

# **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 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.

(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.

### **Registration of Individual Memberships for Member Organizations**

Section 8. (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 9. 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 10. (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:

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

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

(3) 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:

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

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

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

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

(5) 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 (d) 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:

(1) 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.

(2) 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.

(3) 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 either (i) at least one (1) Class A and at least one (1) Class B Director, or (ii) at least five (5) Non-Industry Directors, 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.