange may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Members, and the Exchange.

(b) *Suspension Due to Operating Difficulty*.

(1) An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to Exchange services, must file any application for reinstatement within six months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.

(2) If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of Chapter 17 (Hearing and Review).

(c) *Suspension Due to Financial Difficulty*.

(1) An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to Exchange services, must file any application for reinstatement within thirty (30) days of such action.

(2) Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by the Exchange.

(3) The Membership of a Member summarily suspended by reason of financial difficulty may not be disposed of by the Exchange until that Member has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of Chapter 17 (Hearing and Review).

Rule 1503. Failure to Obtain Reinstatement

If a Member suspended under the provisions of this Chapter fails or is unable to apply for reinstatement in accordance with Rule 1502, or fails to obtain reinstatement as therein provided, his or its Membership shall be disposed of by the Exchange in accordance with Rule 310(b), unless such Member sells or leases such Membership.

Rule 1504. Termination of Rights by Suspension

A Member suspended under the provisions of this Chapter shall be deprived during the term of his or its suspension of all rights and privileges of Membership.

CHAPTER 16

Discipline

Rule 1600. Disciplinary Jurisdiction

(a) A Member or a person associated with a Member (the "Respondent") who is alleged to have violated or aided and abetted a violation of any provision of the Exchange Act, the rules and regulations promulgated thereunder, or any provision of the Constitution or Rules of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange under this Chapter, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Member or any other fitting sanction, in accordance with provisions of the Chapter.

(b) An individual Member, nominee or other person associated with a Member Organization may be charged with any violation committed by employees under his supervision or by the Member Organization with which he is associated, as though such violation were his own. A Member Organization may be charged with any violation committed by its employees or by a Member or other person who is associated with such Member Organization, as though such violation were its own.

(c) Any Member or person associated with a Member shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person's termination of membership or association with a Member with respect to matters that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or former associated person within one (1) year of receipt by the Exchange, or such other exchange or association recognized for purposes of Rule 903, of the latest written notice of the termination of such person's status as a Member or person associated with a Member. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself to the disciplinary jurisdiction of the Exchange by becoming a Member or a person associated with a Member.

Rule 1601. Complaint and Investigation

(a) *Initiation of Investigation.* The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon order of the Board, the Business Conduct Committee, the President or other Exchange officials designated by the President, or upon receipt of a complaint alleging such violations filed by a Member or by any other person alleging injury as a result of such violations (the "Complainant"). All complaints shall be in writing signed by the Complainant and shall specify in reasonable detail the facts constituting the violation, including the specific statutes, by-laws, rules, interpretations or resolutions allegedly violated.

(b) *Requirement to Furnish Information.* Each Member and person associated with a Member shall be obligated upon request by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) an investigation initiated pursuant to paragraph (a) of this Rule, (ii) a hearing or appeal conducted pursuant to this Chapter or preparation by the Exchange in anticipation of such a hearing or appeal, or (iii) an Exchange inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 1406.

(1) A Member or person associated with a Member is entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.

(2) No Member or person associated with a Member shall impede or delay an Exchange investigation or proceeding conducted pursuant to this Chapter or an Exchange inquiry pursuant to Rule 1406, nor refuse to comply with a request made by the Exchange pursuant to this paragraph.

(3) Failure to furnish testimony, documentary evidence or other information requested by the Exchange in the course of an Exchange inquiry, investigation, hearing or appeal conducted pursuant to this Chapter, or in the course of preparation by the Exchange in anticipation of such a hearing or appeal, on the date or within the time period the Exchange specifies shall be deemed to be a violation of this Rule.

(c) *Report.* In every instance where an investigation results in a finding that there are reasonable grounds to believe that a violation has been committed, the Exchange staff shall submit a written report of its investigation to the Business Conduct Committee.

(d) *Notice, Statement and Access.* Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report (the "Subject") of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or provisions of the Constitution or Rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. Except when the Committee determines that expeditious action is required, a Subject shall have fifteen (15) days from the date of the notification described above to submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

Rule 1602. Expedited Proceeding

Upon receipt of the notification required by Rule 1601(d), a Subject may seek to dispose of the matter through a letter of consent signed by the Subject.

(a) If a Subject desires to attempt to dispose of the matter through a letter of consent, the Subject must submit a written notice electing to proceed in an expedited manner pursuant to this Rule within fifteen (15) days from the date of the notification required by Rule 1601(d).

(b) The Subject must then endeavor to reach agreement with the staff upon a letter of consent that is acceptable to the staff and which sets forth a stipulation of facts and findings concerning the Subject's conduct, the violation(s) committed by the Subject and the sanction(s) therefor.

(c) The matter can only be disposed of through a letter of consent if the staff and the Subject are able to agree upon terms of a letter of consent that are acceptable to the staff and the letter is signed by the Subject.

(d) At any point in the negotiations regarding a letter of consent, the staff may deliver to the Subject or the Subject may deliver to the staff a written declaration of an end to the negotiations. On delivery of such a declaration the Subject will then have fifteen (15) days to submit a written statement pursuant to Rule 1601(d) and thereafter the staff may bring the matter to the Business Conduct Committee for appropriate action.

(e) In the event that the Subject and the staff are able to agree upon a letter of consent, the staff shall submit the letter to the Business Conduct Committee. If the letter of consent is accepted by the Business Conduct Committee, it may adopt the letter as its decision and shall take no further action against the Subject respecting the matters that are the subject of the letter. If the letter of consent is rejected by the Business Conduct Committee, the matter shall proceed as though the letter had not been submitted. The Business Conduct Committee's decision to accept or reject a letter of consent shall be final, and a Subject may not seek review thereof.

Rule 1603. Charges

(a) *Determination Not to Initiate Charges.* Whenever it shall appear to the Business Conduct Committee from the report of the staff of the Exchange that no probable cause exists for finding a violation within the disciplinary jurisdiction of the Exchange, or whenever the Committee otherwise determines that no further action is warranted, it shall issue a written statement to that effect setting forth its reasons for such finding, which shall be sent to the Subject and the Complainant, if any.

(b) *Initial of Charges.* Whenever it shall appear to the Business Conduct Committee from the report of the staff of the Exchange that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges against the person or organization alleged to have committed a violation (the "Respondent") specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, provisions of the Constitution or Rules of the Exchange, or interpretations or resolutions of which such acts are in violation. A copy of the charges shall be served upon the Respondent in accordance with Rule 1611. The Complainant, if any, shall be notified if further proceedings are warranted.

(c) *Access to Documents.* Provided that a Respondent has made a written request for access to documents described hereunder with sixty (60) calendar days after a statement of charges has been served upon the Respondent in accordance with Rule 1611, the Respondent shall have access to all documents concerning the case that are in the investigative file of the Exchange except for staff investigation and examination reports and materials prepared by the staff in connection with such reports or in anticipation of a disciplinary hearing. In providing such documents, the staff may protect the identity of a Complainant.

(d) *Ex Parte Communication.* No Member or person associated with a Member shall make or knowingly cause to be made an ex parte communication with any member of the Business Conduct Committee concerning the merits of any matter pending under this Chapter. No member of the Business Conduct Committee shall make or knowingly cause to be made an ex parte communication with any Member or any person associated with a Member concerning the merits of any matter pending under this Chapter.

(1) "Ex parte communication" means an oral or written communication made without notice to all parties, that is, regulatory staff and Subjects of investigations or Respondents in proceedings.

(2) A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

Rule 1604. Answer

The Respondent shall have fifteen (15) days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense that the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

Rule 1605. Hearing

(a) *Participants*. Subject to Rule 1606 of this Chapter concerning summary proceedings, a hearing on the charges shall be held before one or more members of the Business Conduct Committee (the "Panel") or other persons designated by the Exchange. The Exchange and the Respondent shall be the parties to the hearing. Where a Member Organization is a party, it shall be represented by one of its Members (including nominees) at the hearing.

(b) *Notice and List of Documents.* Parties shall be given at least fifteen (15) days notice of the time and place of the hearing. Not less than five (5) business days in advance of the scheduled hearing date, each party shall furnish to the Panel and to the other parties copies of all documentary evidence such party intends to present at the hearing. Where time and the nature of the proceeding permit, the parties shall meet in a pre-hearing conference for the purpose of

clarifying and simplifying issues and otherwise expediting the proceeding. At such pre-hearing conference, the parties shall attempt to reach agreement respecting authenticity of documents, facts not in dispute, and any other items that will serve to expedite the hearing of the matter.

(c) *Intervention.* Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Panel that he has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede his ability to protect that interest. Also, the Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Panel, in exercising its discretion concerning intervention shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(d) *Conduct of Hearing.* The Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the Exchange who, along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Panel and the other parties. The Panel may request the production of documentary evidence and witnesses. No Member or person associated with a Member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the records.

Rule 1606. Summary Proceedings

Notwithstanding the provision of Rule 1605 of this Chapter, the Business Conduct Committee may make a determination without a hearing and may impose a penalty as to violations that the Respondent has admitted or has failed to answer or that otherwise do not appear to be in dispute.

(a) Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) days from the date of service to notify the Business Conduct Committee that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the Business Conduct Committee shall constitute admission of the violations and acceptance of the penalty as determined by the Business Conduct Committee and a waiver of all rights of review.

(b) If the Respondent requests a hearing, the matters that are the subject of the hearing shall be handled as if the summary determination had not been made.

Rule 1607. Offers of Settlement

(a) *Submission of Offer.* At any time during a period not to exceed 120 calendar days immediately following the date of service of a statement of charges upon the Respondent in accordance with Rule 1611, the Respondent may submit to the Business Conduct Committee a written offer of settlement, signed by him, which shall contain a proposed stipulation of facts and shall consent to a specified sanction.

(1) Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision, including findings and conclusions and imposing a sanction, consistent with the terms of such offer.

(2) Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become a part of the record.

(3) A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement, as well as the determination of the Committee whether to accept or reject such an offer, shall be final, and the Respondent may not seek review thereof.

(4) A Respondent shall be entitled to submit to the Business Conduct Committee a maximum of two (2) written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 1603(b), unless the Business Conduct Committee, in its discretion, permits a Respondent to submit additional offers of settlement.

(5) The 120-day period specified in section (a) shall be tolled during the number of days in excess of seven (7) calendar days that it takes staff of the Exchange to provide access in response to a Respondent's request for access to documents provided that the request for access is made pursuant to the provisions and within the time frame provided in Rule 1603(c).

(6) Subject to Rule 1606, following the end of the 120-day period or after the Business Conduct Committee's rejection of a Respondent's second offer of settlement, a hearing will be scheduled and the hearing will proceed in accordance with the provisions of Rule 1605.

(b) *Submission of Statement.* A Respondent may submit with an offer of settlement a written statement in support of the offer. In addition, if the staff will not recommend acceptance of an offer of settlement before the Business Conduct Committee, a Respondent shall be notified and may appear before the Committee to make an oral statement in support of his offer. Finally, if the Business Conduct Committee rejects an offer that the staff supports, a Respondent may appear before that Committee to make an oral statement concerning why he believes the Committee should change its decision and accept his offer. A Respondent must make a request for such an appearance within five (5) days of his being notified that his offer was rejected or that staff will not recommend acceptance.

Rule 1608. Decision

(a) Following a hearing conducted pursuant to Rule 1605, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor.

(b) When the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction.

(c) The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, provisions of the Constitution or Rules of the Exchange, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation.

(d) The Respondent shall be sent a copy of the decision promptly after it is rendered.

Rule 1609. Review

(a) *Petition.* The Respondent shall have fifteen (15) days after serve of notice of a decision made pursuant to Rule 1608 of this Chapter to petition for review thereof. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken, together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(b) *Motion of Board.* The Board may on its own initiative order review of a decision made pursuant to Rule 1606 or 1608 of this Chapter within thirty (30) days after notice of the decision has been served on the Respondent.

(c) *Conduct of Review.* The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board.

(1) Any Director who participated in a matter before the Business Conduct or other Committee may not participate in review of that matter by the Board.

(2) Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties.

(3) New issues may be raised by the Board, and in such event, Respondents shall be given notice of an opportunity to address any such new issues.

(d) *Determination.* The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent, and shall be final.

(e) *Review of Decision Not to Initiate Charges.* Upon application made by the President within thirty (30) days of a decision made pursuant to Rule 1603(a), the Board may order review of such decision.

Rule 1610. Judgment and Sanction

(a) *Sanctions.* Members and persons associated with Members shall (subject to any rule or order of the SEC) be appropriately disciplined by the Business Conduct Committee for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, or any other fitting sanction.

(b) *Effective Date of Judgment.* Sanctions imposed under this Chapter shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a sanction on the Respondent, the Business Conduct Committee may impose such conditions and restrictions on the activities of the Respondent as the Committee considers reasonably necessary for the protection of investors and the Exchange.

Rule 1611. Service of Notice

Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at his place of business or by deposit in the United States post office, postage prepaid via registered or certified mail addressed to the Respondent at his address as it appears on the books and records of the Exchange.

Rule 1612. Extension of Time Limits

Any time limits imposed under this Chapter for the submission of answers, petitions or other materials may be extended by permission of the authority at the Exchange to or by whom such materials are to be submitted.

Rule 1613. Reporting to the Central Registration Depository

(a) With respect to formal Exchange disciplinary proceedings, the Exchange shall report to the CRD the issuance of a statement of charges pursuant to Exchange Rule 1603(b) and all significant changes in the status of such proceedings while such proceedings are pending.

(b) For purposes of reporting to the CRD:

(1) A formal Exchange disciplinary proceeding shall be considered to be pending from the time that a statement of charges is issued in such proceeding pursuant to Exchange Rule 1603(b) until the outcome of the proceeding becomes final.

(2) An Exchange disciplinary proceeding shall be considered to be a formal disciplinary proceeding if it is initiated by the Exchange pursuant to Rule 1601.

(3) Significant changes in the status of a formal Exchange disciplinary proceeding shall include, but not be limited to, the scheduling of a disciplinary hearing, the issuance of a decision by the Business Conduct Committee, the filing of an appeal to the Board of Directors of the Exchange, and the issuance of a decision by the Board of Directors of the Exchange.

Rule 1614. Imposition of Fines for Minor Rule Violations

(a) *General*. In lieu of commencing a disciplinary proceeding pursuant to Exchange Rule 1601, the Exchange may, subject to the requirements set forth herein, impose a fine, not to exceed $5,000, on any Member, Member Organization, or person associated with or employed by a Member or Member Organization, with respect to any Rule violation listed in section (g) of this Rule. Any fine imposed pursuant to this Rule that (i) does not exceed $2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d-1 under the Exchange Act or by any other regulatory authority. The Exchange is not required to impose a fine pursuant to this Rule with respect to the violation of any Rule included in herein, and the Exchange may, whenever it determines that any violation is not minor in nature, proceed under Exchange Rule 1601, rather than under this Rule.

(b) *Notice*. Any person against whom a fine is imposed under this Rule shall be served with a written statement setting forth (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested as provided below, which date shall be not less than thirty (30) days after the date of service of such written statement.

(c) *Review*. Any person against whom a fine is imposed pursuant this Rule may contest the Exchange's determination by filing with the Office of the Secretary of the Exchange a written answer as provided in Exchange Rule 1604 on or before the date such fine must be paid.

(1) Upon the receipt of an answer by the Exchange the matter becomes subject to review by the Business Conduct Committee.

(2) The answer must include a request for a hearing, if a hearing is desired. Hearings will be conducted in accordance with the provisions of Exchange Rule 1605. If a hearing is not requested, the review will be based on written submissions and will be conducted in a manner to be determined by the Business Conduct Committee.

(3) If, after a hearing or review based on written submissions pursuant to subsection (c)(1) of this Rule, the Business Conduct Committee determines that the person charged is guilty of the rule violation(s) alleged, the Committee may impose any one or more of the disciplinary sanctions authorized by the Exchange's Constitution and Rules. Unless the sole disciplinary sanction imposed by the Committee for such rule violation(s) is a fine that is less than the total fine initially imposed by the Exchange for the subject violation(s), the person charged shall pay a forum fee shall in the amount of $100 if the determination was reached without a hearing and $300 if a hearing was conducted.

(4) The staff, the person charged or the Board of Directors on its own motion may require a review of any determination by the Business Conduct Committee under this Rule by proceeding in the manner described in Rule 1609. Where such review is requested by the staff, it shall have the same rights as a Respondent under Exchange Rule 1609.

(5) In the event that a fine imposed pursuant to this Rule is subsequently upheld by the Business Conduct Committee or, if applicable, on appeal, such fine, plus all interest that has accrued thereon since the fine was due and any forum fee imposed pursuant to subparagraph (3) above, shall be immediately payable.

(d) *Violations Subject to Fines*. The following is a list of the rule violations subject to, and the applicable fines that may be imposed by the Exchange pursuant to, this Rule:

(1) Position Limits (Rule 411). Violations of the position limit rule that continue over consecutive business days will be subject to a separate fine, pursuant to subsection (g)(1) of this Rule, for each day during which the violation occurs and is continuing. For purposes of subsection (g)(1)(a), all accounts of non-member broker-dealers will be treated as customer accounts. In calculating fine thresholds under subsection (g)(1)(a) for each Exchange Member, all violations occurring within a single calendar year in all of that Member's non-member customer accounts are to be added together.

(A) For violations of Rule 411 occurring in the accounts of non-Member (*i.e.*, customers that are not Exchange Members), the Member shall be subject to fines as follows, with a minimum fine amount of $100:

Number of Cumulative Violations

Within One Calendar Year	*Fine Amount*
1 to 6 (up to 5% in excess of applicable limit)	Letter of Caution
1 to 6 (above 5% in excess of applicable limit)	$1 per contract
7 to 12	$1 per contract over limit
13 or more	$5 per contract over limit

(B) For violations occurring in a Member's account (*i.e.*, proprietary accounts and accounts of other Exchange Members), the Member whose account exceeded the limits shall be subject to fines as follows, with a minimum fine amount of $100:

Number of Violations Within One Calendar Year	*Fine Amount*
1 to 3 (up to 5% in excess of applicable limit)	Letter of Caution
1 to 3 (above 5% in excess of applicable limit)	$1 per contract
4 to 6	$1 per contract over limit
7 or more	$5 per contract over limit

(2) Focus Reports (Rule 1403).Each Member shall file with the Exchange a report of financial condition on SEC Form X-17A-5 as required by Rule 17a-10 under the Exchange Act. Any Member who fails to file in a timely manner

such report of financial condition pursuant to Exchange Act Rule 17a-10 shall be subject to the following fines:

Days Late	*Sanction*
1 to 30	$200
31 to 60	$400
61 to 90	$800
90 or more	Referral to Business Conduct Committee

(3) Requests for Trade Data (Rule 1404). Any Member who fails to respond within ten (10) days to a request by the Exchange for submission of trade data shall be subject to the following fines:

Days Late	*Sanction*
1 to 9	$200
10 to 15	$500
16 to 30	$1,000
30 or more	Referral to Business Conduct Committee

Any Member who violates this Rule more than one (1) time in any calendar year shall be subject to the following fines, which fines shall be imposed in addition to any sanction imposed pursuant to the schedule above:

Number of Violations Within One Calendar Year	*Fine Amount*
2nd Offense	$500
3rd Offense	$1,000
4th Offense	$2,500
Subsequent Offenses	Referral to Business Conduct Committee

(3) Conduct and Decorum Policies. The Exchange's trading conduct and decorum policies shall be distributed to the membership periodically and shall set forth the specific dollar amounts that may be imposed as a fine hereunder with respect to any violations of those policies.

(4) Order Entry (Rule 717). Violations of Rule 717(a), (c)-(e) regarding limitations on orders entered into the System by Electronic Access Members, as well as violations of Rule 805(b)(1)(i) regarding restrictions on orders entered by market makers, will be subject to the fines listed below. Each paragraph of Rule 717 subject to this Rule shall be treated separately for purposes of determining the number of cumulative violations.

