

Finally, NASDAQ is proposing to re-establish an Opening Cross to be executed upon the termination of a trading halt.<sup>5</sup> Having operated NOM for almost two years, NASDAQ has determined in its experience that an auction will provide a more orderly opening of the market after a halt. This is particularly true because NOM has attracted significantly higher levels of liquidity, an important ingredient for a successful cross. Accordingly, NASDAQ is proposing to modify Chapter V, Section 4 (Resumption of Trading After a Halt) and various subsections of Chapter VI, Section 8. The Opening Cross will operate in the same manner following a trading halt as it operates at the start of the trading day, including dissemination of the Order Imbalance Indicator, matching algorithm, and posing or routing of interest that remains unexecuted following execution of the opening cross. The Opening Cross for halted options will differ only in the time at which it occurs and the fact that that time is determined pursuant to Chapter V, Section 4.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposal is consistent with this standard because the proposed rule change is designed to improve execution quality at the critical opening of the market both at the start of the trading day and following a trading halt.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

<sup>5</sup> When Nasdaq first proposed its options trading rules, it planned to resume trading by operating a "Halt Cross," which it originally described in Chapter VI, Section 8. Nasdaq later amended the proposed rules to remove the Halt Cross. See Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approval order regarding NOM Rules including Chapters III and XIV).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-037 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2011-037, and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-64144; File No. SR-NYSEAmex-2011-18]**

### **Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Formation of a Joint Venture Between the Exchange, Its Ultimate Parent NYSE Euronext, and Seven Other Entities To Operate an Electronic Trading Facility for Options Contracts**

March 29, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 23, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to form a joint venture between the Exchange, its ultimate parent NYSE Euronext, a Delaware corporation, and the following entities (each, a "Founding Firm"): Citadel Securities LLC ("Citadel"); Goldman, Sachs & Co. ("Goldman Sachs"); Banc of America Strategic Investments Corporation ("BAML"); Citigroup Financial Strategies, Inc. ("Citigroup"); Datek Online Management Corp. ("TD Ameritrade"); UBS Americas Inc. ("UBS"); and Barclays Electronic Commerce Holdings Inc. ("Barclays"). The joint venture will operate an electronic trading facility (the "Options Exchange") that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities. The Options Exchange will be operated as a "facility" (as such term is defined in Section 3(a)(2) of the Securities Exchange Act of 1934 (the "Act")) of the Exchange, which will act as the self-regulatory organization ("SRO") for the Options Exchange. The Options Exchange will be operated by NYSE Amex Options LLC (the "Company"), a Delaware limited liability company formed by NYSE Euronext, the Exchange and the Founding Firms and jointly owned by the Exchange and the Founding Firms. The text of the proposed rule change, consisting of the proposed Limited Liability Company Agreement of the Company (the "LLC Agreement") and a proposed Members Agreement of the Company setting forth certain additional terms (the "Members Agreement"), is available at the Exchange, the Commission's Public Reference Room, on the Commission's Web site at <http://www.sec.gov>, and on <http://www.nyse.com>. The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed formation of a joint venture between the Exchange, its ultimate parent NYSE Euronext and the Founding Firms. The joint venture will operate an electronic trading facility, the Options Exchange, that will engage in the business of listing for trading options contracts permitted to be listed on a national securities exchange (or facility thereof) and related activities.<sup>4</sup> The Options Exchange will be operated as a "facility" (as such term is defined in Section 3(a)(2) of the Act) of the Exchange, which will act as the SRO for the Options Exchange. The Options Exchange will be operated by the Company, the Exchange and the Founding Firms and jointly owned by the Exchange and the Founding Firms. The Exchange will have regulatory responsibility for the activities of the Options Exchange. The Exchange represents that it has adequate funds to discharge all regulatory functions related to the Options Exchange.

The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation. No changes to the Exchange's existing rules will be necessary in connection with the establishment of the Company and the operation of the Options Exchange.

#### Summary

This section contains a summary of certain provisions in the operative documents of the Company. The provisions are more fully described in the sections following the summary.

#### Structure of the Company

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company ("Interests"). The holders of interests are referred to as the members of the Company (the "Members"). The Interests represent equity interests in the

Company and entitle the holders thereof to participate in the Company's allocations and distributions. Initially, NYSE Amex will own 100% of the preferred non-voting Interests ("Preferred Interests") and 47.2% of the Common Interests,<sup>5</sup> as Class A Common Interests. The Founding Firms will own the remaining 52.8% of the Common Interests, as Class B Common Interests, and no single Founding Firm (including its affiliates) will own Class B Common Interests comprising more than 19.9% of the issued and outstanding Common Interests. The 52.8% ownership of Class B Common Interests will initially be allocated as follows: 14.95% to each of Citadel and Goldman Sachs; 5.0% to each of BAML, Citigroup and TD Ameritrade; 4.9% to UBS; and 3.0% to Barclays.<sup>6</sup>

#### Capital Contributions

Members may be subject to both voluntary and mandatory capital calls. Mandatory capital calls may be issued by the board of directors of the Company (the "Board"), up to a cap, if the Company requires funds to maintain its status as a facility of an SRO or for other regulatory compliance purposes. In addition, during the first two years after the Company is formed, the Board, with the approval of a simple majority vote of the Board, may solicit voluntary capital calls up to a cap. In addition, a Supermajority Vote of the Board<sup>7</sup> will be able to approve: (i) Any voluntary capital call during the first two years

<sup>5</sup> Common Interests consist of Class A Common Interests and Class B Common Interests.

<sup>6</sup> Following the effective date of this Proposed Rule Change, additional Class B Common Interests will be issued to the Founding Firms based, in part, on each Founding Firm's contribution to the annual volume of the Options Exchange from October 1, 2009 to December 31, 2010, as described further under the heading "Volume-Based Equity Plan". The Exchange represents that this issuance of shares to the Founding Firms will not result in any Member (alone or together with its affiliates) other than NYSE Amex exceeding the 19.9% Maximum Percentage (as defined below).