Number of Cumulative Violations Within Rolling Six-Month Period	*Fine Amount*
1 to 5	Letter of Caution
6 to 10	$500
11 to 15	$1,000
16 to 20	$2,000
Over 20	Referral to Business Conduct Committee

(5) Quotation Parameters (Rule 803). Violations of Rule 803(b)(4) regarding spread parameters for market maker quotations shall be subject to the fines listed below. For purposes of this Rule, the spread parameters in Rule 803(b)(4) will not be violated upon a change in a bid (offer) if a market maker takes immediate action to adjust his offer (bid) to comply with the maximum allowable spread. Except in unusual market conditions, immediate shall mean within five (5) seconds of a change in the market makers bid or offer.

Number of Cumulative Violations Within Rolling Six-Month Period	*Fine Amount*
1 to 15	Letter of Caution
16 to 25	$200
26 to 35	$400
36 to 40	$800
Over 40	Referral to Business

Conduct Committee

(6) Execution of Orders in Appointed Options (Rule 805). Violations of Rule 805(b) and (c) requiring market makers to execute in appointed options classes a minimum percentage of the total number of contracts executed during a quarter shall be subject to the following fines:

Number of Violations Within Rolling Twelve-Month Period	*Fine Amount*
1st Offense (within 85% of requirement)	Letter of Caution
2nd Offense (not within 85% of requirement)	$400
3rd Offense	$800
4th Offense	$1,200
Subsequent Offenses	Referral to Business Conduct Committee

Rule 1615. Contracting Responsibilities

The Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern Exchange disciplinary actions and to what extent the rules of the other SRO shall govern such actions. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.

CHAPTER 17

Hearings and Review

Rule 1700. Scope of Chapter

This Chapter provides the procedure for persons economically aggrieved by Exchange action, including, but not limited to, those persons or organizations who have been denied membership, barred from becoming associated with a Member, or prohibited or limited with respect to Exchange services, or the services of any Exchange Member, taken pursuant to any contractual arrangement, the Constitution or the Rules of the Exchange, to apply for an opportunity to be heard and to have the complained of action reviewed. Review of disciplinary actions and arbitrations are not subject to review under this Chapter.

Rule 1701. Submission of Application to Exchange

(a) *The Application*. A person who is aggrieved by any action of the Exchange within the scope of this Chapter and who desires to have an opportunity to be heard with respect to such action shall file a written application within thirty (30) days after such action has been taken. The application shall state the action complained of and the specific reasons why the applicant takes exception to such action and the relief sought. The application should indicate whether the applicant intends to submit any documents, statements, arguments or other material in support of the application, and describe any such materials.

(b) *Extensions of Time to File Applications*. An application that is not filed within the time specified in paragraph (a) of this Rule shall not be considered by the Business Conduct Committee unless the applicant files his application within such extension of time as allowed by the Chairman of such Committee. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in paragraph (a) of this Rule, file an application for an extension of time within which to submit the application. Such an application for an extension will be ruled upon by the Chairman of the Business Conduct Committee, and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal.

Rule 1702. Procedure Following Applications for Hearing

(a) *Panel.* Applications for hearing and review shall be referred to the Business Conduct Committee, which shall appoint a hearing panel of no less than three (3) members of such Committee. A record of the proceedings shall be kept.

(b) *Documents*. The panel so appointed will set a hearing date and shall be furnished with all material relevant to the proceeding at least seventy-two (72) hours prior to the date of the hearing. Each party shall have the right to inspect and copy the other party's material prior to the hearing.

(c) *Notice*. Parties to the proceeding shall be informed of the composition of the panel at least seventy-two (72) hours prior to the scheduled hearing.

Rule 1703. Hearing

(a) *Participants*. The parties to the hearing shall consist of the applicant and a representative of the Exchange who shall present the reasons for the action taken by the Exchange that allegedly aggrieved the applicant. In addition, any other person may intervene as a party in the hearing when the person claims an interest in the transaction that is the subject of the action and is so situated that the disposition of the action may, as a practical matter impair or impede that person's ability to protect that interest unless it is adequately represented by existing parties. Also, the panel may, in its discretion, permit a person to intervene in the action as a party when the person's claim or defense and the main action have a question of law and fact in common. The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceeding.

(b) *Procedure for Intervention*. The person seeking intervention shall serve a motion to intervene on the Secretary, which will be transmitted to the panel. The motion shall state the grounds therefor and shall set forth the claim or defense upon which the intervention is sought.

(c) *Conduct of Hearing*. The panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine opposing witnesses and present closing arguments orally or in writing as determined by the panel. The panel shall also have the right to question all parties and witnesses to the proceeding and a record shall be kept. The formal rules of evidence shall not apply.

(d) *Decision*. The hearing panel's decision shall be made in writing and shall be sent to the parties to the proceedings. Such decision shall contain the reasons supporting the conclusions of the panel.

Rule 1704. Review

(a) *Petition*. The decision of the hearing panel shall be subject to review by the Board, either on its own motion within thirty (30) days after issuance, upon written request submitted by the applicant below, by the President of the Exchange, within fifteen (15) days after issuance of the decision. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with the reasons for such exceptions. Any objection to a decision not specified by written exception shall be considered to have been abandoned and may be disregarded. Parties may petition to submit a written argument to the Board and may request an opportunity to make an oral argument before the Board. The Board, or a committee of the Board, will have sole discretion to grant or deny either request.

(b) *Conduct of Review*. The review shall be conducted by the Board or a Committee of the Board composed of at least three (3) Directors. Any Director who participated in a matter before it was appealed to the Board shall not participate in any review action by the Board concerning that matter. The review shall be made upon the record and shall be made after such

further proceedings, if any, as the Board or its designated committee may order. An applicant shall be given notice of and a chance to address any issues raised by the Board on its own initiative.

(c) *Decision*. Based upon the record, the Board or its designated Committee may affirm, reverse or modify in whole or in part, the decision of the hearing panel. The decision of the Board or its designated committee shall be in writing, shall be sent to the parties to the proceeding, and shall be final.

Rule 1705. Miscellaneous Provisions

(a) *Service of Notice*. Any notices or other documents may be served upon the applicant either personally or by leaving the same at his place of business or by deposit in the United States post office, postage prepaid via registered or certified mail addressed to the applicant at his last known business or residence address.

(b) *Extension of Time Limits*. Any time limits imposed under this Chapter for the submission of answers, petitions or other materials may be extended by permission of the Secretary of the Exchange. All papers and documents relating to review by the Business Conduct Committee, the Board or its designated committee must be submitted to the Secretary of the Exchange.

Rule 1706. Contracting Responsibilities

The Exchange may contract with another SRO to perform some or all of the functions specified in this Chapter. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern review of Exchange actions and hearings under this Chapter and to what extent the rules of the other SRO shall govern such activities. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all these functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.

CHAPTER 18

Arbitration

Rule 1800. Matters Subject to Arbitration

(a) Any dispute, claim or controversy arising between parties who are Members or persons associated with a Member that arises out of the Exchange business of such parties shall, at the request of any such party and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(b) Any dispute, claim or controversy arising between a non-member and a Member or persons associated with a Member that arises out of the Exchange business of such Member or a person associated with a Member shall, at the request of such non-member and the approval of the Exchange's Director of Arbitration, be submitted for arbitration in accordance with these rules.

(c) If a party to a dispute, in an Answer, Reply or other written response to a request for arbitration, has challenged the appropriateness of submitting a matter to arbitration under this Chapter, the Director of Arbitration shall serve upon the parties written notice of his decision to accept or reject the matter for arbitration.

(1) The decision by the Director of Arbitration to accept or reject a matter for arbitration shall, at the request of any party to the dispute, be subject to review by the Board of Directors or a panel of the Board composed of at least three Directors.

(2) Requests for review must be submitted in writing to the Secretary of the Exchange within ten calendar days from receipt of notice of the Director of Arbitration's decision.

(d) The arbitration provisions of this Chapter shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

(e) For purposes of this Chapter, the terms Member and a person associated with a Member shall be deemed to encompass those persons who were former Exchange Members or persons associated with a Member.

(f) It may be deemed conduct inconsistent with just and equitable principles of trade for a Member or a person associated with a Member to fail to submit a dispute for arbitration on demand under the provisions of this Chapter, or to fail to provide any document in his possession or control as directed pursuant to the provisions of this Chapter or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Chapter where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

Rule 1801. Procedure in Member Controversies

The following procedures shall apply in any dispute, claim or controversy between parties who are Members or persons associated with a Member which is submitted for arbitration pursuant to Rule 1800(a):

(a) *Selection of Arbitrators.* The arbitration panel shall be selected by the Director of Arbitration and shall consist of not less than three members of the Arbitration Committee.

(b) *Challenges.* Each party to the dispute may peremptorily challenge any person appointed to the arbitration panel. There shall be no fixed limit on the number of peremptory challenges by a party; however, no party may assert an unreasonable number of challenges. The Director of Arbitration shall deny peremptory challenges if both the Director of Arbitration and the Chairman of the Arbitration Committee agree that the number of such challenges by a party has been unreasonable. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 1811 or Rule 1822 (d) or (e), whichever comes first. There shall be unlimited challenges for cause.

(c) *General.* Subject to the foregoing provisions of this Rule, the other Rules of Chapter 18 shall apply to arbitrations between Members except for those provisions specifically applicable to arbitrations involving Public Customers.

Uniform Arbitration Code

Rule 1802. Arbitration

(a) Any dispute, claim or controversy between a customer or non-member and a Member and/or associated person arising in connection with the business of such Member and/or associated person in connection with his activities as an associated person shall be arbitrated under the Rules of the Exchange, as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.

(b) Under this Uniform Arbitration Code (the "Code"), the Director of Arbitration shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy where, having the due regard for the purposes of the Exchange and the intent of this Code, such dispute, claim or controversy is not a proper subject matter for arbitration. Any determination by the Director of Arbitration in this regard is subject to review as provided in Rule 1800(c)

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by the Director of Arbitration.

Rule 1803. Class Action Claims

(a) A claim submitted as a class action shall not be eligible for arbitration under this Code at the Exchange.

(b)(1) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to an arbitral forum not sponsored by a self regulatory organization for a class-wide arbitration. However, such claims shall be eligible for arbitration in accordance with Rule 1800 or 1802 or pursuant to the parties' contractual agreement, if any, if a Claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(2) Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrator(s) appointed in accordance with Rule 1804 or Rule 1810, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

(3) No Member and/or associated person shall seek to enforce any agreement to arbitrate against a customer, other Member or persons associated with a Member who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

(i) the class certification is denied;

(ii) the class is decertified;

(iii) the customer, other Member or person associated with a Member is excluded from the class by the court; or

(iv) the customer, other Member or person associated with a Member elects not to participate in the putative or certified class action, or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(c) No Member and/or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is a party except to the extent stated in this Rule.

Rule 1804. Simplified Arbitration

(a) Any dispute, claim or controversy, arising between a Public Customer(s) and an associated person or a Member subject to arbitration under this Code involving a dollar amount not exceeding $10,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether a hearing is demanded.

(c) The Claimant shall pay a non-refundable filing fee and remit a hearing deposit as specified in Rule 1832 upon filing of the Submission Agreement. The final disposition of the fee or deposit shall be determined by the arbitrator.

(d) (1) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(2) Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer.

(3) Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any forum fees required under Rule 1832. The Answer shall designate all available defenses to the Claim and may set forth any related Counter-Claim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person.

(4) If the Respondent(s) has interposed a Third-Party Claim, the Respondent(s) shall serve the Third-Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third-Party Claim and a copy of the original claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim.

(5) If the Respondent(s) files a related Counter-Claim exceeding $10,000 the arbitrator may refer the Claim, Counter-Claim and/or Third-Party Claim, if any, to a panel of no less than three (3) arbitrators in accordance with Rule 1810 of this Code, or he may dismiss the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counter-Claim and/or Third-Party Claim, without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counter-Claim and/or Third-Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Rule 1832.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrators, a copy of the Answer, Counter-Claim, Third-Party Claim or other responsive pleading, if any. The Claimant, if a Counter-Claim is asserted against him, shall within ten (10) calendar days either:

(1) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrators, a Reply to any Counter-Claim, or

(2) if the amount of the Counter-Claim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry who is selected by the Director of Arbitration. Unless the Public Customer demands or consents to a hearing, or the arbitrator calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h)(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded or consented to in accordance with paragraph (f) of this Rule, the General Provisions Governing a Pre-Hearing proceeding under Rule 1822 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the request for production. The selected arbitrator shall resolve all requests under this paragraph on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel that shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(l) Except as otherwise provided herein, the general arbitration rules of the Exchange shall be applicable to proceedings instituted under this Rule.

Hearing Requirements

Rule 1805. Waiver of Hearing

(a) Any dispute, claim or controversy, except as provided in Rule 1804, shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

Rule 1806. Time Limitation Upon Submission

No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

Rule 1807. Dismissal or Termination Proceedings

At any time during the course of an arbitration, the arbitrators may, either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to the remedies provided by law. The arbitrators shall, upon the joint request of the parties, dismiss the proceeding.

Rule 1808. Settlements

All settlements upon any matter submitted shall be at the election of the parties.

Rule 1809. Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration

(a) Where permitted by law, the time limitation(s) that would otherwise run or accrue for the institution of legal proceedings shall be tolled when a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

Rule 1810. Designation of Number of Arbitrators

(a)(1) In all arbitration matters involving Public Customers and non-members where the amount in controversy exceeds $10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist

of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the Public Customer or non-member requests a panel consisting of at least a majority from the securities industry.

(2) An arbitrator will be deemed as being from the securities industry if he or she:

(i) is a person associated with a Member, broker-dealer, government securities broker, government securities dealer, municipal securities dealer, or register investment adviser; or

(ii) has been associated with any of the above within the past (5) years; or

(iii) is retired from or spent a substantial part of his or her business career in any of the above; or

(iv) is an attorney, accountant or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(v) is an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person(s).

(3) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or investment adviser.

(4) The following will apply with regard to the classification of securities industry and public arbitrators and to the exercise of challenges for cause:

(i) Individuals with close securities industry ties such as attorneys, accountants or other professionals who routinely represent industry firms or individuals, will either be reclassified as industry arbitrators or not be used.

(ii) Individuals who have spent a substantial part of their business careers in the securities industry shall always be classified as industry arbitrators.

(iii) Individuals who have spent a relatively minor portion of their career in the securities industry shall not be classified as public arbitrators until at least five (5) years have elapsed from the date of their last industry affiliation. All such past affiliations shall be disclosed and challenges for cause based upon such past affiliations shall be sustained.

(iv) Close family relationships with broker/dealers shall be disclosed and challenges for cause based on such relationships shall be sustained.

(v) Attorneys, accountants and other professionals whose firms have close securities industry ties will still be classified as public arbitrators provided the attorney or other professional does not routinely represent industry firms or individuals. Challenges for cause based on such industry ties will be sustained.

(vi) All arbitrators shall read and become familiar with the Code of Ethics for Arbitrators developed by the American Bar Association and the American Arbitration Association.

(vii) Any close question on arbitrator classification or on challenges for cause shall be decided in favor of Public Customers.

(viii) Spouses of securities industry personnel may not serve as public arbitrators.

(b) *Composition of Panels.* The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

Rule 1811. Notice of Selection of Arbitrator(s)

(a) The Director of Arbitration shall inform the parties of the names and employment histories of the arbitrator(s) for the past ten (10) years, as well as information disclosed pursuant to Rule 1813, at least eight (8) business days prior to the date fixed for the initial hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background.

(b) In the event that any arbitrator, after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 1813, as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of replacement arbitrator(s) and within the time remaining prior to the first hearing session or the five (5) day period provided under Rule 1812, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 1812.

Rule 1812. Challenges

In any arbitration proceeding, each party shall have the right to one (1) peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one (1) peremptory challenge, the Respondents shall have one (1) peremptory challenge, and the Third-Party Respondents shall have one (1) peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by

awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the person(s) named under Rule 1811 or Rule 1822 (d) or (e), whichever comes first. There shall be unlimited challenges for cause.

Rule 1813. Disclosures Required of Arbitrators

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration.

(2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships that they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances which might preclude an arbitrator from entering an objective and impartial determination described in paragraph (a) hereof is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances which arise, or which are recalled or discovered.

(d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section if the arbitrator who disclosed the information is not removed.

Rule 1814. Disqualification or Other Disability of Arbitrators

(a) In the event that any arbitrator, after the commencement of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of such resignation, death, withdrawal, disqualification, or other inability.

(b) Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator pursuant to Rule 1811, as well as any other information disclosed pursuant to Rule 1813. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 1812, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provide in Rule 1812.

Rule 1815. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) *Statement of Claim*. The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim, together with documents in support of the Claim, and the required non-refundable filing fee and hearing session deposit set forth under Rule 1832. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and for each arbitrator(s). The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to server promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim,

(b) *Service and Filing with Director of Arbitration*. For the purposes of the Code of Arbitration Procedure, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service, or in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) *Answer-Defenses, Counter-Claims and or Cross-Claims*

(1) Within twenty (20) business days from receipt of the Statement of Claim, the Respondents(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 1832. The Answer shall specify all available defenses and relevant facts that will be relied upon at the hearing and may set forth any related Counter-Claim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim

against any other party or person based upon any existing dispute, claim or controversy subject to arbitration under this Code.

(2)(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrator(s), be barred from presenting any facts or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's Answer, may, upon objection by a party, in the discretion of the arbitrator(s), be barred from presenting the facts or defenses not included in such party's Answer at the hearing.

(iii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third-Party Respondent who fails to file an Answer within twenty (20) business days from receipt of service of a claim, unless the time to Answer has been extended pursuant to paragraph (c)(5), may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(3) Respondent(s) shall serve each party with a copy of any Third-Party Claim. The Third-Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any forum fees required under Rule 1832. Third Party Respondent(s) shall answer in the manner provided for response to the Claim, as provided in (c)(1) and (2) above.

(4) The Claimant shall serve each party with a reply to a Counter-Claim within ten (10) business days of the receipt of an Answer containing a Counter-Claim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) The Director of Arbitration may extend any time period in this section whether such be denominated as a Claim, Answer, Counter-Claim, Cross-Claim, Reply or Third-Party pleading.

(d) *Joining and Consolidation—Multiple Parties.*

(1) Permissive Joinder. All persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these Claimants will arise in the action. All persons may be joined in one action as Respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all Respondents will arise in the action. A Claimant or Respondent need not assert rights to or defend all the relief demanded. Judgment may be given for one or more

of the Claimants according to their respective rights to relief, and against one or more Respondents according to the respective liabilities.

(2) In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) Further determinations with respect to joining, consolidation and multiple parties under this subsection may be made by the arbitration panel and shall be deemed final.

Rule 1816. Designation of Time and Place of Hearing

Unless the law directs otherwise, the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

Rule 1817. Representation by Counsel

All parties shall have the right to representation by counsel at any stage of the proceedings.

Rule 1818. Attendance at Hearings

The attendance or presence of all persons at hearings, including witnesses, shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

Rule 1819. Failure to Appear

If any of the parties, after due notice, fails to appear at a hearing or at any continuation of a hearing, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases all awards shall be rendered as if each party has entered an appearance in the matter submitted.

Rule 1820. Adjournments

(a) The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit with the request for an adjournment, a fee equal to the initial deposit of hearing deposit fees for the first adjournment and twice the initial deposit of hearing deposit fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted, the deposit shall be refunded. If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to either party. The Claimant may then file a new arbitration.

Rule 1821. Acknowledgement of Pleadings

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

Rule 1822. General Provisions Governing Pre-Hearing Proceeding

(a) *Requests for Documents and Information.* The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) *Document Production and Information Exchange.*

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this Rule or to a selected arbitrator under paragraph (e) of the Rule.

(c) *Pre-Hearing Exchange*

(1) At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing. The parties may provide a list of those documents that have already been produced pursuant to the other provisions of Rule 1822 in lieu of the actual documents. A list of such documents served under this paragraph shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties.

(2) In addition, at least twenty (20) calendar days prior to the first scheduled hearing date, the parties also shall serve on each other a list identifying witnesses they intend to present at the hearing by name, address and business affiliation. A copy of the list of witnesses shall be served on the Director of Arbitration at the same time and in the same manner as service on the parties.

(3) The arbitrator(s) may exclude from the arbitration any documents not exchanged or identified or witnesses not identified in accordance with the requirements of this paragraph (c). This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal.

(d) *Pre-Hearing Conference.*

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing, including but not limited to, the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of facts, identification and briefing of contested issues and any other matters that will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the Arbitration Panel for decision.

(e) *Decisions by Selected Arbitrator*.

The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this Rule. In matters involving Public Customers, such single arbitrator shall be a public arbitrator except the arbitrator may be either public or industry when

the Public Customer has requested a panel consisting of a majority from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance and issue any other ruling that will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Decisions under this paragraph shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this paragraph to the full panel.

(f) *Subpoena*.

The arbitrator(s) and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. However, the parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) *Power to Direct Appearances and Production of Documents*

The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any Member or person employed by or associated with any Member or Member Organization of the Exchange, and/or the production of any records in the possession or control of such persons, Members or Member Organizations. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Rule 1823. Evidence

The arbitrator(s) shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

Rule 1824. Interpretation of Code and Enforcement of Arbitrator Rulings

The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Code and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

Rule 1825. Determinations of Arbitrators

All rulings and determinations of the panel shall be by a majority of the arbitrators.

Rule 1826. Record of Proceedings

A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. if the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

Rule 1827. Oaths of the Arbitrators and Witnesses

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

Rule 1828. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies for each arbitrator. The party filing a new or different pleading shall serve on all other parties a copy of the new or different pleading in accordance with the provisions set forth in Rule 1815(b). The other parties may, within ten (10) days from the receipt of service, file a response with the Director of Arbitration, with sufficient additional copies for each arbitrator, in accordance with Rule 1815(b).

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

Rule 1829. Reopening of Hearings

Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon the application of a party at any time before the award is rendered.

Rule 1830. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgement in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.

(c) The Director of Arbitration shall endeavor to serve a copy of the award:

(1) by registered or certified mail upon all parties, or their counsel, at the address of record;

(2) by personally serving the award upon the parties; or

(3) by filing or delivering the award in such manner as may be authorized by law.

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the names of the parties, the name(s) of counsel, if any, a summary of the issues, including the type(s) of any security or product, in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date that the claim was filed and the award rendered, the numbers and dates of hearing sessions, the locations of the hearing(s) and the signatures of the arbitrators concurring in the award.

(f) The awards shall be made publicly available provided, however, that the name of any customer party to the arbitration will not be publicly available if he or she so requests in writing.

(g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If such a motion has been filed, either party may request the President to direct that the award be paid to an escrow account maintained by the Exchange. Such request shall be filed with the Secretary of the Exchange within thirty-five (35) days of receipt of such award.

(h) An award shall bear interest from the date of the award:

(1) if not paid within thirty (30) days of receipt;

(2) if the award is the subject of a motion to vacate that is denied; or

(3) as specified by the arbitrator(s) in the award.

(i) Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Rule 1831. Miscellaneous

This Code shall be deemed a part of and incorporated by reference in every duly-executed Submission Agreement, which shall be binding on all parties.

Rule 1832. Schedule of Fees

(a) At the time of filing a Claim, Counter-Claim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Exchange in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

(1) Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per additional hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedule below.

(2) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, that lasts four (4) hours or less. The forum fee for a pre-hearing conference with a single arbitrator shall be the amount set forth in the schedules below.

(b) The arbitrator(s), in the award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees are assessed to the parties on a per hearing session basis. The aggregate of the forum fee for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing, in which cases hearing session fees shall be computed as provided in paragraph (c). The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

(1) If a customer is assessed forum fees in connection with a Member claim, forum fees assessed against the customer shall be based on the hearing deposit required under the Member claims schedule for the amount awarded to Member parties to be paid by the customer and not based on the size of the Member claim. No fees shall be assessed against a customer in connection with a Member claim that is dismissed; however in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

(2) Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

(3) In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Rules 1820, 1822 and 1826 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne. If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded unless the arbitrators determine otherwise

(c) For claims filed separately and subsequently joined or consolidated under Rule 1815(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidations shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(d) If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee will be $250 and the hearing session deposit to be remitted by a party shall be $600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed $1,500.

(e) The Exchange shall retain the total initial hearing session amount deposited by all parties in any matter submitted and settled or withdrawn within eight (8) business days of the first scheduled hearing session other than a pre-hearing conference.

(f) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 1820, 1822 and 1826 based on hearing session(s) held and scheduled within eight (8) business days of the Exchange receiving notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(g) Schedule of Fees. For purposed of the schedule of fees the term claim includes Claims, Counter-Claims, Third-Party Claims or Cross-Claims. Any such claim involving a customer and a Member or person associated with a Member is a customer claim. Any such claim submitted by a Member or person associated with a Member against another Member is a Member claim.

CUSTOMER CLAIM FEE SCHEDULE

Amount of Dispute (Exclusive of Interest and Expenses)	*Filling Fees*	*Pre-Hearing Conference Fee*	HEARING DEPOSIT FEE PER SESSION	
			Simplified	*Hearing*
$1,000 or less.....	$ 15	$ 15	$15	$ 15
$1,001 to $2,500.....	$ 25	$ 25	$25	$ 25
$2,501 to $5,000.....	$ 50	$100	$75	$ 100
$5001 to $10,000.....	$ 75	$200	$75	$ 200
$10,001 to $30,000.....	$100	$300	N/A	$ 400
$30,001 to $50,000.....	$120	$300	N/A	$ 400
$50,001 to $100,000.....	$150	$300	N/A	$ 500
$100,001 to $500,000.....	$200	$300	N/A	$ 750
$500,001 to $5,000,000.....	$250	$300	N/A	$1,000
Over $5,000,000.....	$300	$300	N/A	$1,500

MEMBER CLAIM FEE SCHEDULE

Amount of Dispute (Exclusive of Interest and Expenses)	*Filling Fees*	*Pre-Hearing Conference Fee*	*Hearing Deposit Fee Per Session*
$1,000 or less.....	$ 75	$ 15	$ 600
$1,000 to $2,500.....	$ 75	$ 25	$ 600
$2,501 to $5,000.....	$ 100	$100	$ 600
$5,001 to $10,000.....	$ 500	$200	$ 600
$10,001 to $30,000.....	$ 500	$300	$ 600
$30,001 to $50,000.....	$ 500	$300	$ 600
$50,001 to $100,000.....	$ 500	$300	$ 600
$100,001 to $500,000.....	$ 750	$500	$ 750
$500,001 to $1,000,000.....	$1000	$500	$1,000
Over $1,000,000.....	$1500	$500	$1,500

Rule 1833. Requirements when Using Pre-Dispute Arbitration Agreements with Customers

(a) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein), which shall also be highlighted:

(1) Arbitration is final and binding on the parties.

(2) The parties are waiving their right to seek remedies in court, including the right to jury trial.

(3) Pre-arbitration discovery is generally more limited than and different from court proceedings.

(4) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(b) Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a pre-dispute arbitration clause. This statement shall also indicate at what page and paragraph the arbitration clause is located.

(c) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(d) No agreement shall include any condition that limits or contradicts the rules of any SRO or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any awards.

(e) All agreements shall include a statement that:

"No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

(i) the class certification is denied; or

(ii) the class is decertified; or

(iii) the customer is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(f) The requirements of paragraphs (a) through (d) of this Rule shall apply only to new agreements signed by an existing or new customer of a Member or Member Organization after September 7, 1989. The requirements of paragraph (e) shall apply only to new agreements signed by an existing or new customer or a Member or Member Organization after January 23, 1996.

Rule 1834. Failure to Honor Award

Any Member, or person associated with a Member, who fails to honor an award of arbitrators appointed in accordance with the Rules in this Chapter 18 shall be subject to disciplinary proceedings in accordance with Chapter 16 (Discipline).

Rule 1835. Contracting Responsibilities

The Exchange may contract with another SRO to perform some or all of the arbitration functions specified in this Chapter. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern Exchange arbitrations and to what extent the rules of the other SRO shall govern such arbitrations. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.

Exhibit A(2)

There are no written rulings, settled practices having the effect of rules, or interpretations of the board of directors or other committee of the International Securities Exchange that are not included in Exhibit A(1).

Exhibit A(3)

A copy of the Articles of Organization and Operating Agreement for Adirondack Trading Partners, LLC are attached hereto.

ARTICLES OF ORGANIZATION
OF
ADIRONDACK TRADING PARTNERS LLC

Under Section 203 of the Limited Liability Company Law

The undersigned, as the organizer of ADIRONDACK TRADING PARTNERS LLC hereby adopts the following Articles of Organization under Section 206 of the New York Limited Liability Company Law:

ARTICLE I. The name of the limited liability company is: ADIRONDACK TRADING PARTNERS LLC (the "Company").

ARTICLE II. The county in the state of New York in which the office of the Company is to be located is New York County.

ARTICLE III. The Secretary of State of the State of New York is designated as agent of the Company upon whom process against it may be served. The post office address within or without the State of New York to which the Secretary of the State of the State of New York shall mail a copy of any process against the Company served upon him or her is c/o CT Corporation System, 1633 Broadway, New York, NY 10019.

ARTICLE IV. The Company is to be managed by one or more members.

ARTICLE V. The Company shall have the power to indemnify, to the full extent permitted by the New York Liability Company Law, as amended from time to time, all persons whom it is permitted to indemnify pursuant thereto.

IN WITNESS WHEREOF, this certificate has been subscribed this 18th day of January, 1998, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

KAP GROUP, LLC
Member of Adirondack Trading Partners LLC

By: W A Porter

William A. Porter
Manager of KAP Group, LLC
Authorized Person

AMENDED AND RESTATED
OPERATING AGREEMENT
OF
ADIRONDACK TRADING PARTNERS LLC

A NEW YORK LIMITED LIABILITY
COMPANY

Amended and Restated Operating Agreement, dated as of October 1, 1998, by and among the persons have executed the signature page(s) hereto as Members, together with such other persons who from time to time hereafter are added as Members and agree to be bound by this Agreement as Members of ADIRONDACK TRADING PARTNERS LLC (the "**Company**") in accordance with the terms of this Agreement.

WITNESSETH:

WHEREAS, the Company has heretofore been formed as a limited liability company under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the Secretary of State of New York on January 27, 1998 and pursuant to an Operating Agreement dated as of June 30, 1998, entered into among the Members as amended by letter amendment dated in or around June 1998 (the "**Initial Operating Agreement**"); and

WHEREAS, the Members of the Company wish hereby to amend and restate the Initial Operating Agreement in order to increase from twenty (20) to twenty-five (25) the maximum number of Combined B Units authorized hereunder and to make the other changes incorporated herein, in each case on the terms expressly set forth herein;

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

ARTICLE IARTICLE
FORMATION AND BUSINESS OF THE COMPANY

1.1 **Formation**. The Company was organized on January 27, 1998, in accordance with and pursuant to the New York Limited Liability Company Law.

1.2 **Name**. The name of the Company is Adirondack Trading Partners LLC. The Company may do business under that name and, as permitted by applicable law, under any other name determined from time to time by the Board.

1.3 **Purpose of the Company**. The purpose of the Company shall be to conduct any lawful business or activity whatsoever, as permitted by applicable law and as determined from time to time by the Board of Directors. The Company may exercise all powers necessary to or reasonably connected with the Company's business from time to time, and may engage in all activities necessary, customary, related or incidental to any of the foregoing.

1.4 **Principal Office**. The Company's principal place of business shall be located at 47 Laurel Hill Road, Centerport, New York 11721 or such other place determined from time to time by the Board. The Company may have such other business offices within or without the State of New York as determined from time to time by the Board.

1.5 **Registered Agent**. The name and address of the Company's registered agent in the State of New York is CT Corporation Systems, New York, New York 10019. The registered agent may be changed from time to time by the Board upon the filing of the name and address of the new registered agent with the New York Secretary of State pursuant to the LLC Act.

1.6 **Term**. The term of the Company shall commence on the date hereof and continue until December 31, 2098 unless the Company is earlier dissolved in accordance herewith and with the LLC Act.

1.7 **Members**. The Company shall maintain at its principal place of business a record of the name, address, facsimile number, and taxpayer identification number of each Member, and such record shall be available to the Members upon reasonable notice and during normal business hours.

ARTICLE IIARTICLE II

DEFINITIONS

The following terms shall have the meaning set forth below when used in this Agreement:

2.1 The term "**Adjusted Capital Account**" of a Member shall mean such Member's Capital Account, after giving effect to the following:

(a) increasing such Capital Account for any amount required to be restored under Treas. Reg. Section 1.704-1(b)(2)(ii)(c), as well as any amounts in addition thereto pursuant to Treas. Reg. Sections 1.704-2(g)(1) and (i)(5), after taking into account any changes during such Fiscal Year in Company Minimum Gain and Member Nonrecourse Debt Minimum Gain; and

(b) decreasing such Capital Account for the items described in Treas. Reg. Sections 1.704-l(b)(2)(ii)(d)(4), (5) and (6).

2.2 The term "**Affiliate**" shall mean, as to any person, any other person that, directly or indirectly, is in control of, is controlled by, or is under common control with such person. For purposes of this definition, a person shall be deemed to be "controlled by" another person if such other person possesses, directly or indirectly, power either to (a) vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such person or (b) direct or cause the direction of the management and policies of such person, whether by contract or otherwise.

2.3 The term "**Agreement**" shall mean this Amended and Restated Operating Agreement, as originally executed and as amended from time to time in accordance herewith and with the LLC Act.

2.4 The term "**Articles of Organization**" shall mean the Articles of Organization of the Company, as filed with the New York Secretary of State, as amended from time to time in accordance herewith and with the LLC Act.

2.5 The term "**Bankruptcy**" of any Person shall mean (a) the entry of an order for relief with respect to that Person in a proceeding under the United States Bankruptcy Code, as amended from time to time, or (b) the Person's initiation, whether by filing a petition, beginning a proceeding or in answer to a proceeding commenced by another person, of any action for liquidation, dissolution, receivership or other similar relief, or the Person's application for, or consent to the appointment of, a trustee, receiver or custodian for its assets. For purposes of this definition, a Person's consent shall be deemed to have been given if an order appointing a trustee, receiver or custodian is entered by a court of competent jurisdiction and is not dismissed within ninety (90) days after its entry.

2.6 The term "**Board of Directors**" or "**Board**" shall have the meaning set forth in Article V of this Agreement.

2.7 The term **"Buy-Sell Agreement"** shall mean any agreement between the Company and a Director, officer, employee or independent contractor of the Company or any Controlled Subsidiary who may be issued Employee Units, pursuant to which, among other things, vesting rights may be established and the Company may have the right to purchase the Employee Units under specified circumstances.

2.8 The term "**Capital Account**" of a Member, as of any date, shall mean the account maintained for such Member pursuant to Section 3.3 of this Agreement, as adjusted through such date.

2.9 The term "**Capital Contribution**" of, or attributed to, a Member shall mean the total contributions to the capital of the Company, whether in cash, property (net of liabilities) or services, made, performed or to be performed by, or attributed to, such Member, valued on the date of contribution in the Company's books and records.

2.10 The term "**Code**" shall mean the Internal Revenue Code of 1986, as amended, in effect as of the date hereof and as amended from time to time hereafter.

2.11 The term **"Combined A Unit"** shall a group of Units consisting of one Preferred A Unit and 100,000 Common Units.

2.12 The term **"Combined B Unit"** shall mean any group of Units consisting of one Preferred B Unit and 20,000 Common Units.

2.13 The term **"Combined C Unit"** shall mean any group of Units consisting of one Preferred C Unit and a fixed number of Common Units to be set at the discretion of the Board pursuant to Section 3.2(b).

2.14 The term "**Combined Unit**" shall mean any of a Combined A Unit, Combined B Unit or Combined C Unit.

2.15 The term "**Common Member**" shall mean any Member holding Common Units.

2.16 The term "**Common Unit**" shall mean any Initial Common Unit or any other unit representing an Interest designated by the Board as a Common Unit.

2.17 The term "**Company**" shall have the meaning set forth in the preamble to this Agreement.

2.18 The term "**Company Minimum Gain**" shall mean the amount determined under Treas. Reg. Sections 1.704-2(i)(3) and 1.704-2(d), and shall be computed separately for each Member in a manner consistent with Code Section 704(b) and the Treasury Regulations thereunder.

2.19 The term "**Company Nonrecourse Deductions**" shall mean the deductions of the Company determined under Treas. Reg. Section 1.704-2(c).

2.20 The term **"Compounded Preference Amount"** shall mean, with respect to any Preferred Member, an amount, initially zero, adjusted on the last day of each calendar year by adding to such amount, as it may have been theretofore adjusted pursuant to this definition (the "Pre-Adjustment Amount"), any excess of (i) the aggregate amount that would be (or would have been) distributed, without duplication, to such Preferred Member on such day (or on the last day of the three preceding calendar quarters) pursuant to Section 4.1(b)(i) if the Board were to determine (or had determined) to distribute all amounts distributable under Section 4.1(b)(i) on such day (and on such three other days), over (ii) the aggregate amount actually distributed to such Preferred Member on such day (and on such three other days) pursuant to Section 4.1(b)(i).

2.21 The term "**Director**" shall have the meaning set forth in Article V of this Agreement.

2.22 The term "**Economic Interest**" shall mean any right to share in the allocation of one or more of the Company's allocable items, including, without limitation, Net Income and Net Loss, and/or in distributions of the Company's assets, in each case pursuant to this Agreement or the LLC Act, but shall not include any Management Interest.

2.23 The term "**Employee Unit**" shall mean any Common Unit issued to a Director, officer, employee or independent contractor out of those Common Units authorized to be issued to any such Person pursuant to Section 3.1 or 3.2 for services provided or to be provided to the Company, but excluding any Common Units issued to any such Person for cash consideration comparable to that being paid contemporaneously by Persons other than Directors, officers, employees and independent contractors.

2.24 The term "**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

2.25 The term "**Fiscal Year**" shall mean the Company's accounting, tax and fiscal year, which shall be the calendar year.

2.26 The term "**Fiscal Quarter**" shall mean a fiscal quarter of the Company ending March 31, June 30, September 30 or December 31.

2.27 The term "**Fully Diluted Basis**" means, as of any date, with respect to calculations involving the Common Units outstanding of the Company, making the assumption that all convertible securities of the Company then outstanding were converted on such date and that all options, warrants and similar rights to acquire Common Units were exercised on such date.

2.28 The term "**Fundamental Change**" shall mean the merger of the Company with another entity, the dissolution of the Company, or the sale or other disposition of all or substantially all of the business or assets of the Company, or the incurrence of indebtedness by the Company in excess of $5,000,000.

2.29 The term "**Indemnitee**" shall mean a Director, officer, agent or employee of the Company who may be indemnified by the Company as set forth in Article XI of this Agreement.

2.30 The term "**Initial Common Units**" shall mean the Common Units authorized to be issued by the Company under Section 3.1.

2.31 The term "**Initial Preferred Units**" shall mean the Preferred Units authorized to be issued by the Company under Section 3.1.

2.32 The term "**Interest**" shall mean any of an Economic Interest, Management Interest and/or Membership Interest.

2.33 The term "**LLC Act**" shall mean the New York Limited Liability Company Law, as amended from time to time.

2.34 The term "**Management Interest**" of a Member shall mean such Member's right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in, any decision or action of or by the Members hereunder or under the LLC Act.

2.35 The term "**Member**" shall mean each person who (a) executes a counterpart of this Agreement as a Member as of the date hereof or (b) is admitted as a Member after the date hereof pursuant to this Agreement.

2.36 The term "**Member Nonrecourse Debt**" shall mean nonrecourse debt of the Company under Treas. Reg. Section 1.704-2(b)(4).

2.37 The term "**Member Nonrecourse Deductions**" shall mean the losses, deductions and expenditures attributable to Member Nonrecourse Debt under Treas. Reg. Section 1.704-2(i)(2).

2.38 The term **"Membership Interest"** shall mean a Member's entire interest in the Company, including its Economic Interest (to the extent not Transferred) and Management Interest.

2.39 The term **"Net Capital Violation"** shall mean a violation of any provision of the "net capital" regulations promulgated by the SEC under Section 15(c)(3) of the Exchange Act, as amended.