<sup>7</sup> A "Supermajority Vote," as defined in the LLC Agreement, means, with respect to matters submitted to the Board at a validly called and validly noticed meeting, (x) for so long as NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), (A) the affirmative vote of more than fifty percent (50%) of the directors designated by NYSE Amex entitled to vote thereon and present in person or by proxy and (B) the affirmative vote of more than fifty percent (50%) of those directors designated by Founding Firms entitled to vote thereon and present in person or by proxy, and (y) for so long as NYSE Amex's percentage ownership of Common Interests is less than fifteen percent (15%), the affirmative vote of more than fifty percent (50%) of all directors entitled to vote thereon and present in person or by proxy (which excess of fifty percent (50%) must include more than two-thirds (2/3) of those directors designated by Founding Firms and NYSE Amex in the aggregate entitled to vote thereon and present in person or by proxy).

<sup>4</sup> The activities of the Options Exchange are further described in Section 3.1(b) of the LLC Agreement.

after the Company is formed in excess of the cap, (ii) any voluntary capital call after the two-year anniversary of the formation of the Company, and (iii) any voluntary capital call that is necessary for the Company to maintain its status as a facility of an SRO or any other regulatory compliance purposes and that is in excess of the cap for mandatory capital calls. Any Member that fails to participate in a mandatory capital call may be subject to certain customary sanctions. Any Member that fails to participate in a voluntary capital call will be diluted in its equity holdings.

#### *Term and Termination*

The Company will continue in perpetual existence until dissolved pursuant to the LLC Agreement or the Delaware Limited Liability Company Act, as amended (the "Delaware LLC Act"). The LLC Agreement includes customary provisions for the dissolution of the Company and an orderly liquidation of its business.

#### *Ownership Limitations*

No Member, other than NYSE Amex, will be permitted to hold Common Interests in excess of nineteen and nine-tenths percent (19.9%) of the issued and outstanding Common Interests or any lower percentage that may be imposed under applicable law. Any Member that holds Common Interests in excess of 19.9% will be required to dispose of their excess Common Interests following a procedure outlined below under the heading "Ownership Limitations". In addition, any such excess interests will be deemed non-voting until they are transferred to a Member or another person or entity in whose hands they would not be in excess of 19.9% of the issued and outstanding Common Interests and who may vote such Common Interests under applicable law.

#### *Members and Membership*

Members will be required to comply with Federal securities laws (to the extent such laws relate to the Company) and cooperate with the SEC and NYSE Amex, pursuant to NYSE Amex's regulatory authority. As explained more fully in the description of Section 7.6 of the LLC Agreement under the heading "Members and Membership" below, the Members may, upon the affirmative written consent of NYSE Amex (in its capacity as SRO) and a Supermajority Vote of the Board (excluding the vote of the director designated by the Member subject to sanction), suspend or terminate a Member's voting privileges in the event: (i) The Member has materially violated a Regulatory Matters

Provision (as defined below) in the LLC Agreement or any applicable law; (ii) the Member is subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors.

Persons or entities may become Members by acquiring Common Interests from an existing Member either pursuant to the transfer provisions described below or with approval by a Supermajority Vote.

A Member may seek to be treated as a "Restricted Member" to comply with any legal restrictions applicable to its holdings of Common Interests. A Restricted Member will be subject to restrictions on the distributions it receives and its Common Interests may be deemed non-voting. This election may be reversed in certain circumstances.

#### *Governance*

Day-to-day operations of the Company and the management of its business and affairs will be delegated to the Company's officers and to NYSE Group, Inc. ("NYSE Group"), a subsidiary of NYSE Euronext, in accordance with a services agreement (the "NYSE Euronext Agreement") between NYSE Group and the Company. Under the NYSE Euronext Agreement, NYSE Group will agree to provide the Options Exchange with a broad range of operational and support services.

The Board will be responsible for the oversight of the Company's officers and of NYSE Group's performance under the NYSE Euronext Agreement. The Board will consist of thirteen members. Each Founding Firm so authorized pursuant to the LLC Agreement will have the right to designate one director to the Board—for a total of six directors designated by Founding Firms—and NYSE Amex will have the right to designate the remaining seven directors. The LLC Agreement outlines the basic qualifications of the directors and specifies grounds for their removal.

Most decisions of the Board will be taken by a simple majority vote; however, a specified list of actions will require the approval of a Supermajority Vote. An action requiring a simple majority vote of the Board may be taken even if none of the directors appointed by Founding Firms have voted in favor of such an action. Most matters subject to a Supermajority Vote will be essentially commercial and business issues, such as the offering of additional equity to new investors, certain capital calls and other dilutive measures, or the

sale or liquidation of the business. Matters relating to market governance, surveillance, discipline, regulatory compliance, and similar oversight issues will not be subject to Supermajority Vote.

In the event that there are two or fewer directors designated by Founding Firms or in the event that Founding Firms cease to own, in the aggregate, at least twenty percent (20%) of the outstanding Common Interests, most of the matters subject to a Supermajority Vote will cease to require approval by a simple majority of Founding Firms, and will instead require only a simple majority of the Board. In addition, in the event that the Founding Firms cease to own, in the aggregate, at least fifteen percent (15%) of the outstanding Common Interests, only actions that would have a materially and disproportionately disadvantageous effect on the Founding Firms will require a Supermajority Vote.

If NYSE Amex's equity interest falls below fifteen percent (15%), NYSE Amex will lose the right to appoint one (or more) directors (as necessary to result in a board evenly split between NYSE Amex and Founding Firms). A Founding Firm may also lose its right to appoint a director under a variety of circumstances.