2.40 The terms "**Net Income**" and "**Net Loss**" shall mean, for each Fiscal Year (or other period for which they are determined), the income and gain, and the losses, deductions and credits of the Company, respectively, in the aggregate or separately stated, as appropriate, as determined for federal income tax purposes under Section 703(a) of the Code and Treasury Regulations Section 1.703-1 (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in income or loss), with the following adjustments:.

(a) Any tax-exempt income, as described in Section 705(a)(1)(B) of the Code, realized by the Company during such taxable year shall be taken into account in computing such income or loss;

(b) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code for such taxable year, including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) as items described in Section 705(a)(2)(B) of the Code, shall be taken into account in computing such income or loss as if they were deductible items;

(c) Any item of income, gain, loss or deductions that is required to be allocated specially to the Members under Section 4.5, 4.6, or 4.7 shall not be taken into account in computing such income or loss;

(d) In lieu of any depreciation, amortization and cost recovery deductions taken into account in computing such income or loss, the Company shall compute such deductions based on the book value of Company property, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3);

(e) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the book value of the property disposed of (as adjusted for "book" depreciation computed in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3)), notwithstanding that the adjusted tax basis of such property differs from its book value; and

(f) If the book value of Company assets is adjusted to equal fair market value as provided in Section 3.4 hereof, then income or loss shall include the amount of any increase or decrease in such book values attributable to such adjustment.

2.41 The term "**Offered Interests**" shall have the meaning set forth in Section 9.2(a).

2.42 The term "**officer**" shall have the meaning set forth in Article VIII of this Agreement.

2.43 The term "**Percentage Interest**" of a Member shall mean the number of Common Units of the Member expressed as a percentage of the aggregate number of Common Units of all Members.

2.44 The term "**person**" shall mean any individual, partnership, limited liability company, corporation, joint venture, trust, association or any other entity, domestic or foreign, and its respective heirs, executors, administrators, legal representatives, successors and assigns where the context of this Agreement so permits.

2.45 The term **"Preference Amount"** of a Preferred Member shall mean, with respect to each Preferred Member, on any given date, (i) in respect of any Preferred A Units, Preferred B Units or Preferred C Units, an amount equal to six percent (6%), multiplied by the sum of (a) such Preferred Member's applicable Preferred Payment Account, plus (b) such Preferred Member's Compounded Preference Amount and (ii) in respect of any other class or series of Preferred Units authorized by the Board, an amount determined in the manner established by the Board.

2.46 The term "**Preferred A Member**" shall mean any Member holding Preferred A Units.

2.47 The term "**Preferred A Payment Account**" shall mean the memorandum account established and maintained for each Preferred A Member pursuant to Section 3.3(f).

2.48 The term "**Preferred A Units**" shall mean the Preferred A Units authorized to be issued by the Company pursuant to Sections 3.1 and 3.2(b).

2.49 The term "**Preferred B Member**" shall mean any Member holding Preferred B Units.

2.50 The term "**Preferred B Payment Account**" shall mean the memorandum account established and maintained for each Preferred B Member pursuant to Section 3.3(f).

2.51 The term "**Preferred B Units**" shall mean any Preferred B Units authorized to be issued by the Company pursuant to Sections 3.1 and 3.2(b).

2.52 The term "**Preferred C Member**" shall mean any Member holding Preferred C Units.

2.53 The term "**Preferred C Payment Account**" shall mean the memorandum account established and maintained for each Preferred C Member pursuant to Section 3.3(f).

2.54 The term "**Preferred C Units**" shall mean the Preferred C Units authorized to be issued by the Company pursuant to Sections 3.1 and 3.2(b).

2.55 The term **"Preferred Member"** shall mean any Preferred A Member, Preferred B Member or Preferred C Member.

2.56 The term "**Preferred Payment Account**" shall mean any Preferred A Payment Account, Preferred B Payment Account, Preferred C Payment Account or a comparable memorandum account maintained by the Company for a Preferred Member pursuant to Section 3.3(f) in respect of any other class or series of Preferred Units.

2.57 The term **"Preferred Unit"** shall mean any Preferred A Unit, Preferred B Unit, Preferred C Unit or other Unit of a class or series of Units authorized by the Board pursuant to this Agreement and designated as a Preferred Unit.

2.58 The term "**Regulatory Allocations**" shall have the meaning set forth in Section 4.7 of this Agreement.

2.59 The term "**Remaining Interests**" shall have the meaning set forth in Section 9.2(d).

2.60 The term "**SEC**" shall mean the U.S. Securities and Exchange Commission.

2.61 The term "**Transfer**" shall mean any sale, assignment, transfer, gift, exchange, bequest or other disposition of an Interest, in any manner, voluntary or involuntary, by operation of law or otherwise.

2.62 The term "**Transfer Notice**" shall have the meaning given in Section 9.2(a).

2.63 The term "**Transferee**" shall mean the person to whom a Member Transfers, or proposes to Transfer, an Interest.

2.64 The term "**Transferring Member**" shall mean any Member which Transfers, or proposes to Transfer, an Interest.

2.65 The term "**Treasury Regulations**" or "**Treas. Reg**." shall mean regulations promulgated under the Code in effect as of the date hereof or hereafter amended or adopted.

2.66 The term **"Unallocated Preference Amount"** of a Preferred Member as of any date shall mean the excess of such Preferred Member's aggregate Preference Amount accumulated from the inception of the Company to such date (including portions thereof which may have been distributed previously and any portion not yet distributed) over the aggregate amount of Net Income allocated to such Member pursuant to Section 4.3(a)(i) from the inception of the Company to such date.

2.67 The term **"Units"** shall mean any of the Common Units or Preferred Units.

ARTICLE IIIARTICLE III

CAPITAL CONTRIBUTIONS, CAPITAL ACCOUNTS AND PREFERRED CAPITAL AMOUNTS

3.1 **Authorized Membership Interests**. The Company shall be authorized to accept Capital Contributions in respect of, and to issue, one million three hundred ninety thousand (1,390,000) Common Units (the "**Initial Common Units**"), provided one hundred forty thousand (140,000) of the Common Units shall be reserved and held for issuance to Directors, officers, employees or independent contractors, from time to time, for services provided or to be provided to the Company and for such other consideration and on such other terms as the Board may deem appropriate. The Company is authorized to accept Capital Contributions in respect of, and to issue, five (5) Preferred Units designated Series A (the "**Preferred A Units**"), twenty (25) Preferred Units designated Series B (the "**Preferred B Units**") and thirty-five (35) Preferred Units designated Series C (the "**Preferred C Units**"; and, together with the Preferred A Units and the Preferred B Units, the "**Initial Preferred Units**"). In addition, the Company shall be authorized to issue additional Interests and Units to the extent so authorized by the Board, subject to Section 3.2(c).

3.2 **Initial Capital Contributions; Combined Units; Additional Interests**.

(a) All Initial Common Units (other than the Employee Units), to the extent issued, shall be issued and sold for a price of $0.10 per Common Unit (or such greater price as may be determined by the Board). All Initial Preferred Units, to the extent issued, shall be issued and sold for the price of $1,000,000 per Preferred Unit.

(b) All Units (other than Employee Units) authorized under Section 3.1 shall be issued as part of Combined Units in accordance with this Section 3.2(b). Five hundred thousand (500,000) Common Units and five (5) Preferred A Units shall be issued to KAP Group LLC as five (5) Combined A Units, each Combined A Unit consisting of one hundred thousand (100,000) Common Units and one (1) Preferred A Unit. Up to five hundred thousand (500,000) Common Units and up to twenty-five (25) Preferred B Units may be issued as up to twenty-five (25) Combined B Units, each Combined B Unit to consist of twenty thousand (20,000) Common Units and one Preferred B Unit. A number of Common Units up to the excess of seven hundred and fifty thousand (750,000) over the number of Common Units actually issued as part of Combined B Units and a number of Preferred C Units up to the excess of fifty (50) over the number of Preferred B Units actually issued as part of Combined B Units will be issued as a number of Combined C Units up to the excess of fifty (50) over the number of Combined B Units actually issued. No Combined B Units may be issued after any Combined C Units are issued. The Board shall have the power and authority (subject to this Section 3.2(b)) prior to the issuance of Combined C Units to fix the number of Common Units issuable with a Preferred C Unit as a Combined C Unit, provided, that each Combined C Unit shall include the same number of Common Units. The Units

described in this section 3.2(b) shall be issued to such persons as the Board shall determine in its sole discretion at any time and from time to time.

(c) In the event that the Board determines that it is in the best interest of the Company to offer and issue additional Interests and Units other than those specifically authorized and issued pursuant to Sections 3.1, 3.2(a) and 3.2(b), and except as otherwise set forth below, each Member shall be given prompt written notice of such offering and issuance of additional Interests and Units and a reasonable opportunity to commit to contribute additional capital and to contribute additional capital in respect of such Interests and Units, in proportion to the number of Common Units held by it, on the same terms as those offered. Any such Interests which are not acquired by Members may be sold by the Company to other Persons. The foregoing provisions shall not apply to the issuance of Common Units to the Directors, officers, employees and independent contractors of the Company or any of its Controlled Subsidiaries for services provided or to be provided, which Common Units in the aggregate do not exceed ten percent (10%) of the number of all Common Units that would be outstanding upon such issuance on a Fully Diluted Basis. Notwithstanding the foregoing provisions, so long as KAP Group LLC shall hold Common Units, at any time that the Company issues Common Units to Members or other persons pursuant to this Section 3.2(c), KAP Group LLC shall have the right to purchase Common Units in a number sufficient to permit KAP Group LLC to maintain its Percentage Interest in the Company at the same purchase price as that being offered to other persons (but without any requirement that might apply to other purchasers to acquire Preferred Units in conjunction with their acquisition of Common Units or any other terms).

(d) Subject to the provisions of Section 3.2(c), the Board in its discretion may authorize and issue additional Interests and Units, and accept Capital Contributions in respect of additional Interests and Units, from time to time, for such consideration and on such other terms as the Board may deem appropriate, provided that no additional Preferred Units shall have any right to receive distributions representing a return of capital or a return on capital in priority to such rights of any class or series of Preferred Units then outstanding, without the approval of the Members holding a majority of the Preferred Units comprising each class or series of Preferred Units so affected (it being understood that the foregoing proviso shall not prohibit the Board from authorizing Preferred Units entitling the Preferred Members holding such Units to distributions representing a return of capital on a pro rata basis with other Preferred Members in proportion to the number of Common Units held by all Preferred Members or distributions representing a return on capital on a pro rata basis (based on undistributed Preference Amounts) with other Preferred Members.

3.3 **Capital Accounts; Preferred Payment Accounts**.

(a) The Company shall establish and maintain a Capital Account for each Member.

(b) The Capital Account of each Member shall be increased by the amount of the income and gain allocated to such Member, and shall be decreased by any

losses and deductions allocated, or distributions made, to such Member pursuant to the terms of this Agreement. It is the intention of the Members that Capital Accounts be maintained strictly in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv).

(c) Notwithstanding anything contained herein to the contrary, the manner in which Capital Accounts are maintained shall be modified, if necessary, in the opinion of the Company's accountants, to comply with applicable law, provided that no such change shall materially alter the economic agreement between or among the Members.

(d) Except as otherwise required by the LLC Act or permitted under this Agreement, no Member shall have any liability to restore all or any portion of any Capital Account having a deficit balance.

(e) No Member shall be paid interest on the balance of its Capital Account unless otherwise determined by the Board, except as otherwise provided in this Agreement.

(f) The Company shall establish and maintain a memorandum account designated a Preferred A Payment Account, Preferred B Payment Account and Preferred C Payment Account for each Member holding Preferred A Units, Preferred B Units and Preferred C Units, respectively, which shall be increased by the amount paid for Preferred Units of such class purchased by such Member, and decreased by any distributions made to such Member pursuant to Sections 4.1(b)(ii).

3.4 **Adjustments to Capital Accounts**.

(a) The Board may, in its discretion, adjust the Capital Accounts to reflect a revaluation of the Company's assets upon the occurrence of any of the following events:

(i) a Capital Contribution by a new or existing Member as consideration for the issuance of a Unit;

(ii) the distribution of cash or other property by the Company to a retiring or continuing Member as consideration for the repurchase or redemption of a Unit; or

(iii) events described in Treas. Reg. Section 1.704-1(b)(2)(iv)(f).

(b) Any adjustment pursuant to Section 3.4(a) of this Agreement shall be based on the fair market value of Company property on the date of adjustment, and shall reflect the manner in which the unrealized income, gain, loss or deduction inherent in the property, not previously reflected in Capital Accounts, would be allocated among the Members if there were a taxable disposition of the property for fair market value on that date.

(c) If there is any basis adjustment pursuant to an election under Code Section 754, the Capital Accounts shall be adjusted to the extent required by Treas. Reg. Section 1.704-1(b)(2)(iv)(m).

3.5 **Return of Capital Contributions**. Except as otherwise provided in this Agreement, no Member shall have any right to demand or receive (a) any cash or property of the Company in return of its Capital Contribution or in respect of its Interest until the dissolution of the Company, or (b) any distribution from the Company in any form other than cash.

3.6 **Transfer of Interest**. If an Interest is Transferred as permitted by this Agreement, the Transferee shall succeed to the Capital Account of the Transferring Member to the extent the Capital Account relates to the Transferred Interest in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(l).

3.7 **Admission of Additional Members.** Each Member admitted after the effective date of the Initial Operating Agreement shall execute and deliver a written instrument satisfactory to the Board whereby such Member becomes a party to this Agreement, as well as any other documents (including a Subscription Agreement) required by the Board. Upon execution and delivery of a counterpart of this Agreement and acceptance thereof by the Board, and upon payment for the Interest and/or Units acquired, such Person shall be admitted as a Member of the Company and shall thereafter be entitled to all the rights and subject to all the obligations of Members as set forth herein.

ARTICLE IVARTICLE IV

DISTRIBUTIONS AND ALLOCATIONS

4.1 **Distributions**.

(a) Distributions of cash shall be made no less than three days prior to April 15 of each year, to each Member an amount equal to fifty percent (50%) of the excess of (i) the cumulative taxable income (as determined for federal income tax purposes) of the Company for all tax years (to and including the preceding tax year) allocated to such Member over (ii) the sum of all amounts previously distributed to such Member pursuant to this Section 4.1(a) and any amount allocated to such Member pursuant to Section 4.3(a)(i) with respect to the preceding tax year; provided, however, that the distributions to Members (other than to Members in respect of Employee Units) that would otherwise be required by this Section 4.1(a) shall not be made to the extent that such distributions would result in a Net Capital Violation.

(b) Distributions may be made, at the discretion of the Board, as set forth below:

(i) on the last day of each calendar quarter, to each Preferred Member an amount not exceeding such Preferred Member's undistributed

Preference Amount, such amounts to be distributed to all Preferred Members in proportion to their respective undistributed Preference Amounts;

(ii) on June 30 of each year, so long as no undistributed Preference Amounts remain, to each Preferred Member in proportion to the Common Units held by such Preferred Member, in an amount equal to (or in such larger amount as the Board may determine) fifty percent (50%) of the excess of Net Income over the sum of (A) fifty percent (50%) of the total amount distributed pursuant to Section 4.1(b)(i), plus (B) the total amount distributed pursuant to Section 4.1(a); provided that no Preferred Member shall have the right to receive distributions under this Section 4.1(b)(ii) if such Preferred Member's Preferred Payment Account has been reduced to zero, and that any distributions under this Section 4.1(b)(ii) shall be made to other Preferred Members in proportion to the Common Units held by each of them without regard to the Common Units held by any Preferred Members whose Preferred Payment Accounts have been reduced to zero;

(iii) on June 30 of each year, so long as a distribution has been made on such date pursuant to Section 4.1(b)(ii) and in such aggregate amount as the Board may determine and no undistributed Preference Amounts remain, to each Member in proportion to the Common Units held by such Member.

4.2 **Limitation on Distributions**. No distribution shall be declared and paid unless, after giving effect thereto, the assets of the Company exceed the Company's liabilities.

4.3 **Allocations of Net Income and Net Loss**.

(a) After giving effect to the special allocations set forth in Section 4.5 and 4.6, Net Income for each taxable period and all items of income and gain taken into account in computing Net Income for such taxable period shall be allocated to the Members in the following order and priority:

(i) first, among the Preferred Members in proportion to their respective Unallocated Preference Amounts;

(ii) second, among the Members in an amount equal to the excess, if any, of Net Loss allocated to such Member pursuant to Section 4.3(b)(iii) over Net Income previously allocated to such Member under this Section 4.3(a)(ii), in proportion to the amount of such excesses;

(iii) third, among the Members in an amount equal to the excess, if any, of Net Loss allocated to such Member pursuant to Section 4.3(b)(ii) over Net Income previously allocated to such Member under this Section 4.3(a)(iii), in proportion to the amount of such excesses. Net Income shall be allocated pursuant to this Section 4.3(a)(iii) in a manner that reverses the allocation of Net Loss allocated pursuant to Section 4.3(b)(ii) in reverse order, *i.e.*, taking into account allocations pursuant to the second sentence of Section

4.3(b)(ii) before taking into account allocations made under the first sentence of Section 4.3(b)(ii);

(iv) fourth, among the Members in an amount equal to the excess, if any, of Net Loss allocated to such Member pursuant to Section 4.3(b)(i) over Net Income previously allocated to such Member under this Section 4.3(a)(iv), in proportion to the amount of such excesses;

(v) thereafter, among the Members in proportion to their respective Common Units.

(b) After giving effect to the special allocations set forth in Sections 4.5 and 4.6, Net Loss for each taxable period and all items of loss and deduction taken into account in computing Net Loss for such taxable period shall be allocated to the Members in the following order and priority:

(i) first, among all the Members in proportion to their respective Common Units, but only to the extent such amount when so allocated would not result in, or cause an increase in, a deficit balance in any Member's Adjusted Capital Account;

(ii) second, among all the Members that do not have an Adjusted Capital Account with a deficit balance in proportion to their respective Common Units, but only to the extent such amount when so allocated would not result in, or cause an increase in, a deficit balance in any Member's Adjusted Capital Account. This Section 4.3(b)(ii) shall be applied, *mutatis mutandis*, until the allocation of Net Loss would cause each of the Members to have a deficit balance for such Member's Adjusted Capital Account;

(iii) thereafter, among the Members in proportion to their respective Common Units.

(c) Notwithstanding Sections 4.3(a) and (b), Net Income or Net Loss arising from transactions in connection with or in contemplation of a liquidation of the Company or upon a sale of substantially all of the assets of the Company shall be allocated such that, to the extent possible, the amount of cash each Member shall receive on account of its Interests pursuant to Section 10.2(b) shall equal the amount of cash such Member would receive if the net proceeds of such sale or other transactions available for distribution to the Members were distributed pursuant to Section 4.1 hereof.

4.4 **[Intentionally Deleted].**

4.5 **Qualified Income Offset**. Notwithstanding anything in this Article IV to the contrary, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treas. Reg. §1.704-1(b)(2)(ii) (d)(4), (5) or (6) which cause a deficit or increase the deficit in the Member's Capital Account, items of Company gross income and gain shall be allocated to the Member in an amount and manner sufficient to eliminate the deficit in its Capital Account as quickly as possible; provided, however, that for this purpose, a Capital

Account shall be increased by the Member's share of Company Minimum Gain as of the end of the Fiscal Year. It is the intention of the Members that this Section 4.5 be treated as a "qualified income offset" within the meaning of Treas. Reg. Section 1.704-1(b)(2)(ii)(d). Such Section of the Treasury Regulations shall control in the case of any conflict between that Section of the Treasury Regulations and this Section 4.5.

4.6 **Minimum Gain**.

(a) Nonrecourse Deductions. Company Nonrecourse Deductions shall be allocated to the Capital Accounts as set forth in Section 4.3 of this Agreement. Member Nonrecourse Deductions shall be allocated to the Member that bears the economic risk of loss with respect to the debt to which such Member Nonrecourse Deduction is attributable.

(b) Distributions of Nonrecourse Financing Proceeds. If the Company makes a distribution to the Members that is allocable to the proceeds of any nonrecourse liability of the Company, or of any other entity in which the Company has an interest, such distribution shall be allocable to an increase in Company Minimum Gain as provided in Treas. Reg. Sections 1.704-2(h) and (i)(6).