The Company will have a Founding Firm Advisory Committee (the "Advisory Committee"), which will advise the Board on certain matters, including new products and market structure.

#### *Transfers of Interests*

Transfers of Common Interests will be governed by customary provisions and subject to certain restrictions. In particular, Founding Firms wishing to transfer their Common Interests will be subject to certain limitations on the amount of Common Interests they may transfer in each year. NYSE Amex will have an initial right of first offer to purchase Common Interests that a Founding Firm intends to transfer, at a price at least equal to their fair market value. In the event NYSE Amex does not exercise its right of first offer, the transferring Founding Firm will have the right, subject to certain conditions, to sell its Common Interests to NYSE Amex at a price equal to their fair market value or to sell its Common Interests to a third party. In addition, following the tenth anniversary of the formation of the Company, NYSE Amex will have the right to buy some or all of the Class B Common Interests from the Founding Firms at a price equal to their fair market value.

In the event NYSE Amex intends to transfer any of its Common Interests, the Founding Firms will have certain rights of first offer to purchase these Common Interests. However, no Founding Firm will be able to acquire Common Interests in this way if such acquisition would result in the Founding Firm's equity holdings exceeding nineteen and nine tenths percent (19.9%) of the total equity of the Company.

In the event that NYSE Amex acquires any Class B Common Interests, such Class B Common Interests will automatically be converted into Class A Common Interests. Similarly, in the event any Founding Firms acquire Class A Common Interests, such Class A Common Interests will be automatically converted into Class B Common Interests.

Subject to certain conditions, Members will be obligated to transfer their Common Interests where another Member, acting along or together with other Members, intends to make a transfer of 75% of the then-outstanding Common Interests and the Board, by Supermajority Vote, approves the sale of the Company to a person or entity who is not an affiliate of the Company.

#### *Redemptions of Interests*

The Board may, by Majority Vote,<sup>8</sup> redeem the equity interests of a Founding Firm under specified circumstances, such as (i) a transfer of equity interests by such Founding Firm to certain entities specified in the LLC Agreement, (ii) such Founding Firm's failure to satisfy a certain minimum volume threshold in connection with the Plan (as defined below) during certain twelve-month periods or (iii) such Founding Firm's entry into certain economic arrangements as further detailed below under the heading "Redemption of Interests" coupled with such Founding Firm's failure to satisfy a certain minimum volume threshold in connection with the Plan during certain three-month periods.

<sup>8</sup> A "Majority Vote" is defined as (i) with respect to matters submitted to the Board at a validly called meeting, the affirmative vote by those directors representing greater than fifty percent (50%) of the directors entitled to vote thereon and present in person or by proxy at such meeting, including, in the event that NYSE Amex's percentage ownership of Common Interests exceeds fifteen percent (15%), the affirmative vote of directors representing greater than fifty percent (50%) of the NYSE Amex directors that are present in person or by proxy at the meeting and (ii) with respect to matters submitted to Members at a validly called meeting, the affirmative vote of those Members holding greater than fifty percent (50%) of the Common Interests entitled to vote thereon and present in person or by proxy at such meeting.

#### *Certain Regulatory and Compliance Matters*

The LLC Agreement includes regulatory provisions that govern the actions of the Company, the Member, NYSE Group, NYSE Euronext, NYSE Amex, as SRO for the Options Exchange, and the employees and directors of each of these entities. The Company, NYSE Euronext, NYSE Group, each Member and the officers, directors, agents and employees of each of these entities will be required to comply with Federal securities laws and cooperate with the SEC and NYSE Amex, pursuant to NYSE Amex's regulatory authority. In addition, the Board will adopt corporate compliance policies that will govern the conduct of employees.

NYSE Amex, as SRO for the Options Exchange, will have broad authority to direct any action that it deems necessary or appropriate to fulfill its obligations as an SRO.

#### *Volume-Based Equity Plan*

A volume-based equity plan (the "Plan") will be in place for an initial period of five (5) years and three (3) months following the formation of the Company, pursuant to which each Founding Firm will be entitled to receive, for no additional consideration, a predetermined amount of new Class B Common Interests ("Annual Incentive Shares") based on the degree to which such Founding Firm has satisfied certain minimum volume requirements. The Plan may reallocate the equity interests of the Founding Firms among each other. However, the Plan will not affect the equity holdings of NYSE Amex and the Plan will not increase or decrease the aggregate equity interest of the Founding Firms relative to NYSE Amex. The Company will not allocate Annual Incentive Shares to a Founding Firm if such allocation would result in the Founding Firm holding Common Interests representing in excess of nineteen and nine tenths percent (19.9%) of the total equity of the Company, or any lower percentage that may be imposed under applicable law.

#### *Confidentiality*

Members will be subject to customary confidentiality obligations with respect to information relating to the Company or any Member. Customary exceptions to these obligations will allow disclosure of information to the SEC or to NYSE Amex in its capacity as an SRO.