(c) Company Minimum Gain. Each Member's share of Company Minimum Gain shall be determined as provided in Treas. Reg. Sections 1.704-2(g) and (i)(5).

(d) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for a Fiscal Year, items of Company income and gain shall be allocated to the Capital Accounts as provided in Treas. Reg. Section 1.704-2(f). Notwithstanding the foregoing, to the extent such net decrease is attributable to a Member Nonrecourse Debt, then any Member with a share of the minimum gain attributable to such debt shall be allocated items of income and gain as provided in Treas. Reg. Section 1.704-2(i)(4).

4.7 **Regulatory Allocations**. The allocations set forth in Sections 4.5 and 4.6 of this Agreement (the "**Regulatory Allocations**") are intended to comply with certain requirements of Treas. Reg. Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations might not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Board is hereby authorized to allocate other items of income, gain, loss, and deduction among the Members so as, to the extent possible, to prevent the Regulatory Allocations from causing the manner in which Company distributions will be divided between the Members pursuant to this Agreement to be different from the division intended by the Members. In general, the Members anticipate that this will be accomplished by specially allocating other items of Company income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of the Regulatory Allocations and such other items to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not been required.

4.8 **Allocation of Nonrecourse Liabilities**. For purposes of Treas. Reg. Section 1.752-3(a), the Members' interests in Net Income shall be equal to their respective Common Units.

4.9 **Allocation of Taxable Income and Loss**. The income, gains, losses, credits and deductions of the Company shall be allocated among the members in the same manner as such items are allocated to the Capital Accounts of the members, to the extent permitted under the Code and applicable Treasury Regulations.

4.10 **Distributions In Kind**. All distributions of Company property in kind shall be valued at their fair market value as of the date of distribution, and the amount of any gain or loss that would be realized by the Company if it were to sell such property at such fair market value shall be allocated to the Members in accordance with Section 4.3 of this Agreement.

4.11 **Tax Returns and Other Elections**. The Board shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all applicable laws of each jurisdiction in which the Company does business. Copies of all such returns, or summaries thereof, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Board, in its sole discretion. All matters concerning allocations for income tax purposes not expressly provided for by the terms of this Agreement shall be determined by the Board. William Porter is designated the "**Tax Matters Partner**" pursuant to Section 6231(a)(7) of the Code.

4.12 **Transfers of Interest**. If an Interest is Transferred during the Fiscal Year as permitted by this Agreement,

(a) Net Income and Net Loss allocable to such Interest shall be proportioned between the Transferring Member and Transferee as of the date of Transfer of the Interest on the last day of the Fiscal Quarter in which the Transfer occurred, and the portion of Net Income and Net Loss allocated to the Transferring Member shall be determined by multiplying the Net Income and Net Loss allocable to such Interest by a fraction, the numerator of which is the number of calendar days the Transferring Member owned the Interest (not including the day the Transfer was effected) and the denominator of which is the total number of calendar days in the Fiscal Quarter, and the portion of Net Income and Net Loss allocated to the Transferee shall be the remainder of the Net Income and Net Loss; and

(b) tax credits, if any, shall be allocated among the Interest holders as determined at the time the property with respect to which the credit is claimed is placed in service

4.13 **Partnership Tax Status**. The Members intend that the Company will be treated as a partnership for U.S. Federal, state and local income tax purposes, and no election to the contrary shall be made unless approved by the Board of Directors.

ARTICLE VARTICLE V

BOARD OF DIRECTORS

5.1 **Number; Management and Authority**.

(a) The Company shall have up to eight (8) managers serving on a Board of Directors, each of which shall be referred to individually as a "**Director**" and collectively as the "**Board of Directors**" or the "**Board.**" The number of Directors shall be fixed from time to time by action of the Board. A Director shall serve until any meeting of Members that may be called pursuant to Section 5.2 for the purpose of electing Directors or until its successor shall have been elected and qualified.

(b) The property, business and affairs of the Company shall be managed by the Directors. Except where the Members' approval is expressly required by this Agreement or by the Act, the Directors shall have full authority, power and discretion to make all decisions with respect to the Company's business and to perform such other services and activities as set forth in this Agreement; provided, however, that except as otherwise provided in this Agreement, any determination of the Directors shall be made by a majority of the Directors. The Directors shall be agents of the Company for its business purposes and any Director may bind the Company in the ordinary course, provided that (i) the Directors shall have approved such action in accordance with this Agreement or the Act and (ii) the Person with whom such Director is dealing has no knowledge that the action has not been so approved. Unless otherwise expressly authorized by this Agreement or the Members as set forth herein, the act of a Director that is not apparently for carrying on the Company's business in the ordinary course shall not bind the Company.

(c) If any action by the Company requires the approval of the Directors under this Agreement, such action shall require approval by a majority of the Directors. Except as otherwise expressly provided in this Agreement or the Act, the Members shall have no right to control or manage, nor shall they take any part in the control or management of, the property, business or affairs of the Company, but they may exercise the rights and powers of Members under this Agreement, including, without limitation, the right to approve certain matters as provided herein.

5.2 **Election and Tenure of Directors**. Each Director shall be elected by a vote of Members holding a majority of the Common Units then outstanding. Each Director shall be entitled to hold office until his or her death, resignation or removal pursuant to Section 5.5 below.

5.3 **Certain Powers of the Directors**. Without limiting the generality of Section 5.1, but subject to Section 5.4, the Directors shall have the power and authority, on behalf of the Company, to:

(a) acquire property in the ordinary course of the Company's business from any Person (including Members, Directors or affiliates of any thereof);

(b) purchase life, liability and other insurance to protect the Company's property and business;

(c) establish bank accounts in the name of the Company and establish the identity of all signatories entitled to draw against such accounts for the benefit of the Company;

(d) employ, and fix the terms of employment and termination of employment of, employees of the Company (including Members or affiliates of Members or Directors), and accountants, legal counsel and other consultants for the Company (but not including Directors in their capacity as such);

(e) invest Company funds in time deposits, short-term governmental obligations, commercial paper or other similar investments or in any other capital asset or investment in the ordinary course;

(f) execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Directors, to the business of the Company and relating to transactions that have been approved in accordance with this Agreement;

(g) except as otherwise set forth in Section 5.4, borrow money for the Company in the ordinary course, on a secured or unsecured basis, from banks or any other Person (including Members, Directors or affiliates of any thereof);

(h) enter into any and all other agreements on behalf of the Company with any other Person (including Members, Directors or affiliates of any thereof), for any purpose in the ordinary course, in such forms as the Directors may approve;

(i) institute, prosecute and defend legal, administrative or other suits or proceedings in the Company's name;

(j) cause the Company to issue additional Interests as contemplated under Section 3.2(d), subject to Section 3.2(c); and

(k) establish pension, benefit and incentive plans for any or all current or former Members, Directors, employees, and/or agents of the Company, on such terms and conditions as the Directors may approve, and make payments pursuant thereto.

5.4 **Decisions Requiring Approval of Common Members**. The approval of Members holding at least two-thirds of the Common Units then outstanding shall be required to authorize any act or transaction by one or more Directors that will result in a Fundamental Change.

5.5 **Resignation or Removal**. A Director may resign at any time by giving notice to the Members, effective upon receipt thereof or at such later time specified therein. Unless otherwise specified in the notice, acceptance of a resignation shall not be necessary to make it effective. The resignation of a Director shall not affect its rights as a Member. Any Director may be removed, with or without cause, only by a vote of the Members holding a majority of the Common Units then outstanding.

5.6 **Meetings of Board**.

(a) Notice of the time and place of each meeting of the Board of Directors shall be delivered to each Board member, either personally (including by courier) or by telephone, telegraph or facsimile, at least twenty-four (24) hours before the time at which such meeting is to be held, or shall be mailed to each Director by first-class mail, postage prepaid, addressed to it at its mailing address set forth in the records of the Company, at least three (3) days before the day on which such meeting is to be held. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting, at the beginning of such meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Minutes of all meetings of the Board shall be kept and retained in the records of the Company.

(b) Any action permitted or required by applicable law or this Agreement to be taken at a meeting of the Board may be taken without a meeting if a consent is in writing, setting forth the action to be taken, is signed by each of the Directors. Such consent shall have the same force and effect as a vote at a meeting and may be stated as such in any document or instrument filed with the Secretary of State of New York, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Board. Subject to the requirements of this Agreement for notices of special meetings, Directors may participate in and hold a meeting of the Board, by means of a telephone conference or similar communications equipment by means of which all Directors participating in the meeting can hear and speak to each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Director participates in the meeting for the express purpose of objecting, at the beginning of such meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) The Board shall be entitled to appoint the Chairman of the Board (the "**Chairman**"). The Chairman shall preside over all meetings of the Board and shall have such other powers, authority and responsibility ad the Board may, from time to time, delegate to such Chairman. The Chairman shall (subject to the right of the Board to designate the Chairman as provided above) be entitled to hold office until death, resignation or removal. The person who is serving as Chairman may be removed as Chairman, with or without cause, only by the Board and the right of removal may be exercised at any time.

5.7 **Vacancies**. In the event that the position of a Director becomes vacant, (including as a result of an increase in the number of Directors) a replacement shall be nominated

by agreement of the Board and shall be elected by a vote of the Members holding a majority of Common Units then outstanding, provided that Members holding Common Units that have not vested pursuant to a Buy-Sell Agreement shall not have the right to vote for or against such replacement.

5.8 **Limitation of Liability**. Notwithstanding anything contained herein to the contrary, to the fullest extent permitted by applicable law from time to time, the Directors shall not have any liability to the Company or any Member by reason of being or having been a Director or for any breach of their duties in such capacity, provided that this Section 5.8 shall not affect the Directors' liability:

(a) if an adverse judgment or other final adjudication establishes that (i) his acts or omissions were in bad faith, or involved, intentional misconduct, (ii) he gained financial or other advantages to which he was not entitled, or (iii) he did not perform his duties as required under the LLC Act with respect to a distribution made in violation of the LLC Act; or

(b) for any act or omission prior to June 30, 1998.

5.9 **Reliance on Information**. In performing their duties, the Directors shall be entitled to rely on information, opinions, reports or statements, including financial statements, in each case prepared or presented by:

(a) one or more agents or employees of the Company; or

(b) counsel, public accountants or other persons, as to matters that the Board believes to be within such person’s respective professional or expert competence.

5.10 **No Exclusive Duty**. The Directors may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Directors or in any income or revenues derived therefrom.

5.11 **Execution of Documents**.

(a) Except as otherwise determined by the Board or the Members or as set forth herein or in the LLC Act, any document or instrument may be executed and delivered on behalf of the Company by any Director expressly authorized by the Board of Directors, including, without limitation, any deed, mortgage, note or other evidence of indebtedness, lease, security agreement, financing statement, contract of sale or other instrument purporting to convey or encumber, in whole or in part, any or all of the assets of the Company at any time held in its name, or any compromise or settlement with respect to accounts receivable or claims of the Company; and, subject to the authorization requirements set forth herein or in the LLC Act, no other signature shall be required for any such instrument to bind the Company.

(b) Any third person dealing with the Company, the Board or the Members may rely upon a certificate signed by a majority of the Directors as to (i) the identity of the Members or the Board, (ii) acts by the Members or the Board, (iii) any act or failure to act by the Company, or (iv) any other matter involving the Company or any Director.

5.12 **Powers of the Board in Bankruptcy**. The Board shall have the power and authority, on behalf of the Company and any Controlled Subsidiary, to:

(a) represent the Company or a Controlled Subsidiary in any bankruptcy or insolvency proceedings to which it is a party, in whatever capacity;

(b) determine whether the Company or a Controlled Subsidiary shall file any petition under the United States Bankruptcy Code or other applicable insolvency law; and

(c) execute and deliver, in the name of the Company or otherwise, any and all documents and instruments, including, without limitation, petitions and requests for relief, necessary or desirable in connection with actions under Section 5.11(a) or (b) of this Agreement, as determined by the Board.

5.13 **Compensation and Expenses**. The compensation of the Directors shall be fixed from time to time by the Board.

5.14 **Delegation to Agents and Officers**. The Board may delegate functions relating to the day-to-day operations of the Company to such officers, agents, consultants or employees as the Board may from time to time designate. Such officers, agents, consultants and employees need not be Members or Directors, and shall have such duties, powers, responsibilities and authority as may from time to time be prescribed by the Board, and may be removed at any time, with or without cause, by the Board.

5.15 **Other Duties of the Board**. In addition to its other duties set forth herein, the Board:

(a) shall determine, from time to time, the method of accounting and the independent accountants for the Company;

(b) may make, on behalf of the Company, the election permitted by Code Section 754 with respect to adjustments to the basis of the Company property; and

(c) shall, promptly following receipt thereof, give notice to the Members of any proposed audit or adjustment of any Company tax return.

ARTICLE VIARTICLE VI

MEMBERS

6.1 **Rights of Members**.

(a) Common Members shall have only such voting rights and powers as may be specifically provided under the LLC Act, the Articles of Organization and Sections 3.2, 5.2, 5.4, 5.5, 5.7, 9.4 and 12.4 of this Agreement; provided, however, that for the purposes of said sections of this Agreement no Member shall be entitled to voting rights in respect of any Common Units which remain unvested pursuant to the terms of any applicable Buy-Sell Agreement (but shall be entitled to vote in respect of any vested Common Units) and all Common Units which remain unvested shall be deemed not to be outstanding for purposes of said sections.

(b) Preferred Members shall have no voting rights other than those arising by virtue of ownership of Common Units, as conferred by the preceding Section 6.1(a).

6.2 **Meetings of Members**.

(a) An annual meeting of the Members shall be held during each calendar year on a date determined at the discretion of the Board. Unless otherwise determined by the Directors, no other periodic meetings of the Members shall be required to be called or conducted.

(b) Special meetings of the Members may be called by the Directors or any Member or Members holding at least twenty-five per cent (25%) of all Common Units, for any purpose or purposes, including the election or removal of Directors, unless otherwise prescribed by the LLC Act, and shall be held at such times and places within or without the State of New York as the Persons calling such meeting may from time to time determine.

(c) Notice of the time, place and purpose or purposes of each meeting of the Members shall be delivered to each Member entitled to vote at the meeting either personally (including by courier) or by telephone, telegraph, facsimile or first class mail, postage prepaid, addressed to it at its mailing address, at least ten (10) but not more than sixty (60) days before the date of the meeting. An affidavit of a Person giving such notice shall, absent fraud, be prima facie evidence that notice of a meeting has been given. Notice of a meeting need not be given to any Member who, either before or after the meeting, executes a waiver of notice, or who attends such meeting without objecting, at its beginning, to the transaction of any business because the meeting is not lawfully called or convened.

(d) Except as otherwise provided in this Agreement or as required by the LLC Act, Members holding a majority of the Units entitled to vote on, or take action with respect to, any matter shall constitute a quorum for the transaction of business at such meeting. In the absence of a quorum, a majority in interest of Members present and entitled to vote thereat may adjourn any meeting from time to time for a period not to exceed sixty (60) days without further notice. If the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Member of record entitled to vote on, or take action with respect to, any matter at such meeting. At any

adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting as originally noticed may be transacted. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Members whose absence would result in less than a quorum being present.

6.3 **Proxies and Voting Arrangements**. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Any proxy, or other arrangement, by contract or otherwise, by which a Member grants to a non-Member any right to exercise any Management Interest, shall be null and void.

6.4 **Action Without a Meeting**. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if Members holding voting interests sufficient to authorize such action at a meeting at which all of the Members entitled to vote thereon were present and voted consent thereto in writing. Such consent shall be delivered to the Company by hand or by certified or registered mail, return receipt requested, for filing with the Company records. Action taken under this Section 6.4 shall be effective when all necessary Members have signed a consent, unless the consent specifies a different effective date.

6.5 **Participation in Meetings by Telephone and Other Equipment**. Members may participate in a meeting by conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

6.6 **Record Dates**. For the purpose of determining (a) Members entitled to notice of, or to vote at, any meeting of Members or (b) the identity of Members for any other purpose, the date on which notice of the meeting is mailed, or on which the declaration of such distribution is adopted, as the case may be, shall be the record date for such determination. When a determination of Members entitled to vote at any meeting has been made as provided in this Section 6.6, the determination shall apply to any adjournment of the meeting. The record date for determining Members entitled to take action without a meeting pursuant to Section 6.4 shall be the date the first Member signs a written consent

6.7 **Liability for Wrongful Distributions**. A Member who receives a distribution from the Company which the Member knows to be in violation of this Agreement or the LLC Act shall be liable to the Company for the amount of such distribution for a period of three years after it was made.

6.8 **Limited Preemptive Rights**. Except as otherwise set forth in Section 3.2(c), no Member shall have any preemptive, preferential or other right with respect to (a) making additional Capital Contributions, (b) the issuance or sale of Interests by the Company, (c) the issuance of any obligations, evidences of indebtedness or securities of the Company convertible into, exchangeable for, or accompanied by, any rights to receive, purchase or

subscribe to, any Interests, (d) the issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing, or (e) the issuance or sale of any other interests or securities by the Company.

ARTICLE VIIARTICLE VII

COMMITTEES

The Board may designate such Committees of the Board, and such Committees shall have such powers and consist of such persons, or shall consist of persons selected in such manner, as may be prescribed by the Board.

ARTICLE VIIIARTICLE VIII

OFFICERS

8.1 **General**. The Company shall have such officers, and such officers shall have such duties, powers, responsibilities and authority, as may be provided by the Board.

8.2 **Appointment, Removal and Resignation**. Officers shall be appointed and removed, and may resign, as provided by the Board.

ARTICLE IXARTICLE IX

TRANSFERABILITY AND WITHDRAWAL OF MEMBERSHIPS

9.1 **Transferability**. Subject to Section 9.2, a Member may offer for sale and Transfer all or any portion of, or any rights in, its Interest, provided that the Transfer will not result in the termination of the Company pursuant to Code Section 708, and provided further that only Combined Units may be transferred to each Transferee. Notwithstanding the foregoing sentence, Members may Transfer Preferred Units to an Affiliate of such Member.

9.2 **Right of First Refusal**.

(a) If at any time any Member proposes to Transfer to one or more third parties (other than a proposed transfer to an immediate family member or a trust established for the benefit of the Member or its immediate family members), pursuant to an understanding with such third parties, then such Member (the "**Transferring Member**") shall give each other Member written notice of the Transferring Member's intention to make the Transfer (the "**Transfer Notice**"). The Transfer Notice shall include (i) a description of the Interests of the Transferring Member to be offered (the "**Offered Interests**") including the amount of such Interests, (ii) the identity of the prospective offeree(s) and (iii) the consideration and the material terms and conditions upon which the proposed Transfer is to be made. The Transfer Notice shall certify that the Transferring Member has received a firm offer from the prospective transferee(s) and in good faith believes a binding agreement for the Transfer is obtainable on the terms set forth in the Transfer Notice.

(b) Each Member shall have an option for a period of twenty (20) days from the Transferring Member's delivery of the Transfer Notice to elect to purchase its pro rata share of the Offered Interests at the same price and subject to the same material terms and conditions as described in the Transfer Notice. Each Member may exercise such purchase option and, thereby purchase all of his, her or its pro rata share of the Offered Interests, by notifying the Transferring Member in writing, before expiration of the twenty (20) day period. Each Member shall be entitled to apportion the Offered Interests to be purchased among its associates and affiliates, provided that such Member notifies the Transferring Member of such allocation. If a Member gives the Transferring Member notice that it desires to purchase its pro rata share of the Offered Interests, then payment for the Offered Interests shall be by check or wire transfer, against delivery of the Offered Interests to be purchased at a place agreed upon between the parties and at the time of the scheduled closing therefor, which shall be no later than forty-five (45) days after the Member's receipt of the Transfer Notice, unless the value of the purchase price has not yet been established pursuant to Section 9.2(c).