#### **Capital Contributions**

##### *Regulatory Capital Contributions*

At any time, and from time to time, the Board may *require* each of the Members to participate on a *pro rata* basis in accordance with each Member's Common Interests in calls for additional capital contributions to the Company that may be necessary for the Company to ensure that the Options Exchange maintains, and complies with any regulatory requirements applicable to, its status as a facility of an SRO pursuant to the Act or to satisfy any other regulatory obligation (any such capital call, a "Regulatory Capital Call", and each such contribution, a "Regulatory Capital Contribution"). The Board must provide each Member with not less than thirty (30) days written notice of such Regulatory Capital Call, which notice shall specify (i) the aggregate dollar amount of the Regulatory Capital Call and the individual dollar amount required to be contributed by such Member; (ii) the date by which the Regulatory Capital Contribution must be made; (iii) such Member's percentage ownership of the Common Interests as of the date of the notice; and (iv) the reason for the Regulatory Capital Call.<sup>9</sup>

##### *Voluntary Capital Contributions*

At any time during the period commencing on the effective date of the LLC Agreement, and ending on the second anniversary of that effective date, the Board may solicit the Members to make one or more additional capital contributions to the Company (each such solicitation, a "Voluntary Capital Call", and each such contribution, a "Voluntary Capital Contribution") for the benefit of the Company, up to an amount not to exceed \$5,000,000 in the aggregate in any twelve (12) month period following the effective date of the LLC Agreement (the "Voluntary Capital Call Cap"). Notwithstanding the foregoing, however, the Board may, by Supermajority Vote, among other things, solicit Voluntary Capital Contributions at any time, if such Voluntary Capital Contribution is necessary for the Company to ensure that the Options Exchange maintains, and complies with any regulatory requirements applicable to, its status as a facility of an SRO pursuant to the Act or to satisfy any other regulatory obligation, to the extent of any amount exceeding the Regulatory

<sup>9</sup> Regulatory Capital Contributions required to be made to the Company by the Members cannot exceed \$5,000,000 in the aggregate in any thirty-six (36)-month period following the effective date of the LLC Agreement (the "Regulatory Capital Call Cap").

Capital Call Cap. No Member shall have any obligation at any time to make any Voluntary Capital Contribution.

#### Non-Funding Members

Any Member that fails to make its Regulatory Capital Contribution on or before the payment due date or any Member that elects to participate in a Voluntary Capital Call but subsequently fails to make its Voluntary Capital Contribution on or before the payment due date, as applicable, will be considered a "Non-Funding Member." The unpaid subscription amount will bear interest payable to the Company equal to a specified default interest rate, from and after the applicable payment due date and until such non-payment has been cured by the Non-Funding Member or the Non-Funded Interest (as defined below) has been purchased by another Member or other person or entity as described in the following paragraph. No such interest paid by a Non-Funding Member to the Company will be treated as a capital contribution but will be treated as interest income of the Company.

In addition to the foregoing, upon thirty (30) days written notice by the Company to any Member that becomes a Non-Funding Member (and provided that such non-payment has not been cured by the Non-Funding Member within such 30-day period), the Board, in its sole discretion, may (i) sell to any of the other Members, on a *pro rata* basis, all or any portion of (A) in the case of a Voluntary Capital Call, the Common Interests that the Non-Funding Member would have received had the amount requested been paid in full and (B) in the case of a Regulatory Capital Call, the amount of Common Interests corresponding to the amount requested (in both cases, "Non-Funded Interests"); or (ii) in the event that the entire amount of Non-Funded Interests of the Non-Funding Member is not acquired by the Members pursuant to clause (i) above, so notify the Members and designate one or more persons or entities (subject to the agreement of such persons or entities), which may include Members, to acquire all or any portion of the Non-Funding Member's Non-Funded Interests not so acquired; *provided* that (A) any purchase of such Non-Funded Interest by any Member, in whole or in part, shall result in a corresponding increase to such Member's Common Interest and (B) any purchase of such Non-Funded Interest by a party that is not a Member shall be treated as a transfer by the Non-Funding Member to such person and shall be subject to conditions and limitations in the LLC Agreement relating to

admission of Members and transfers of Interests.

#### Term and Termination

Pursuant to Section 2.3 of the LLC Agreement, the Company shall continue in perpetual existence until dissolved pursuant to the LLC Agreement or the Delaware LLC Act. However, Section 12.1 of the LLC Agreement provides that the Company may be dissolved in the event of (i) a Supermajority Vote by the Board to that effect, (ii) the sale or other disposition of all or substantially all of the Company's assets and the receipt of all consideration therefrom, or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the Delaware LLC Act (involving a situation where it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement); *provided* that no Member may make an application for the dissolution of the Company pursuant to Section 18-802 of the Delaware LLC Act without approval by a Supermajority Vote of the Board. The dissolution of the Company will be effective as of the day on which the event occurs giving rise to the dissolution, but the Company will not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in Section 12.2 of the LLC Agreement (see following paragraph) and the Certificate of Formation of the Company has been canceled.

Section 12.2 of the LLC Agreement provides that, upon the termination and dissolution of the Company, the Board must take all steps necessary and proper to effect an orderly liquidation of the Company's business and shall apply and distribute the net proceeds of such liquidation in the following order of priority: (a) *First*, to creditors, including Members who are creditors (but excluding liabilities to Members for distributions under Section 18-606 of the Delaware LLC Act), to the extent otherwise permitted by applicable law, in satisfaction of liabilities of the Company (other than contingent, conditional or unmatured liabilities for which reserves are established by the Board), whether by payment or the making of reasonable provision for payment thereof, (b) *second*, to the establishment of any reserves determined by the Board to be reasonably necessary or appropriate to provide for any contingent, conditional or unmatured Company liabilities and obligations (which reserves may be paid over to a bank or trust company, as escrow agent, to be held by such escrow agent for the purpose of disbursing such

reserves in payment of the referenced liabilities and obligations) and, at the expiration of such period as the Board shall deem advisable, to pay over the balance thereafter remaining for distribution, (c) *third*, to the holder of Preferred Interests, to the extent of the Priority Claim (as defined below), and (d) *finally*, subject to such other arrangements as the Members may agree, to the Members, *pro rata*, in accordance with their percentage ownership of Common Interests; subject to any applicable limitations imposed by a Member's maximum percentage of distributions as provided in Section 7.5 of the LLC Agreement or such other arrangements as the Members may agree. In the latter situation, any distribution so limited shall be made to the other Members in proportion to their respective percentage ownership of Common Interests.