(c) Should the purchase price specified in the Transfer Notice be payable in property other than cash or evidences of indebtedness, the Members shall have the right to pay the purchase price in the form of cash equal in amount to the value of such property. If the Transferring Member and the Members cannot agree on such cash value within five (5) days after the Members' receipt of the Transfer Notice, the valuation shall be made by an appraiser of recognized standing selected by the Transferring Member and the Members or, if they cannot agree on an appraiser within the fifteen (15) days after the delivery of the Transfer Notice), each shall select an appraiser of recognized standing and the two appraisers shall designate a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of such appraisal shall be shared equally by the Transferring Member and the Members, with the costs pro rata by each based on the number of Interest such parties are purchasing pursuant to this Section 9.2. If the time for the closing of the subject Interest has expired but for the determination of the value of the purchase price offered by the prospective transferee(s), then such closing shall be held on or prior to the fifth business day after such valuation shall have been made pursuant to this subsection.

(d) To the extent that the Members have not exercised their rights to purchase the Offered Interests within time periods specified in Section 9.2(b), the Transferring Member shall have a period of forty-five (45) days from the expiration of rights in which to sell the remaining Offered Interests (the "**Remaining Interests**"), upon terms and conditions (including the purchase price) no more favorable than those specified in Transfer Notice to the third-party transferee(s) identified in the Transfer Notice. Prior to transfer the third-party transferee(s) shall agree in writing that they acquire the Interests subject to the rights of first refusal under this Agreement and shall become parties to this Agreement in accordance with the terms hereof. In the event the Transferring Member does not consummate the sale or disposition of the Remaining Interests within the sixty (60) day period from the expiration of these rights, the Members' first refusal rights shall continue to be applicable to any subsequent disposition of the Offered Interests or Remaining Interests by the Transferring Member until such right lapses in accordance with the terms of this Agreement. Furthermore, the exercise or

non-exercise of the rights of the Members under this Section 9.2 to purchase Interests from the Transferring Member or participate in sales of Interests by the Transferring Member shall not adversely affect their rights to make subsequent purchases from the Transferring Members of Interests or subsequently participate in the sale of Interests by the Transferring Members.

9.3 **Withdrawal**. A Member shall have no right or power to surrender such Member's Interest voluntarily or otherwise take, or permit to be taken, any action to such effect, except in accordance with the provisions of this Article IX.

9.4 **Resigning Member**. Prior to the occurrence of any event specified in Section 10.1, (i) any Member may, by written notice to the Company (a "**Member Notice**"), resign as a Member of the Company, effective as of last day of the fiscal quarter of the Company in which such notice of resignation is given (the "**Resignation Date**"), or (ii) in the event that any Member has engaged in criminal acts, fraud, acts resulting in material civil liability or bad faith or for other good cause, the Company (with the consent of Members holding at least two-thirds of the Common Units then outstanding), may, by written notice to any Member (a "**Company Notice**"), require such Member to resign as a Member of the Company, effective as of last day of the fiscal quarter in which such notice of resignation is given (the "**Buy Out Date**"). As of the Resignation Date or the Buy Out Date, as applicable, except for the rights set forth in Section 9.5 or expressly set forth in any other agreement (including an employment agreement), the Member designated in the applicable notice (the "**Resigning Member**") (and all Persons claiming by, through or under such Member) shall have no further rights or interests in and in respect of the Company, including any Membership Interest, any rights in specific Company property, any rights against the Company or any Member, any rights to any return of the Resigning Member's capital or any other rights under this Agreement.

9.5 **Purchase Price**.

(a) In consideration of the resignation of the Resigning Member, the Company shall pay to the Resigning Member on a day not later than ninety (90) after the Resignation Date or Buy-Out Date, a purchase price (the "**Purchase Price**") equal to the sum of (i) the balance of any Preferred Payment Account, together with any undistributed Preference Amount, in respect of any Preferred Units then held by the resigning Member, plus (ii) the product obtained by multiplying the Company's Members' equity attributable to Common Units shown on the Company's balance sheet as of the Resignation Date or Buy-Out Date, as applicable by a fraction, the numerator of which shall be the number of Common Units held by such Resigning Member, and the denominator of which shall be the aggregate number of Common Units held by all Members.

(b) The Purchase Price payable to a Member resigning pursuant to Section 9.4(i) shall be paid by the Company, in its sole discretion, either by payment of the Purchase Price in cash or by the delivery of a subordinated note in a principal amount equal to the Purchase Price, maturing on the fifth anniversary of the Resignation Date, and otherwise substantially in the form of Exhibit 9.5(b)-1 hereto (a "**Subordinated Note**"). The Purchase Price payable to a Member pursuant to Section 9.4(ii) shall be paid by the Company by delivery to the Resigning Member of the Company's subordinated

promissory note maturing on the fifth anniversary of the Buy-Out Date and otherwise substantially in the form of Exhibit 9.5(b)-1 hereto. Each Member agrees that if it becomes a Resigning Member and receives such a subordinated note, that such note shall be (i) subordinated to the rights of other creditors of the Company pursuant a "satisfactory subordination agreement" (as such term is used in Rule 15c3-1d promulgated by the SEC under the Exchange Act), which each such Resigning Member shall be obligated to execute and deliver upon delivery of such note, and (ii) paid in relative priority to the rights of Members to receive distributions upon the terms set forth in Exhibit 9.5(b)-2 hereto.

ARTICLE XARTICLE X

DISSOLUTION AND TERMINATION

10.1 **Events Causing Dissolution and Winding-up**. The Company shall be dissolved up upon the first to occur of the following events:

(a) the approval of such action by the Members;

(b) the sale or other disposition of all or substantially all of the business or assets of the Company;

(c) the expiration of the term of the Company; or

(d) the entry of a decree of judicial dissolution under Section 702 of the LLC Act.

10.2 **Winding up of the Company**.

(a) If the Company is to be dissolved in accordance with Section 10.1 of this Agreement, then the Board shall wind up the affairs of the Company, including by selling or otherwise liquidating the Company assets in a bona fide sale or sales to third persons at such prices and upon such terms as they may determine. If the Board determines that an immediate sale would be financially inadvisable, it may defer sale of the Company assets for a reasonable time, or distribute the assets in kind.

(b) The proceeds of any liquidation of the Company shall be distributed in the following order of priority (to the extent that such order of priority is consistent with the laws of the State of New York):

(i) first, to the payment of the debts and liabilities of the Company to persons other than Members with respect to Subordinated Notes and the expenses of dissolution and liquidation;

(ii) then, to the establishment of any reserves which the Board shall deem reasonably necessary for payment of such other debts and liabilities of the Company (contingent or otherwise), as are specified by the Board, such reserves to be held in escrow by a bank or trust company selected by the Board,

and, to be disbursed as directed by the Board in payment of any of the specified debts and liabilities or, at the expiration of such period as the Board may deem advisable, to be distributed in the manner hereinafter provided;

(iii) then, to Members holding Subordinated Notes, in proportion to (and to the extent of) indebtedness due to such Members under such Subordinated Notes;

(iv) then, to the Members in proportion to (and to the extent of) the positive balances of their respective Capital Accounts; and

(v) thereafter, to the Members in proportion to their Common Units.

(c) Notwithstanding anything contained herein to the contrary, no Member shall be entitled to receive, upon liquidation, distributions in excess of the positive balance of such Member's Capital Account, except to the extent all Members receive such distributions in proportion to their respective Common Units.

(d) If any assets are distributed in kind, they shall be distributed on the basis of the fair market value thereof, and shall be deemed to have been sold at fair market value for purposes of the allocations under Article IV of this Agreement.

(e) If the Company is liquidated under Treas. Reg. Section 1.704-1(b)(2)(ii)(G), the liquidating distribution shall be made by the later of (i) the end of the Fiscal Year in which liquidation occurs, or (ii) ninety (90) days after the date of liquidation.

(f) The Company shall terminate when all assets of the Company have been sold and/or distributed and all affairs of the Company have been wound up.

10.3 **Articles of Dissolution**. Within ninety (90) days following the dissolution and the commencement of winding up of the Company, or at any other time when there are no Members, Articles of Dissolution shall be prepared, executed and filed in accordance with the LLC Act.

ARTICLE XIARTICLE XI

INDEMNIFICATION

11.1 **Indemnification**. To the fullest extent permitted by applicable law from time to time in effect:

(a) the Company shall indemnify and hold harmless the Directors, Members and officers, agents and employees of the Company and their respective directors, trustees, shareholders, officers, employees, agents and other affiliates, against all costs, liabilities, claims, expenses, including reasonable attorneys' fees, and damages

(collectively, "**Losses**") paid or incurred by any such Person in connection with the conduct of the Company's business; and

(b) each Person who at any time is, or has been, a Director, Member or officer, agent or employee of the Company (an "**Indemnitee**"), and is threatened to be, or is, made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or it is, or was, a Director, Member, officer, agent or employee of the Company, or is serving, or has served, at the request of the Company as a manager, officer, member, employee or agent of another Person, shall be indemnified against all Losses actually and reasonably incurred in connection with any such pending, threatened or completed action, suit or proceeding.

provided, however, that no person shall be entitled to indemnification under this Section 11.1 for liabilities relating to such person's acts or omissions that were in bad faith or intentional misconduct.

11.2 **Source of Payment**. Notwithstanding anything contained in this Agreement to the contrary, any amount to which an Indemnitee may be entitled under this Article XI shall be paid only out of the assets of the Company and any insurance proceeds available to the Company for such purposes. No Member shall be personally liable for any amount payable pursuant to this Article XI, or to make any Capital Contribution, return any distribution made to it by the Company, or restore any Negative Capital Account balance to enable the company to make any such payment.

ARTICLE XIIARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 **Notices**. Except as otherwise set forth herein, any notice, demand or communication required or permitted to be given under this Agreement shall be (a) in writing, (b) delivered by hand, nationally recognized overnight courier service, facsimile or registered or certified mail, postage prepaid, addressed to a party at its mailing address or facsimile number set forth in the books and records of the Company, and (c) deemed to have been given on the date delivered by hand or sent by facsimile, one business day after deposit with such courier service, and three business days after being deposited in the United States mail.

12.2 **Books of Accounts and Records**.

(a) At the expense of the Company, the Board shall maintain at the Company's principal place of business, records and accounts of all operations and expenditures of the Company, including, without limitation, the following records:

(i) a current list in alphabetical order of the name and mailing address of each Member, Director, and officer, their respective facsimile numbers and, with respect to the Members, their respective shares of Net Income and Net Loss, or information from which such shares can be derived;

(ii) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any such amendment has been executed;

(iii) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent Fiscal Years; provided, however, that any amounts due under a Subordinated Note issued to a Member pursuant to Section 9.5(b) within one (1) year prior to the Bankruptcy of the Company or within one (1) year prior to any of the events of dissolution of the Company set forth in Section 10.1 shall be payable pursuant to Section 10.2(b)(iv) below as if such holder of the Subordinated Note remained a Member and the aggregate of the amounts due under such Subordinated Note constituted the positive balance of such Member's Capital Account.

(iv) copies of this Agreement, as in effect from time to time;

(v) any writings or other information with respect to each Member's obligation to contribute cash, property or services to the Company, including, without limitation, the amount of cash so contributed and a description and statement of the agreed-upon fair market value of property or services so contributed or to be contributed;

(vi) any financial statements of the Company for the three most recent Fiscal Years;

(vii) minutes of every annual, special and court-ordered meeting of the Members; and

(viii) any written consents obtained from the Members or Directors for actions taken by Members or Directors without a meeting.

(b) Upon reasonable advance notice, during normal business hours, any Member or its representatives may, at its expense, inspect and copy the records described in Section 12.2(a) for any purpose reasonably related to such person's Interest.

12.3 **Governing Law**. This Agreement, and the application or interpretation hereof, shall be governed by and in accordance with the laws of the State of New York applicable to agreements made and fully to be performed therein, and specifically the LLC Act.

12.4 **Amendment of Articles of Organization and Agreement**.

(a) Except as otherwise required by this Agreement or the Act, this Agreement may be amended by the affirmative vote of the Members holding a majority of the Common Units, provided that Member holding Common Units which have not vested pursuant to a Buy-Sell Agreement shall not have the right to vote on any proposed Amendment.

(b) Notwithstanding anything to the contrary contained in this Section 12.4 or elsewhere in the Agreement (a) any amendment to this Agreement that would adversely affect (i) the federal income tax treatment to be afforded a Member or (ii) the liabilities of a Member shall require the consent of each Member affected, and (b) any amendment to this Agreement that would adversely affect the consent and approval rights reserved by the Members or any class or series thereof, or which would change the method of calculating allocations or distributions under Article IV and/or Section 10.2, shall require the consent of Members holding seventy-five percent (75%) of the outstanding Units in the class or series affected.

12.5 **Amendment by Agreement of Merger**. Notwithstanding anything to the contrary contained in this Agreement, in accordance with Section 1004(e) of the LLC Act, an agreement of merger or consolidation approved by the Members as required by this Agreement may effect (a) amendments to this Agreement contained in the agreement of merger or consolidation or necessitated thereby or (b) the adoption of a new operating agreement for the Company if it is the surviving or resulting entity, in each case without further action by the Members.

12.6 **Execution of Additional Instruments**. Each Member hereby agrees to execute such other and further documents and instruments, including, without limitation, statements of their Interests and powers of attorney, as necessary to comply with applicable law or otherwise as reasonably requested by the Board.

12.7 **Construction**. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the neuter gender shall include the feminine and masculine genders and vice versa.

12.8 **Headings**. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.

12.9 **Waivers; Rights and Remedies Cumulative**. The failure of any party to pursue any remedy for breach, or to insist upon the strict performance, of any covenant or condition contained in this Agreement shall not constitute a waiver of any such right with respect to any subsequent breach. Except as otherwise expressly set forth herein, rights and remedies under this Agreement are cumulative, and the pursuit of any one right or remedy by any party shall not preclude, or constitute a waiver of, the right to pursue any or all other remedies. All rights and remedies provided under this Agreement are in addition to any other rights the parties may have by law, in equity or otherwise.

12.10 **Severability**. If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.

12.11 **Successors and Assigns**. All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

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

12.13 **No Right to Petition for Dissolution**. The Members agree that irreparable harm would be done to the business and goodwill of the Company if any Member were to bring an action in Court under the LLC Act for the judicial dissolution of the Company. Accordingly, each Member, in his capacity as such, hereby irrevocably waives any such right to petition for dissolution of the Company under the LLC Act, and all similar rights under other applicable law, except to the extent such relief may be sought by the Company itself as authorized by the Members in accordance with this Agreement.

12.14 **No Third Party Beneficiaries**. The covenants, obligations and rights set forth in this Agreement are not intended to benefit any creditor of the Company or of any Member, or any other third person, and except as permitted by applicable law after the obligation to make an additional Capital Contribution has been fixed, or in connection with certain wrongful distributions, no such creditor or other third person shall, under any circumstances, have any right to compel any actions or payments by the Board and/or the Members or shall, by reason of any provision contained herein, be entitled to make any claim in respect of any debt, liability, obligation or otherwise against the Company or any Member.

12.15 **Directors as Attorneys-in-Fact for Members**.

(a) Each Member hereby irrevocably constitutes and appoints, with full power of substitution, each Director, its true and lawful attorney-in-fact, with full power and authority in its name, place and stead, to execute, certify, acknowledge, deliver, file and record at the appropriate public offices:

(i) all certificates and other instruments, and any amendment thereto, which the Board deems appropriate to form, qualify or continue the business of the Company as a limited liability company;

(ii) any other instrument or document which may be required to be filed by the Company under the laws of any state, or which the Board deems advisable to file; and

(iii) any instrument or document, including amendments to this Agreement, which may be required to continue the business of the Company, admit a Member, or dissolve and liquidate the Company (provided that such continuation, admission or dissolution are in accordance with this Agreement), or to reflect any reductions in the amount of Members' capital.

(b) Each Member's appointment of the Directors as its attorneys-in-fact shall be deemed to be a power coupled with an interest and shall survive the incompetency, Bankruptcy or dissolution of the Member giving such power, except that, in the event of a Member's Transfer of an Interest in accordance with this Agreement, this power of attorney shall survive such Transfer only until such time, if any, as the Transferee shall have been admitted to the Company as a Member and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

12.16 **Entire Agreement**. The Articles of Organization and this Agreement embody the entire understanding and agreement between the Members concerning the subject matter hereof and thereof and supersede any and all prior negotiations, understandings or agreements with respect thereto. To the extent the LLC Act addresses a matter not otherwise addressed by this Agreement, it is the intention of the Members that the provisions of the LLC Act shall apply, but no such application shall otherwise affect any provision of this Agreement.

AMENDMENT NO. 1
TO AMENDED AND RESTATED OPERATING AGREEMENT

OF

ADIRONDACK TRADING PARTNERS LLC
(A New York Limited Liability Company)

THIS AMENDMENT No. 1 to the Amended and Restated Operating Agreement (this "**Amendment**") of ADIRONDACK TRADING PARTNERS LLC (the "**Company**") is made and entered into as of the 10th day of November, 1998, by and among the Members that are signatories hereto, pursuant to Section 12.4 of that certain Amended and Restated Operating Agreement dated as of October 1, 1998 among the Members (the "**Operating Agreement**"; terms used but not otherwise defined in this Amendment shall have the meaning assigned thereto in the Operating Agreement).

RECITALS:

WHEREAS, the Company is a limited liability company organized under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the Secretary of State of the State of New York on January 27, 1998 and governed by the Operating Agreement, and

WHEREAS, the Members of the Company hereby wish to amend the terms of the Operating Agreement to add provisions that will facilitate the investment in the Company by persons that are subject to the Bank Holding Company Act of 1956, as amended, and to make such other changes are may be required in order to permit such investors to be admitted as members of the Company, in each case on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto hereby agrees as follows:

1. Amendments to the Operating Agreement.

(a) The phrase "the date hereof" on line 1 of Section 1.6 of the Operating Agreement is hereby corrected to read "June 30, 1998".

(b) A new Section 2.5A is hereby added after Section 2.5 of the Operating Agreement, to read in its entirety as follows:

> The term "**BHC Act**" shall mean the Bank Holding Company Act of 1956, as amended.

(c) A new Section 2.5B is hereby added after Section 2.5A of the Operating Agreement, to read in its entirety as follows:

> The term "**BHC Member**" shall mean a Member that (i) is (A) a bank holding company, as defined in Section 2(a) of the BHC Act, (B) a foreign banking organization subject to the non-banking restrictions of the BHC Act, or (C) a non-bank subsidiary of an entity described in clause (A) or (B) above, and (ii) so indicates in writing to the Board of Directors on or before the date such Member is admitted to the Company.

(d) The first sentence of Section 5.2 shall be amended and restated to read as follows:

> Each Director shall be elected by a vote of Members holding a majority of the Common Units then outstanding; provided, however, that the Company shall have the right to appoint one (1) director to serve on the Board of Directors.

(e) A new Section 6.1(c) and (d) is hereby added after Section 6.1(b) of the Operating Agreement, to read as follows:

> (c) Notwithstanding anything contained herein to the contrary and to the fullest extent permitted by applicable law, any Member that is both (i) a BHC Member and (ii) holds a 5.0% or more interest in the Common Units of the Company, may not vote more than 4.99% of such interests in the Company to the extent that the exercise of such voting right would cause the Common Units to be "voting securities" within the meaning of Regulation Y of the Board of Governors of the Federal Reserve System. Any interest in Common Units held by a BHC Member in excess of such 4.99% limitation shall be held as a non-voting interest. Except as provided in this Section 6.1(c), any interest so held as a non-voting interest shall be identical in all respects to all other Member interests. Any such interest held as a non-voting interest shall continue as a non-voting interest with respect to any assignee or other transferee of such BHC Member interests; provided however, that any non-voting interest that is transferred to a third-party in a widely dispersed offering shall become a voting interest in the transferee's hands, provided that no person acquires more than two percent (2%) of the Common Units in the Company in such offering.
>
> (d) In the event of a Regulatory Change, the effect of which is to permit a BHC Member to vote more than 4.99% of its interests in the Company, the foregoing shall be deemed modified to permit such vote in accordance with such Regulatory Change, upon written notice by such BHC Member to the Board of Directors. For purposes of this Section 6.1(d), "**Regulatory Change**" shall mean, with respect to any BHC Member, (i) any change on or after the date hereof in United States federal or state or foreign laws or regulations (including the BHC Act and Regulation Y thereunder), (ii) the adoption on or after the date hereof of any interpretation or ruling applying to such BHC Member, individually or as a member of a class, under any United States federal or state or foreign laws or

regulations by any court or governmental or regulatory authority charged with the interpretation or administration thereof, or (iii) the modification on or after the date hereof of any agreement or commitment with any such governmental or regulatory authority that is applicable to or binding upon such BHC Member.

3. General Terms and Conditions.

(a) Conditions Precedent. This Amendment shall become effective immediately upon the execution and delivery of this Amendment by Members holding a majority of the Common Units, as provided in Section 12.4(a) of the Operating Agreement.

(b) Entire Agreement; No Other Agreement. Except as expressly provided in this Amendment, all of the agreements, terms, covenants and conditions contained in the Operating Agreement shall remain unamended and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The amendments set forth herein shall be limited precisely as provided for herein and shall not be deemed to be an amendment of, consent to or modification of any other term, provision, of or under the Operating Agreement or of any term or provision of any other instrument referred to therein or herein or of any transaction or further or future action or failure to act by a party hereto or to the Operating Agreement.

(c) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Amendment shall not be construed so as to confer any right or benefit upon any person other than the parties hereto and their respective successors and assigns.

(e) Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(d) Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute together one and the same instrument.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

AMENDMENT NO. 2
TO AMENDED AND RESTATED OPERATING AGREEMENT

OF

ADIRONDACK TRADING PARTNERS LLC
(A New York Limited Liability Company)

THIS AMENDMENT No. 2 to the Amended and Restated Operating Agreement (this "**Amendment**") of ADIRONDACK TRADING PARTNERS LLC (the "**Company**") is made and entered into as of the 18th day of January, 1999, by and among the Members that are signatories hereto, pursuant to Section 12.4 of that certain Amended and Restated Operating Agreement dated as of October 1, 1998 among the Members, as amended by Amendment No. 1 dated as of November 10, 1998 (the "**Operating Agreement**"; terms used but not otherwise defined in this Amendment shall have the meaning assigned thereto in the Operating Agreement).

RECITALS:

WHEREAS, the Company is a limited liability company organized under the New York Limited Liability Company Law pursuant to Articles of Organization filed with the Secretary of State of the State of New York on January 27, 1998 and governed by the Operating Agreement, and

WHEREAS, the Members of the Company hereby wish to amend the terms of the Operating Agreement to add provisions to facilitate the Company's raising additional capital in an offering of the Preferred C Units, to clarify the transfer provisions with respect to holders of Common Units that are not part of a Combined Unit, and certain other changes related thereto, in each case on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto hereby agrees as follows:

1. Amendments to the Operating Agreement.

(a) Section 2.31 is hereby amended and restated in its entirety to read as follows:

The term "**Initial Preferred Units**" shall have the meaning set forth in Section 3.1.

(b) The penultimate sentence of Section 3.1 is hereby amended and restated in its entirety to read as follows:

> The Company is authorized to accept Capital Contributions in respect of, and to issue, five (5) Preferred Units designated Series A (the "**Preferred A Units**"), twenty (25) Preferred Units designated Series B (the "**Preferred B Units**", and, together with the Preferred A Units, the "**Initial Preferred Units**")) and thirty-five (35) Preferred Units designated Series C (the "**Preferred C Units**").

(c) The second sentence of Section 3.2(a) is hereby amended and restated in its entirety to read as follows:

> All Initial Preferred Units, to the extent issued, shall be issued and sold for the price of $1,000,000 per Initial Preferred Unit; all Preferred C Units, to the extent issued shall be issued and sold at the price of $1,000,000 (or such greater price as may be determined by the Board).

(d) Section 9.1 is hereby amended and restated in its entirety to read as follows:

> 9.1 **Transferability**. A Member may offer to Transfer, and may so Transfer, all or any portion of, or any rights in, its Interest, provided that
>
> (a) any such offer and Transfer shall be subject to Section 9.2, except any such offer and Transfer by a Member (i) to an immediate family member of a trust established for the benefit of the Member or the Member's immediate family, as referred to in Section 9.2 below, or (ii) to an Affiliate of such Member of Preferred Units;
>
> (b) such Transfer will not result in the termination of the Company pursuant to Code Section 708; and
>
> (c) with respect to a Member holding its Interest as part of one or more Combined Units, such Member shall be permitted to Transfer all of part of its Interest in such Combined Unit as a Combined Unit only, without bifurcation of its constituent Common Units and Preferred Units, for so long as such Preferred Units entitle such Member to rights hereunder.

3. General Terms and Conditions.

(a) Conditions Precedent. This Amendment shall become effective immediately upon the execution and delivery of this Amendment by Members holding 75% of the outstanding Preferred A Units, 75% of the outstanding Preferred B Units and 75% of the outstanding Common Units, as provided in Section 12.4(b) of the Operating Agreement.

(b) Entire Agreement; No Other Agreement. Except as expressly provided in this Amendment, all of the agreements, terms, covenants and conditions contained in the Operating

Agreement shall remain unamended and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The amendments set forth herein shall be limited precisely as provided for herein and shall not be deemed to be an amendment of, consent to or modification of any other term, provision, of or under the Operating Agreement or of any term or provision of any other instrument referred to therein or herein or of any transaction or further or future action or failure to act by a party hereto or to the Operating Agreement.

(c) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Amendment shall not be construed so as to confer any right or benefit upon any person other than the parties hereto and their respective successors and assigns.

(d) Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(e) Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute together one and the same instrument.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

Exhibit B

A complete set of all forms pertaining to application for membership and for approval as a person associated with a member are listed below and attached thereto.

Application Procedures
Financial Information Form
Pledge, Authorization and Declaration of Applicants for Membership

International Securities Exchange
Membership Application Procedures

The International Securities Exchange ("Exchange") encourages registered broker-dealers and persons associated with registered broker-dealers to apply to become Members of the Exchange. Persons who are neither registered broker-dealers nor associated with a registered broker-dealer also may apply to become Exchange Members ("Lessor"), but must lease their Memberships to a broker-dealer or person associated with a broker-dealer ("Lessee"). In that case, the Lessee must comply with these procedures, while the Lessor must comply with those requirements specifically applicable to it, as indicated below. Chapter 3 of the Exchange's Rules detail the requirements governing Exchange Membership.

These procedures are for applicants (i) that already are registered as broker-dealers and that are members of at least one other self-regulatory organization ("SRO"), (ii) that are persons associated with such registered broker-dealers, and (iii) that are Lessors and that will be leasing their Memberships to broker-dealers. Applicants that are applying for Membership at the same time as initially registering as a broker-dealer and joining one or more other SROs should contact the Exchange to discuss additional or alternate information that the Exchange may require as part of the application process.

I. Required Application Material

An applicant must submit the materials ("Application Materials") listed below. As part of the application review process, the Exchange may require an applicant to provide supplemental information for review. An applicant must update any information that becomes inaccurate or incomplete after the date of submission.

1) *SEC Forms:* The following forms and reports required by the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (Exchange Act):

    a) *Form BD:* An original signed and notarized Form BD reflecting the application for Membership in the Exchange.[1]

    b) *Forms U-4:*

        i) For an individual applicant, a Form U-4 for that individual;

        ii) For a Member Organization applicant, Forms U-4 for the Member Organization’s nominee, each Designated Trading Representative, and any other person who will be conducting Exchange trading activities;

[1] For applicants that are associated persons of a broker-dealer, this form, and all other information relating the broker-dealer, should be the information relating to the broker-dealer with whom the applicant is associated.

iii) For a Member Organization applicant, a copy of page 2 of Form U-4 for each person listed on Schedule A of Form BD for whom a full Form U-4 is not required, which need not be signed; and

iv) For Lessors, a copy of page 2 of Form U-4 for each individual applicant; and for corporations, partnerships and limited liability companies (LLCs), a copy of page 2 of Form U-4 for each person who would have been listed on Schedule A of Form BD if the applicant were a registered broker-dealer, which need not be signed.

c) *Focus Report:* The applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to Rule 17a-5 under the Exchange Act (the most current Parts I, II, and IIA, as applicable).

2) *Description of Proposed Exchange Trading:* A narrative description of all material aspects of the applicant's proposed business dealings on the Exchange, including, but not limited to:

a) Whether the applicant proposes to act as a Primary Market Maker (PMM), Competitive Market Maker (CMM), Electronic Access Member (EAM), or in more than one capacity, as well as a description of the applicant's proposed trading activity on the Exchange;

b) The office(s) from which the applicant will conduct its Exchange trading activity;

c) The name, address and e-mail addresses of:

i) The person who will be a Member Organization's nominee under Exchange Rule 306;

ii) The persons who will be responsible for the trading activity at each office, including all Designated Trading Representative(s) of PMMs and CMMs pursuant to Exchange Rule 802, and any other person who will conduct Exchange trading;

iii) The person(s) who will have supervisory responsibility for the applicant's Exchange trading;

d) For Member Organizations, an organizational chart, including the names of the applicant's chief executive officer, chief financial officer, chief operating officer, and chief compliance officer;

e) The source and amount of applicant's capital to support its Exchange trading, and the source of any additional capital that may become necessary;

f) For applicants that will act as a PMM or CMM and that will be conducting "Other Business Activities," as that term is defined in Exchange Rule 811, a description

of the "Chinese Wall" procedures required pursuant to paragraph (c) of that rule; and

g) For an EAM, the proposed nature of the applicant's proposed trading on the Exchange, such as whether it will be a clearing firm, enter customer orders (and if so, manually or through an automated interface with internal firm order processing systems), conduct block trading, etc.

3) *Financial Information:* A completed form regarding the applicant's financial information, in the form attached as Exhibit A.

4) *Organizational Documents:* A copy of the applicant's partnership agreement, LLC operating agreement, charter, by-laws or equivalent documents. This requirement also applies to Lessors.

5) *Disciplinary History*: A statement indicating whether the applicant or any person for whom Forms U-4 or page 2 of Forms U-4 are required pursuant to No. 1, above, is currently, or has been in the last 10 years, the subject of any investigation or disciplinary proceeding conducted by any SRO, or by any Federal or state securities or futures regulatory agency or commission, regarding the person's activities. If so, the statement must include all relevant details, including any sanctions imposed. This requirement also applies to Lessors.

6) *Clearing and Other Agreements:* A copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the applicant with services regarding the execution or clearance and settlement of transactions effected on the Exchange.

7) *Brokers' Blanket Bond:* Evidence that the applicant has the required Brokers' Blanket Bond required under Exchange Rule 624.

8) *Membership Purchase Documentation:* For applicants that are purchasing PMM or CMM Memberships, a copy of the sales agreement and a statement describing the manner in which the applicant will be financing the purchase. This requirement also applies to Lessors.

9) *Membership Lease Documentation:* For applicants that are leasing PMM or CMM Memberships, a copy of the lease agreement, which must include provisions covering:

a) The duration of the lease;

b) The consideration to be paid by the lessee;

c) The assignability of the respective interests of the lessee and lessor; and

d) As between the parties, which party shall exercise the voting rights of the Membership and which party shall provide the funds necessary to satisfy all applicable Exchange dues, fees and other charges.

The lessee also must provide a letter of guarantee from an Exchange Clearing Member or it must deposit with the Exchange an amount equal to the average of the last three sales of Memberships of the same class being leased.

10) *Risk Analysis:* For applicants that propose to be Clearing Members, a copy of the written procedures for assessing and monitoring potential risks, as required pursuant to Exchange Rule 1405.

11) *Non-Refundable Application Fee:* A check representing the appropriate application fee pursuant to the Exchange's Fee Schedule. These fees also apply to Lessors.

12) *Pledge, Authorization and Declaration:* A signed pledge and consent, in the form attached as Exhibit B. This requirement also applies to Lessors.

II. Application Process

The Exchange will process an application promptly upon receipt of all the required documents and other materials. The Exchange will electronically post the name of the applicant.

After reviewing an application, the Exchange may require the applicant to submit additional or supplemental information in support of the application. In addition, the applicant or persons associated with the applicant will need to take and pass all required examinations during the application process. It is also possible that the Exchange may request individual applicants and persons associated with applicants to appear in person before the Exchange. The Exchange may require any Member or person associated with a Member who has information relevant to the applicant's suitability to provide information or testimony to the Exchange.

The Exchange will act on an application within 30 days of receiving all necessary information and the application otherwise being complete. Absent an Exchange determination to the contrary, the Exchange will consider an application to have lapsed if the applicant: does not respond fully within 60 days after an initial request for information or documents, or within 30 days after any subsequent request; or if the application process is not completed within six months of the initial filing.

If the Exchange approves an application, the applicant must become an effective Member of the Exchange within 90 days of the date of approval pursuant to Exchange Rule 308. If the Exchange denies an application, the applicant will be so informed, in writing, explaining the reasons for the denial. An applicant denied Membership has the right to a hearing and review pursuant to Chapter 17 of the Exchange’s Rules.

Exhibit A

International Stock Exchange
Financial Information
Regarding Applicants for Membership

Name: _____ (Applicant) Date: _____

I. Balance Sheet:

Assets

Cash or Cash Equivalents	$ _____
Securities (Market Value)	$ _____
Spot Commodities (Equity)	$ _____
Real Estate (Market Value)	$ _____
Exchange Memberships	$ _____
Other Assets (Itemize Assets Over $10,000 in Value)	$ _____
Total Assets	$ _____

Liabilities

Liabilities Secured by Real Estate	$ _____
Bank Loans	$ _____
Debt Financings	$ _____
Amounts Owed to Exchanges/Members (See II. 1.Below)	$ _____
Taxes	$ _____
Other (Itemize Amounts Over $10,000)	$ _____
Total Liabilities	$ _____
Net Worth (Assets Minus Liabilities)	$ _____

II. Supplemental Financial Information

1. Does the Applicant owe any monies to the Exchange, another national securities exchange, a national securities association, a commodities futures exchange, or to any member of such an organization that are overdue? _____ If so, indicate the aggregate amount under "Liabilities," above, and attach a schedule itemizing such amounts and describing any arrangements the Applicant has made to repay such debts.

2. If Applicant intends to raise additional capital to finance its business on the Exchange, attach a statement indicating the source and amount of such capital.

3. If any other person will guarantee the transactions the Applicant will effect on the Exchange, attach a statement indicating the name of the guarantor and the nature of the guarantee.

4. Provide the name of Applicant's independent public accountant.

5. Provide the name of Applicant's Designated Examining Authority, as well as the names of all other self-regulatory organization of which the Applicant is a member.

III. Declaration

I am the Chief Financial Officer of the Applicant and I hereby state that this financial statement of the Applicant is a true and accurate description of the Applicant's financial condition as of the date first noted above.

By:

_____

(Name and Title of Chief Financial Officer)

_____

(Signature)

Exhibit B

International Stock Exchange
Pledge, Authorization and Declaration
of Applicants for Membership

_____

(Name of Applicant "Applicant")

Applicant hereby:

Pledges that it will abide by the Operating Agreement, Constitution and Rules of the International Securities Exchange (Exchange) as amended from time to time, and by all circulars, notices, directives or decisions the Exchange adopts pursuant to or made in accordance with the Operating Agreement, Constitution and Rules;

Authorizes any self-regulatory organization (SRO), commodities exchange, former employer and other persons to furnish to the Exchange, upon its request, any information that such person or entity may have concerning the character, ability, business activities, reputation and employment history of the Applicant or its associated persons, and releases such person or entity from any and all liability in furnishing such information to the Exchange;

[Insert for Member Organizations: Authorizes ———————— (Nominee) as the nominee of Applicant to represent the Applicant with respect to the Applicant's Membership in all matters relating to the Exchange, and guarantees all obligations arising out of Nominee's representation of the Applicant in all matters relating to the Exchange, including all obligations both to the Exchange and to other Members and Member Organizations resulting from transactions on the Exchange;] and

Authorizes the Exchange to make available to any governmental agency, SRO, commodities exchange or similar entity, any information the Exchange may have concerning the Applicant or its associated persons, and releases the Exchange from any and all liability in furnishing such information; and

Declares that all the information contained in the Application Materials it has submitted to the Exchange is true, complete and accurate.

By:

_____

(Name and Title of Authorized Signatory)

_____

(Signature)

Exhibit C

A complete set of all forms of financial statements, reports or questionnaires required of members is included under Exhibit B.

Exhibit D

The International Securities Exchange currently is proposing to trade only equity options issued by the Options Clearing Corporation. Thus, there are no listing applications or similar documents.

Exhibit E

Audited financial statements for the fiscal 1997 and through October 31 for fiscal year 1998, which have been prepared by Deloitte & Touche LLP, are attached hereto. Audited financial statements through the end of 1998 will be provided as soon as they are available. The International Securities Exchange has no consolidated subsidiaries.

ISE LLC
(A Development Stage Company)

Financial Statements for the Periods January 1, 1998 to October 31, 1998 and September 29, 1997 (Inception Date) to December 31, 1997 and Independent Auditors' Report

Deloitte & Touche

Deloitte & Touche LLP
Two World Financial Center
New York, New York 10281-1414

Telephone: (212) 436-2000
Facsimile: (212) 436-5000

INDEPENDENT AUDITORS' REPORT

To the Members of ISE LLC:

We have audited the accompanying balance sheets of ISE LLC (the "Company") (a development stage company) as of October 31, 1998 and December 31, 1997, and the related statements of operations and cash flows for the periods January 1, 1998 to October 31, 1998 and September 29, 1997 (inception date) to December 31, 1997. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of the Company as of October 31, 1998 and December 31, 1997, and the results of its operations and its cash flows for the periods January 1, 1998 to October 31, 1998 and September 29, 1997 (inception date) to December 31, 1997, in conformity with generally accepted accounting principles.

The Company is in the development stage as of October 31, 1998. As discussed in Note 1 to the financial statements, successful completion of the Company's development program and, ultimately, the attainment of profitable operations is dependent upon future events, including maintaining adequate financing to fulfill its development activities, obtaining regulatory approval, and achieving a level of revenues adequate to support the Company's cost structure.

Deloitte + Touche LLP

January 22, 1999

ISE LLC
(A Development Stage Company)

BALANCE SHEETS
OCTOBER 31, 1998 AND DECEMBER 31, 1997

	1998	1997
ASSETS		
CASH AND CASH EQUIVALENTS	$ 9,057,116	$ 76,000
PREPAID EXPENSES	7,823	
FURNITURE AND EQUIPMENT (net of accumulated depreciation of $17,855 in 1998 and $5,321 in 1997)	50,889	30,243
TOTAL ASSETS	$ 9,115,828	$ 106,243
LIABILITIES AND MEMBERS' CAPITAL		
LIABILITIES:		
Accrued liabilities	$ 160,656	
Amount due to member	33,906	$ 507,775
Total liabilities	194,562	507,775
MEMBERS' CAPITAL:		
10 Class A memberships, 50 Class B memberships and an unlimited number of Class C memberships authorized; 10 Class A memberships and 50 Class B memberships outstanding on October 31, 1998 and 13 Class B memberships outstanding on December 31, 1997		
Balance at beginning of period	(401,532)	
Net loss for the period	(1,677,202)	(726,532)
Sale of memberships	30,450,000	325,000
Membership subscription receivable	(19,450,000)	
Balance at end of period	8,921,266	(401,532)
TOTAL LIABILITIES AND MEMBERS' CAPITAL	$ 9,115,828	$ 106,243

See notes to financial statements.

ISE LLC
(A Development Stage Company)

STATEMENTS OF OPERATIONS
PERIODS JANUARY 1, 1998 TO OCTOBER 31, 1998 AND
SEPTEMBER 29, 1997 (INCEPTION DATE) TO DECEMBER 31, 1997

	1998	1997	September 29, 1997 (Inception) through October 31, 1998
REVENUE:			
Interest income	$ 126,442	$ -	$ 126,442
EXPENSES:			
System development costs	675,000		675,000
Salaries, benefits and taxes	435,856	316,908	752,764
Legal fees	257,699	247,282	504,981
Travel and entertainment	116,357	86,967	203,324
Rent and office expense	123,050	28,644	151,694
Professional services	123,826	27,250	151,076
Depreciation	12,534	5,321	17,855
Interest expense	31,148	12,660	43,808
Other	28,174	1,500	29,674
Total expenses	1,803,644	726,532	2,530,176
NET LOSS	$(1,677,202)	$(726,532)	$(2,403,734)

See notes to financial statements.