The "Priority Claim" is the right of the Preferred Interest holder, upon any liquidation, dissolution or sale of the Company or other similar event, to receive the sum of (i) the amount of the non-cash capital contribution for the Preferred Interests identified on Schedule A-1 to the Amended and Restated Contribution Agreement dated as of February 22, 2011, by and among NYSE Euronext, the Company and the Members (the "Contribution Agreement"), reduced by the amount(s) paid by the Company (x) in respect of any redemptions of Preferred Interests pursuant to Section 11.5(a) of the LLC Agreement as described herein under "Redemption of Interests" or (y) pursuant to Section 3.2(i) of the Members Agreement relating to certain redemptions of Class B Common Interests *plus* (ii) any unpaid amount that has accrued on the Preferred Interests. In any winding up and dissolution of the Company, NYSE Amex may elect to receive Company property-in-kind, *provided* that the fair market value of such property-in-kind will be determined by a Supermajority Vote of the Board or, if the Board is unable to so agree, pursuant to an appraisal thereof by an independent valuation firm approved by a Supermajority Vote of the Board. To the extent the fair market value of the Company property distributed to NYSE Amex is in excess of the amount it would otherwise receive under Section 12.2 of the LLC Agreement, it shall make a cash payment to the Company in the amount of the difference, with the proceeds to be distributed, *pro rata*, to all the Members other than NYSE Amex. Section 12.4 of the LLC Agreement establishes that, upon the occurrence of an event of dissolution as described

above, the Company shall be dissolved unless, within fifteen (15) days of such event, those Members representing greater than fifty percent (50%) of the Common Interests agree in writing to continue the business of the Company.

#### Ownership Limitations

Section 4.9 of the LLC Agreement provides that no Member (other than NYSE Amex alone or, subject to receipt of SEC approval pursuant to the rule filing process under Section 19(b) of the Act, together with its Permitted Transferees<sup>10</sup>) shall be permitted to own or vote (alone or together with its affiliates), directly or indirectly, Common Interests in excess of the lower of (x) nineteen and nine-tenths percent (19.9%) of the then issued and outstanding Common Interests (the "19.9% Maximum Percentage") or (y) the maximum amount of Common Interests such Member (alone or together with its affiliates) may own or vote under applicable law and without subjecting the Company to material regulatory obligations or material liabilities or a reasonable likelihood of material regulatory obligations or material liabilities arising as a result of the extent of such ownership or voting interest (such maximum Common Interests a Member (alone or together with its affiliates) may own or vote under this clause (y), the "Alternate Maximum Percentage", and the amount in excess thereof or in excess of the 19.9% Maximum Percentage, as applicable, "Excess Interests").

In the event that the Company believes that a Member other than NYSE Amex (alone or together with its affiliates) has or may, as a result of then-contemplated events, in the near future, have Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Company shall provide such Member with notice of this belief, setting forth the basis for the Company's position, and the Company and such Member shall discuss in good faith the proposed determination. If the Company and such Member agree that such Member (alone or together with its

affiliates) holds Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Member must, within a reasonable period after such agreement is reached, implement remedial measures including those described in the paragraph immediately below. If the Company and a Member fail to reach agreement as to whether the Member (alone or together with its affiliates) holds Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage), the Company shall be entitled to bring a dispute resolution proceeding in accordance with the dispute resolution provisions in Article XV of the LLC Agreement to resolve the dispute; and in the event the Company prevails in any such dispute resolution proceeding, the applicable Interests shall be deemed to be Excess Interests for purposes of the remedial measures described in the paragraph immediately below. In the event a Member (alone or together with its affiliates) holds Excess Interests as a result of exceeding the 19.9% Maximum Percentage, the Member shall, subject to applicable law, implement the remedial measures described in the paragraph immediately below and such Excess Interests shall automatically and immediately constitute Non-voting Common Interests<sup>11</sup> as described in and subject to the paragraph immediately below.

A Member (alone or together with its affiliates) that (x) holds Excess Interests as a result of exceeding the 19.9% Maximum Percentage or (y) pursuant to the paragraph immediately above, agrees that it holds or is found to hold Excess Interests as a result of exceeding the applicable Alternate Maximum Percentage shall promptly implement the following remedial measures accordingly and in a manner consistent with the LLC Agreement and applicable law: (i) the offer of such Excess Interests at a price equal to the *pro rata* portion of the fair market value of the Member's (or its affiliates', if applicable) Common Interests attributable to the Excess Interests: *first*, to the remaining Members (other than NYSE Amex) *pro rata* in accordance with their relative Common Interests; *second*, if the remaining Members do not purchase all such Excess Interests, to NYSE Amex; and *third*, if NYSE Amex does not purchase all such Excess Interests, to

any other person or entity approved by NYSE Amex (which approval must not be unreasonably withheld, conditioned or delayed), subject to the conditions and limitations in the LLC Agreement on the admission of Members, (ii) subject to applicable law, retention of the Excess Interests as Non-voting Common Interests, pursuant to the provisions of Section 7.5 of the LLC Agreement on Restricted Members (as defined and discussed below), or (iii) except in the case of Excess Interests arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage, any other remedial action discussed in good faith by the Member and the Company, in each case, as determined by the relevant Member to be least burdensome. A Member's Excess Interests arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall automatically and immediately constitute, absent regulatory approval (including SEC approval pursuant to the rule filing process under Section 19(b) of the Act) to the contrary, Non-voting Common Interests and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation (each as defined below) shall be adjusted accordingly. Such an adjustment may have the effect of concentrating the Common Interest Percentages of the other Members. The requirements of this provision shall be applied iteratively in the event that any such adjustment would result in any Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage. Subject to applicable law, Excess Interests of a Member that constitute Non-voting Common Interests solely as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall cease to constitute Non-voting Common Interests (and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation shall be adjusted accordingly) in the event that, and to the extent that, (I) such Member (or, if applicable, its affiliates) transfers, in accordance with Article XI (Transfers) of the LLC Agreement, such Excess Interests to another Member or third party that (taking into account such Excess Interests then being transferred) does not hold Common Interests that would constitute Excess Interests in the hands of such transferee Member or third party due to such transferee Member or third party (in each case, alone or together with its affiliates) exceeding the 19.9% Maximum

<sup>10</sup> A "Permitted Transfer" is defined in the LLC Agreement as (i) any transfer of Interests by any Member among any of its affiliates, (ii) any transfer by merger, consolidation or similar business combination or through the acquisition of substantially all of the assets and liabilities of the transferring party (except for a transfer to a person or entity whose assets subsequent to the transfer would be comprised principally of Interests) or (iii) any transfer required under, or effected to enable a Member to be in compliance with, applicable law or the requirements of a governmental authority or any SRO. Any transferee under clauses (i) and (ii) of the previous sentence is a "Permitted Transferee," and any transferee under clause (iii) of the previous sentence is a "Required Transferee."

<sup>11</sup> "Non-voting Common Interests" are defined in the LLC Agreement as Class B Common Interests (i) designated as non-voting at the time of issuance; (ii) deemed to be non-voting pursuant to Section 7.5(b) or Section 7.5(d) of the LLC Agreement; or (iii) held by a Member, constituting Common Interests in excess of the 19.9% Maximum Percentage, absent SEC approval.

Percentage or (II) such Excess Interests cease to be Excess Interests (due to such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage) because of a reduction in such Member's Common Interest Percentage.<sup>12</sup> Notwithstanding the foregoing, nothing in Section 4.9 of the LLC Agreement limits Section 7.5 of the LLC Agreement (Restricted Members) or the ability of a Member to make a Restricted Member Election (as defined below), which shall impose separate and additional limitations with respect to Common Interests covered thereby. NYSE Amex may assign to one of its affiliates the right to purchase Excess Interests pursuant to clause (i) of this paragraph, subject to providing notice to, and receiving approval from, the SEC under Section 19(b) of the Act.

In the event that material regulatory obligations or material liabilities of the Company arise as a result of a Member (alone or together with its affiliates) holding Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage) and such material obligations or liabilities may be mitigated by the Member becoming a Restricted Member pursuant to Section 7.5(a) of the LLC Agreement, the Member will be deemed to have elected to become a Restricted Member upon such obligation or liability arising; *provided* that, to the extent permitted under applicable law and consistent with the proviso in Section 7.5(a)(iii) of the LLC Agreement relating to the reversal of an election to be treated as a Restricted Member, the Member may revoke such election to be a Restricted Member in connection with either (i) the sale of such Member's Interests or (ii) any other remedial action taken by such Member, each as described in the preceding paragraph.

<sup>12</sup> "Common Interest Percentage" is defined in the LLC Agreement as (i) with respect to NYSE Amex or a transferee of Class A Common Interests, the product of (w) the Aggregate Class A Economic Allocation multiplied by (x) a fraction, (A) the numerator of which shall be the number of Class A Common Interests then held by NYSE Amex or the transferee and (B) the denominator of which shall be the number of Class A Common Interests then held NYSE Amex and all such transferees, and (ii) with respect to any Founding Firm or a transferee of Class B Common Interests, the product of (y) the Aggregate Class B Economic Allocation multiplied by (z) a fraction, (A) the numerator of which shall be the number of Class B Common Interests then held by such Founding Firm or the transferee, including, for the purpose of determining any economic entitlement or entitlement to designate a director, any Non-voting Common Interests and (B) the denominator of which shall be the number of Class B Common Interests then held by all Founding Firms and all such transferees, including, for the purpose of determining any economic entitlement or entitlement to designate a director, any Non-voting Common Interests.

### Members and Membership

Section 7.3 of the LLC Agreement provides that, except as otherwise provided in Article XI (Transfers) of the LLC Agreement (discussed below), persons or entities that acquire Common Interests or Preferred Interests in accordance with the terms of, and subject to the restrictions provided in, the LLC Agreement may be admitted from time to time as new Members by Supermajority Vote of the Board, subject to the following: (a) Any new Member must make a capital contribution in such amount and on such terms as the Board deems appropriate based upon the needs of the Company, the net value of its assets, the Company's financial condition, and the benefits anticipated to be realized by such additional Member; and (b) the additional Member must agree to be bound by the terms of the LLC Agreement and the Members Agreement. In addition, pursuant to Section 7.4 of the LLC Agreement, each Member must maintain commercially reasonable policies and procedures, taking into account the structure and organization of its operations, to prevent disclosure of confidential information of the Company by any director, alternate director, observer to the Board or any committee of the Board or member of the Advisory Committee (as defined below) to any other individual appointed by such Member to perform a similar role with respect to, or who is an officer or employee of, a Specified Entity.<sup>13</sup> Any individual designated to

<sup>13</sup> "Specified Entity" is defined in the LLC Agreement as (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (other than NYSE Amex or any of its affiliates) that lists for trading any option contract that competes with a contract listed for trading on the Options Exchange or a contract that is contemplated by the then-current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days of such date, (ii) any person or entity that owns or controls a U.S. securities option exchange or U.S. alternative trading system described in clause (i), and (iii) any affiliate of a person or entity described in clause (i) or (ii) above; *provided* that, in the event of a change in applicable law permitting the execution of transactions in exchange-listed securities options otherwise than on a national securities exchange or facility thereof (including, but not limited to, internalization of orders for exchange-listed securities options or the execution of such orders on an alternative trading system), (x) a system operated by or on behalf of a Founding Firm or its affiliates for purposes of the internalization or crossing of: (i) Orders of customers of such Founding Firm or its affiliates, (ii) orders of such Founding Firm or its affiliates or (iii) orders routed from a retail broker-dealer or retail brokerage unit, shall not be considered a Specified Entity and (y) in addition to the matters covered in clause (x), NYSE Amex and the Founding Firms will negotiate in good faith the terms of an exception from the definition of Specified Entity for any alternative trading system owned solely by an individual

be a director, alternate director, observer to the Board or any committee of the Board, or member of the Advisory Committee may be required to acknowledge in writing the foregoing requirements.