ISE LLC
(A Development Stage Company)

STATEMENTS OF CASH FLOWS
PERIODS JANUARY 1, 1998 TO OCTOBER 31, 1998 AND
SEPTEMBER 29, 1997 (INCEPTION DATE) TO DECEMBER 31, 1997

	1998	1997	September 29, 1997 (Inception) through October 31, 1998
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	$ (1,677,202)	$ (726,532)	$ (2,403,734)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	12,534	5,321	17,855
Changes in assets and liabilities:			
Prepaid expenses	(7,823)		(7,823)
Amount due to member	(473,869)	507,775	33,906
Accrued liabilities	160,656		160,656
Net cash used in operating activities	(1,985,704)	(213,436)	(2,199,140)
CASH FLOWS FROM INVESTING ACTIVITY -			
Purchase of furniture and equipment	(33,180)	(35,564)	(68,744)
CASH FLOWS FROM FINANCING ACTIVITY -			
Proceeds from sale of memberships	11,000,000	325,000	11,325,000
NET INCREASE IN CASH AND CASH EQUIVALENTS	8,981,116	76,000	9,057,116
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	76,000	-	-
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 9,057,116	$ 76,000	$ 9,057,116
SUPPLEMENTAL CASH FLOW INFORMATION:			
Interest paid	$ 31,148	$ 12,660	$ 43,808
Memberships issued for membership subscription receivable	$ 19,450,000		$ 19,450,000

See notes to financial statements.

ISE LLC
(A Development Stage Company)

NOTES TO FINANCIAL STATEMENTS
PERIODS JANUARY 1, 1998 TO OCTOBER 31, 1998 AND
SEPTEMBER 29, 1997 (INCEPTION DATE) TO DECEMBER 31, 1997

1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

General - ISE LLC (the "Company"), a development stage company, was organized on September 29, 1997 under New York Limited Liability Company Law. The Company was formed to develop and ultimately conduct the operations of the International Securities Exchange, a fully electronic options exchange. Since inception, substantially all of the resources of the Company have been devoted to the development of the exchange and to establish the infrastructure that would permit the operation of the exchange.

Basis of Presentation - The financial statements of the Company have been prepared in conformity with Statement of Financial Accounting Standards No. 7, *Accounting and Reporting by Development Stage Enterprises*. As a development stage company with no commercial operating history, the Company is subject to all of the risks and expenses inherent in the establishment of a new business enterprise. To address these risks and expenses, the Company must, among other things, respond to competitive developments, attract, retain and motivate qualified personnel and support the expense of marketing new services based upon innovative technology. In addition, the Company must receive regulatory approval. To date, the Company has not recognized any operating revenues and does not expect to recognize any revenues until January 2000. As a result of incurring expenses in these development activities without generating revenues, the Company has incurred significant losses and negative cash flow from operating activities, and as of October 31, 1998, the Company had accumulated net losses of $2,403,734. The Company expects to incur substantial losses and substantial negative cash flow from operating activities in the foreseeable future. There can be no assurance, however, that the Company will be able to achieve revenues in excess of such expenses.

Cash Equivalents - The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

Furniture and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the asset.

Income Taxes - The Company is not subject to federal and state income tax as the net income (loss) is passed through to the members. Each member's share of net income (loss) is included on his/her tax returns in accordance with the Internal Revenue Code.

Use of Estimates - The preparation of the Company's financial statements in conformity with generally accepted accounting principles necessarily requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the balance sheet dates and the reported amounts of revenues and expenses for the periods presented. Actual results could differ from those estimates.

2. OPERATING AGREEMENT

The amended and restated Operating Agreement (the "Agreement") dated August 1, 1998 sets forth the respective rights and obligations of members of the Company and provides for terms of its management and conduct of its affairs as summarized below:

Term - The Company's stated termination date is December 31, 2098.

Capital Contributions - Initially, the Company is authorized to accept capital contributions for 10 Class A Membership Units for Primary Market Makers, 50 Class B Membership Units for Market Makers and an unlimited number of Class C Membership Units for broker/dealers who will be Electronic Access Members.

Capital Accounts - The Company must establish capital accounts for each Class A and each Class B Member. No capital account may be established for Class C Members. The Board may, in its discretion, adjust the capital accounts to reflect a revaluation of the Company's assets in accordance with the Agreement.

Allocation of Net Income (Loss) - In accordance with the Agreement, net income and losses are allocated among the Class A Members and Class B Members in proportion to their respective capital interests. Class C Members may not be allocated any portion of net income and losses.

Distributions - Each Class A Member and Class B Member are entitled to receive distributions in proportion to their respective capital interests provided that mandatory distributions are made, to the extent of cash available, to each Class A Member and Class B Member sufficient to allow them to pay federal, state and local income taxes on the income of the Company deemed to be taxable to the members.

3. MEMBERSHIP SUBSCRIPTION RECEIVABLE

On August 1, 1998, Adirondack Trading Partners, LLC ("ATP") entered into an agreement with the Company to purchase 10 Class A Membership Units and 37 Class B Membership Units for $30,450,000. The purchase price is payable in two installments. As of October 31, 1998, ATP made payments of $11,000,000. The remaining amount payable of $19,450,000 is due on August 1, 1999.

4. RELATED PARTY TRANSACTIONS

During the period September 29, 1997 (inception date) to December 31, 1997, a member advanced the Company $507,775. During the period January 1, 1998 to October 31, 1998, $473,869 was repaid.

Additionally, the Company entered into an agreement with a member of ATP, whereby the member will provide technology in the development of the Company's systems. In exchange for such technology, the Company will pay the member a fee based on the volume of future contracts transacted per day for a minimum period of eight years.

* * * * * *

Exhibit F

Audited financial statements for the International Securities Exchange have been provided under Exhibit E. Unconsolidated financial statements for Adirondack Trading Partners, LLC through October 31 for fiscal year 1998 are attached hereto. Financial statements through the end of 1998 will be provided as soon as they are available.

Adirondack Trading Partners LLC

Unconsolidated Financial Statements (Unaudited) for the Period January 27, 1998 (Inception Date) to October 31, 1998

UNCONSOLIDATED BALANCE SHEET (UNAUDITED)
OCTOBER 31, 1998

ASSETS

CASH AND CASH EQUIVALENTS	$10,291,771
INVESTMENT IN ISE LLC	9,549,534
FURNITURE AND EQUIPMENT (net of accumulated depreciation of $3,126)	44,858
TOTAL ASSETS	$19,886,163

LIABILITIES AND MEMBERS' CAPITAL

ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	$ 73,491
MEMBERS' CAPITAL	19,812,672
TOTAL LIABILITIES AND MEMBERS' CAPITAL	$19,886,163

See notes to unconsolidated unaudited financial statements.

ADIRONDACK TRADING PARTNERS LLC

UNCONSOLIDATED STATEMENT OF OPERATIONS (UNAUDITED)
PERIOD JANUARY 27, 1998 (INCEPTION DATE) TO OCTOBER 31, 1998

REVENUE:	
Interest income	$ 159,264
EXPENSES:	
Salaries, benefits and taxes	379,670
Travel	137,233
Interest expense	115,765
Legal fees	143,637
Consultants fees	107,100
Rent and office expense	36,856
Depreciation	3,126
Other	6,639
Total expenses	930,026
OPERATING LOSS	(770,762)
EQUITY LOSS IN ISE LLC	(1,450,466)
NET LOSS	$(2,221,228)

See notes to unconsolidated unaudited financial statements.

UNCONSOLIDATED STATEMENT OF CASH FLOWS (UNAUDITED)
PERIOD JANUARY 27, 1998 (INCEPTION DATE) TO OCTOBER 31, 1998

CASH FLOWS FROM OPERATING ACTIVITIES:	
Net loss	$ (2,221,228)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation	3,126
Equity loss in ISE LLC	1,450,466
Change in liabilities:	
Accounts payable and accrued liabilities	73,491
Net cash used in operating activities	(694,145)
CASH FLOWS FROM INVESTING ACTIVITIES:	
Purchase of furniture and equipment	(47,984)
Investment in ISE LLC	(11,000,000)
Net cash used in investing activities	(11,047,984)
CASH FLOWS FROM FINANCING ACTIVITY:	
Proceeds from issuance of preferred capital	21,950,000
Proceeds from issuance of common capital	83,900
Net cash provided by financing activities	22,033,900
NET INCREASE IN CASH AND CASH EQUIVALENTS	10,291,771
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	-
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 10,291,771

See notes to unconsolidated unaudited financial statements.

ADIRONDACK TRADING PARTNERS LLC

NOTES TO UNCONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)
PERIOD JANUARY 27, 1998 (INCEPTION DATE) TO OCTOBER 31, 1998

1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES

Adirondack Trading Partners LLC (the "Company") was organized on January 27, 1998 under New York Limited Liability Company Law. The Company is a consortium of broker/dealers formed to hold memberships in ISE LLC, a fully electronic options exchange.

Cash Equivalents - The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

Furniture and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets.

Income Taxes - The Company is not taxed on its net income (loss) as the net income (loss) is passed through to the members. Each member's share of net income (loss) is included on his/her tax returns in accordance with the Internal Revenue Code.

Use of Estimates - The preparation of the Company's financial statements in conformity with generally accepted accounting principles necessarily requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the balance sheet dates and the reported amounts of income and expenses for the periods presented. Actual results could differ from those estimates.

2. OPERATING AGREEMENT

The Operating Agreement dated January 27, 1998 sets forth the respective rights and obligations of members of the Company and provides for terms of its management and conduct of its affairs as summarized below:

Term - The Company's stated termination date is December 31, 2098.

Preferred A Units - The Company is authorized to issue 5 Preferred A Units for $1,000,000 per unit. As of October 31, 1998, 5 Preferred A Units were issued and outstanding.

Preferred B Units - The Company is authorized to issue 25 Preferred B Units. As of October 31, 1998, 16.95 Preferred B Units were issued and outstanding.

Common Units - The Company is authorized to issue 1,390,000 Common Units. As of October 31, 1998, 839,000 Common Units were issued and outstanding.

Capital Accounts - The Company must establish capital accounts for each member holding Preferred A Units and Preferred B Units. The Board may, in its discretion, adjust the capital accounts to reflect a revaluation of the Company's assets in accordance with the Agreement.

Allocation of Net Income (Loss) - In accordance with the Agreement, net income and losses are allocated among the holders of Preferred A Units and Preferred B Units in proportion to their respective capital interests.

Distributions - Members are entitled to receive distributions in proportion to their ownership of units, to the extent of cash available, to allow them to pay federal, state and local income taxes on the income of the Company deemed to be taxable to the members.

3. INVESTMENT IN ISE LLC

On August 1, 1998, The Company entered into an agreement with ISE LLC to purchase 10 Class A Membership Units and 37 Class B Membership Units in ISE LLC for $30,450,000. The purchase price is payable in two installments. As of October 31, 1998, the Company made payments of $11,000,000. The remaining amount payable of $19,450,000 is due on August 1, 1999.

* * * * * *

Exhibit G

The officers of the International Securities Exchange are listed below. Pursuant to the Operating Agreement and Constitution, the Exchange has two managers until the initial board of directors is elected, which election shall take place prior to the initiation of trading on the Exchange. There are no fixed terms for officer positions. None of the officers are engaged in business as any type of Exchange Member, although Adirondack Trading Partners, LLC, with which William A. Porter is affiliated, intends to be a market maker on the Exchange. The Exchange currently has no committees.

William A. Porter:	Chairman and Manager beginning January 1998.
David Krell:	President, Chief Executive Officer and Manager beginning January 1998.
Gary Katz:	Senior Vice President, Marketing and Business Development beginning January 1998.
Michael J. Simon:	Senior Vice President, Chief Regulatory Officer, General Counsel and Secretary beginning November 1998.
Richard Pombonyo:	Vice President, Marketing beginning December 1998.

Exhibit H

The officers and directors of Adirondack Trading Partners, LLC are listed below. The company does not have any committees.

William A Porter:	Chairman and Director.
Marty Averbuch:	President, Chief Executive Officer and Director.
E. E. Geduld:	Director.
Kenneth D. Pasternak:	Director.
Magnus Karlsson:	Director.

Exhibit I

While memberships are owned by two individuals, the Exchange has not approved any individual members for trading on the Exchange. The two individual owners are David Krell and Gary Katz, neither of which is associated with a broker-dealer member of the Exchange. Their business address is 110 Wall Street, New York, New York 10005.

Exhibit J

While memberships are owned by two organizations, the Exchange has not approved any member organizations for trading on the Exchange. The two organizations, neither of which currently is a broker-dealer in securities, are listed below.

Adirondack Trading Partners, LLC
47 Laurel Hill Road
Centerport, New York 11721
(516) 754-3532

KAP Group, LLC
316 Golden Hills Dr.
Portola Valley, California 94028
(650) 851-7359

Exhibit K

There are no securities listed on the Exchange.

Exhibit L

There are no securities admitted to unlisted trading privileges on the Exchange.

Exhibit M

There are no unregistered securities admitted to trade on the Exchange.

Exhibit N

A description of the Exchange's system is attached hereto.

INTERNATIONAL SECURITIES EXCHANGE™

Description of Trading on the Exchange

The ISE will operate an automated trading system (the "System") for standardized equity options. It will be an agency-auction market similar to the exchange markets currently in operation, although the auction will occur electronically, and not on a floor. This exhibit describes the participants in this market and the most significant rules and procedures governing trading in the System. This is intended only as a summary, and the Exchange's Constitution and Rules more fully describe trading on the Exchange.

I. Membership

There are three types of members at the ISE: Primary Market Makers ("PMMs"), Competitive Market Makers ("CMMs") and Electronic Access Members ("EAMs"). Each PMM and CMM will enter their own independent quotations into the System. EAMs will enter agency and principal orders into the System. PMMs and CMMs will enter size with quotations, and must provide a minimum size, established by the Exchange, for the execution of customer orders. PMMs will have terminals that provide them with information on the orders and quotations pending in the System, while CMMs and EAMs will have terminals that display the best bid and offer ("BBO") in each options series, as well as the aggregate size of the BBO.

The Exchange expects to trade all of the series of approximately 600 actively-traded options classes, which it will divide into 10 groups of approximately 60 classes each. There will be a total of 10 PMMs (one in each group) and 100 CMMs (ultimately 10 in each group, although there initially will be only 50 CMMs authorized to trade, with five in each group). In addition to being able to enter quotations, PMMs and CMMs will be able to enter "immediate or cancel" limit orders in their assigned options. Subject to certain limitations, PMMs and CMMs also will be permitted to place orders in any of the other groups of options, but will not be allowed to enter quotations outside their assigned group(s). EAMs will not be permitted to enter orders that would effectively result in market making on the Exchange.

II. System Executions

Trades will occur when orders or quotations match in the ISE System. Customer orders will always have priority. If more than one customer order has been entered into the System at the same price, priority is based on the time of order entry. The System will not automatically execute a customer order at a price inferior to the price quoted on another options exchange. In this situation, the PMM can establish parameters for matching away-market quotations or the PMM can handle the order on an individual basis.

After all customer trading interest is executed, orders up to a size determined by the Exchange (the "Minimum Size") will be traded exclusively by the PMM (if the PMM is at the best quote). If the PMM is not the best quote, or if the order is larger than the Minimum Size, the trade will be split among (i) the PMM (if at the best quote), (ii) those CMMs quoting at the best price and (iii) those EAMs with proprietary orders at the best price. The Exchange will establish an algorithm to allocate the trade among these market participants, with the PMM (if participating with enough size) taking a portion of the trade larger than any one CMM or EAM. To encourage the entry of quotations and orders in size, the allocation of a trade among PMM, CMMs and EAMs with quotes or orders at the best price will be based on the size of their quote or order.

If a member enters a limit order into the System that crosses trading interest already in the System, a trade will occur, to the extent that size is available, at the price of the trading interest already in the System. After executing against that trading interest, the limit order will trade against other trading interest in the System until the limit order is filled in its entirety or the order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance of the order will become the best bid or offer.

In addition, trades will not necessarily occur when quotations of PMMs and CMMs match or cross each other. Such matches or crosses can occur, for example, because market maker auto-quotation systems can respond at different speeds. Thus, a trade between two or more market makers will only occur after the quotations remain matched for a defined amount of time, which will be less than one second.

Finally, PMMs and CMMs will have the ability to set parameters regarding their willingness to trade generally with a broker-dealer's proprietary order. When the Exchange receives such an order, any CMM or PMM quotations in the System will be executable only up to the size of the PMM's or CMM's pre-set parameter. The matching rules discussed above otherwise remain the same. Upon completion of the trade, if a PMM or CMM that has established parameters for trading against a proprietary order does not provide a complete fill to the order, the PMM or CMM cannot continue to quote at that price and must move its quotation to the next level. Orders of market makers on other options exchanges will be handled on an order-by-order basis by the PMM and CMMs.

III. Facilitation Mechanism

For block-size orders (currently set in the ISE Rules at 50 contracts), an EAM will be able to use a special "facilitation mechanism" to cross an order between the EAM and its own customer. When the Exchange receives such an order, it will send to the PMM and CMMs assigned to the option, as well as to any EAM that has a proprietary order at the best quote, an anonymous message informing them of the proposed transaction. The recipients of the broadcast will have a designated amount of time, set by the Exchange, to respond. Those responses will not be disseminated.

Upon expiration of the set time period, the System will execute the order as follows: First, it will fill any customers in the System at the facilitation price or better at the facilitation price, thus providing such orders price protection. Second, and only after all customer orders are filled, the EAM entering the order will be allocated a percentage of the remaining order, at a level the Exchange will set from time to time. Third, the PMM, CMMs and EAMs responding at the transaction price (or quoting at the transaction price or better) will trade pursuant to an algorithm set by the Exchange. Finally, if any portion of the order remains unfilled, the EAM entering the facilitation order will trade the balance.

IV. Block Trading Mechanism

A special "block trading mechanism" also is available to EAMs, which they can use to solicit market participation for block-size orders. This mechanism is intended to minimize the market impact of large orders and uses a "quote request" methodology. The buyer or seller of the block sends in a trade request in size, which is broadcast to the assigned PMM and CMMs assigned to the option and to any EAM that has a proprietary order at the best quote. The EAM using the block trading mechanism determines the amount of information that will be disclosed in the broadcast. For example, the broadcast can disclose that there is a sell or a buy order, or it could ask for size on either side. The broadcast also may or may not display size or price or any conditions on the block-size order.

The Exchange will set a time period by which market participants must respond to the broadcast. The responses will not be disseminated. After receiving the responses, the System will execute the trade, if possible, at a single price. Executable customer orders in the System are executed first. Customer orders at the block execution price or better will be executed at the block price, thus providing such orders price protection. After all customer orders are filled, the PMM, CMMs and EAMs responding at the transaction price (or better) will trade pursuant to an algorithm set by the Exchange. After the trade is executed (or if there is no trade), all unexecuted responses are removed from the System and have no further standing.

V. Openings

The PMM will conduct an opening in each options series based on an algorithm operating according to the following principles: All market orders must be filled; all orders must trade at the same price; and market orders are filled before limit orders, regardless of the time of entry.

The opening price is determined using all the orders and quotes available in that series. Depending on the size of both sides of the market, the PMM's input may be required in the opening process.

VI. Fast Markets

"Fast markets" are markets in which the volume is so great, or the market so volatile, that it is not possible to apply the normal rules governing firm quotations and System executions. The Exchange staff can declare a fast market, either on its own or at the request of a PMM. In the event of a fast market, the Exchange will append a non-firm quote indicator to all quotations in the affected class or series. When trading in this condition, the System will "pause" for a set number of seconds, accumulating orders on the book without effecting a trade. The pause will be at least 20 seconds, but could be longer depending on the specific market conditions.

After the pause, the System will operate similarly to an opening rotation, thus attempting to maximize trading possibilities. However, unlike an opening, there will be no requirement to fill all market orders in a fast market. The Exchange will continue the fast market trading process until the fast market conditions end.