As referenced above, the number of Class A Common Interests and Class B Common Interests that will be issued and outstanding to the initial Members will result in (i) the percentage of the aggregate number of Common Interests represented by the Class A Common Interests (the "Aggregate Class A Economic Allocation") initially being equal to 47.2% and (ii) the percentage of the aggregate number of Common Interests represented by the Class B Common Interests (the "Aggregate Class B Economic Allocation") initially being equal to 52.8%. The Class A Common Interests will also initially represent 47.2% of the aggregate number of Common Interests entitled to vote (such percentage, the "Aggregate Class A Voting Allocation" and together with the Aggregate Class A Economic Allocation, the "Aggregate Class A Allocation"), while the Class B Common Interests will initially represent 52.8% of the aggregate number of Common Interests entitled to vote (such percentage, the "Aggregate Class B Voting Allocation" and together with the Aggregate Class B Economic Allocation, the "Aggregate Class B Allocation"). From time to time, the Aggregate Class A Economic Allocation and the Aggregate Class A Voting Allocation shall be separately or together subject to adjustment upwards or downwards, as applicable, in accordance with the provisions of the LLC Agreement and/or the Members Agreement, as will the Aggregate Class B Economic Allocation and the Aggregate Class B Voting Allocation.

### Restricted Members

Section 7.5 of the LLC Agreement provides that each Member (other than NYSE Amex alone or together with its Permitted Transferees) then owning (alone or together with its affiliates) any Excess Interests (other than as a result of exceeding the 19.9% Maximum Percentage) or then owning an Interest entitling that Member to distributions in excess of the Member's Maximum Percentage (as defined below) of the distributions (the "Capped Distribution Amount") then being made to all Members may from time to time make an irrevocable election ("Restricted Member Election") (but subject to

Founding Firm or its affiliates that performs order crossing in a manner that does not substantially compete with the Options Exchange in terms of market share and other relevant factors.

reversal under certain specific circumstances), by written notice to the Company, to be treated for purposes of the LLC Agreement as a "Restricted Member," solely with respect to such Excess Interests or Capped Distribution Amount. "Maximum Percentage" means, for a Member, the lesser of the 19.9% Maximum Percentage and such Member's Alternate Maximum Percentage, if any. With respect to each Restricted Member, for so long as the election to be a Restricted Member remains in effect:

(i) In the event of any distribution of Class B Common Interests, at the request of that Restricted Member by written notice to the Company, the Restricted Member will receive in lieu of Class B Common Interests, at the Company's sole option based on a Majority Vote of the disinterested directors, either (x) the cash equivalent of such distribution to be paid by the Company within ninety (90) days of the date such distribution would have otherwise been made, and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution or (y) a promissory note from the Company (i) in a principal amount equivalent to the amount of such distribution; (ii) having a maturity determined by Supermajority Vote of the disinterested directors not to exceed 5 years; and (iii) having additional commercially reasonable terms to be determined by Supermajority Vote of the disinterested directors that are consistent with customary market practice (*provided* that the Company shall not enter into any contractual restrictions that specifically and directly limit the Company's ability to repay or redeem such promissory note except as required under applicable law), and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution;

(ii) In the event of any distribution that is *not* a distribution of Class B Common Interests, and if such Restricted Member has so elected, then the amount of any distribution that would otherwise be made to the Restricted Member in excess of the Capped Distribution Amount shall be distributed to all other Members who are entitled to participate in such distribution on a *pro rata* basis with respect to the Common Interests held by such Members and the allocations of net profits and losses shall be adjusted accordingly to reflect each Member's share of such distribution; *provided* that with respect to any Restricted Member, including in the event that such distribution permits any Member to elect to be treated as a Restricted

Member and such Member so elects, the distributions to any such Restricted Member shall not exceed the Capped Distribution Amount; and

(iii) Such Restricted Member agrees to transfer the proceeds of any transfer of Common Interests by that Restricted Member (taking into account any proceeds received by the Restricted Member for previous transfers) in excess of the Restricted Member's Maximum Percentage of the proceeds of such transfer of Common Interests to all other Members who are not Restricted Members on a *pro rata* basis with respect to the number of Common Interests held by such Members; *provided* that with respect to any Restricted Member, including in the event that such transfer permits any Member to elect to be treated as a Restricted Member and such Member so elects, the amount transferred to any such Restricted Member shall be limited so as to not cause the Restricted Member's total ownership interest to exceed the Restricted Member's Maximum Percentage or the Capped Distribution Amount, as applicable.

An election to become a Restricted Member will be binding upon the Restricted Member and its direct and indirect transferees, *provided, however*, that the Restricted Member, in its capacity as a Member and a Restricted Member, may (x) upon written notice to the Company at any time and without precondition, reverse its election with respect to paragraph (ii) above and (y) only under the following circumstances, reverse its election to be treated as a Restricted Member upon written notice to the Company:

(A) The Restricted Member owns such Restricted Member's Maximum Percentage or less of the Common Interests then issued and outstanding (in which case such reversal may occur without any further consent of the Board or any other condition precedent);

(B) With the written approval of the Board granted in the sole discretion of the majority of the disinterested directors; or

(C) The Restricted Member provides the Board with appropriate written notice that such Common Interests have been transferred to the extent permissible under the LLC Agreement (1) as part of a widespread public or private offering where no single transferee (together with its affiliates) acquires more than 2% of the total Common Interests, (2) to an underwriter for the purpose of underwriting a widely distributed public or private offering, (3) in one or more open market transactions effected on a stock

exchange, electronic communication network or similar execution system, or in the over-the-counter market (which may include a sale to one or more broker-dealers acting as market makers or otherwise intending to resell the Common Interests sold to them in accordance with their normal business practices), (4) to an acquirer which has acquired control of a majority of the total Common Interests, or (5) with the written approval of the U.S. Board of Governors of the Federal Reserve System or its staff.

Common Interests with a voting interest in excess of the Maximum Percentage of the then issued and outstanding Common Interests of each Member who elects to be treated as a Restricted Member will be deemed Non-voting Common Interests, and the Aggregate Class A Voting Allocation and Aggregate Class B Voting Allocation will be adjusted accordingly. Non-voting Common Interests will not be included in determining whether the requisite percentage in interest of the Members have consented to, approved, adopted or taken any action pursuant to the LLC Agreement. Except as provided in this paragraph, Non-voting Common Interests will be identical in all regards to all other Common Interests held by Members.

A Member may elect to become a Restricted Member with respect to any of its Class B Common Interests, even if such Class B Common Interests do not constitute Excess Interests. Upon such election, such Class B Common Interests shall be deemed Non-voting Common Interests and the provisions of the preceding paragraph will apply with respect to such Member, *provided* that such Member may only reverse such election under the circumstances described in subparagraph (C) above.

The LLC Agreement specifies that, absent SEC approval, the Excess Interests of a Member (other than NYSE Amex alone or together with its affiliates) arising as a result of such Member (alone or together with its affiliates) exceeding the 19.9% Maximum Percentage shall immediately and automatically constitute Non-voting Common Interests.

Section 7.6 of the LLC Agreement provides that the Company and, to the extent it relates to the Company, each Member, agrees to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to cooperate with NYSE Amex pursuant to its regulatory authority and with the SEC. Furthermore, each Member must take into consideration whether its actions would cause the Options Exchange or the Company to

engage in conduct that fosters and does not interfere with NYSE Amex's or the Company's ability to carry out their respective responsibilities under the Act and to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Members may, upon (A) the affirmative written consent of NYSE Amex (in its capacity as SRO) and (B) a Supermajority Vote of the Board (excluding the vote of the director designated by the Member subject to sanction), suspend or terminate a Member's voting privileges, including the ability to designate directors pursuant to Section 8.1(d) of the LLC Agreement in the event: (i) The Member has materially violated any "Regulatory Matters Provision"<sup>14</sup> or any applicable law; (ii) the Member is subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any suspension or

<sup>14</sup> A "Regulatory Matters Provision" is defined in the LLC Agreement as any of Section 4.9 of the LLC Agreement with respect to provisions related to the 19.9% Maximum Percentage; Section 7.6 of the LLC Agreement relating to Member compliance with the federal securities laws and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 8.1(d)(i) of the LLC Agreement relating to designation of directors to the Board; Sections 8.1(e)(ii) and 8.1(e)(iii) of the LLC Agreement relating to a director's suspension or removal in certain circumstances; Section 8.1(h) of the LLC Agreement relating to the qualification of directors; Section 8.1(m) of the LLC Agreement relating to director compliance with the federal securities laws and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 9.3 of the LLC Agreement prohibiting Members from entering voting trust agreements with respect to their Common Interests; Section 11.8 of the LLC Agreement relating to (i) notice and rule filing requirements to the SEC on any acquisition of Interests that results in a Member's ownership of Common Interests reaching certain threshold levels and (ii) requirements regarding direct and indirect ownership of the Company; Section 13.2(c) of the LLC Agreement granting NYSE Amex and the SEC access to the books and records of the Company; Section 14.1(j) of the LLC Agreement providing for the confidentiality of Confidential Information (as defined below) pertaining to the self-regulatory functions of NYSE Amex; Section 14.1(k) of the LLC Agreement granting NYSE Amex and the SEC access to confidential information; Section 16.1 of the LLC Agreement relating to regulatory approvals and compliance; or Section 16.10 of the LLC Agreement relating to amendments to the LLC Agreement and the requirement to file such amendments with the SEC.

termination, (x) the Company will deliver to the Member a written notice specifying in reasonable detail the basis for such proposed suspension or termination and (y) representatives of the Member will be given an opportunity to address the Board regarding such proposed suspension or termination prior to the Board voting thereon. In the event of a suspension or termination, the director (if any) designated by such Member will immediately cease to be a director and the authorized number of directors will be reduced accordingly.

Article IX of the LLC Agreement provides that meetings of the Members may be called by (i) the Board or (ii) by a Member or Members holding not less than thirty-five percent (35%) of the then issued and outstanding Common Interests. Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting of the Members, describing the purposes for which the meeting is called shall be delivered not fewer than ten (10) days, but not more than sixty (60) days, before the date of the meeting. Such notice must include an agenda specifying in reasonable detail the matters to be discussed at the meeting and identifying any specific items to be considered that require a Supermajority Vote. Except as otherwise provided in the LLC Agreement or under applicable law, Members which both (x) represent greater than forty-five percent (45%) of the Common Interests outstanding and are entitled to vote at such time and (y) constitute an absolute majority of Members entitled to vote at such time, represented in person or by proxy, shall constitute a quorum of Members for purposes of conducting business. Except as otherwise required by the LLC Agreement or applicable law, resolutions of the Members at any meeting of Members shall be adopted by Majority Vote of the Members at such meeting at which a quorum is present.

Section 9.3 of the LLC Agreement prohibits Members from entering into voting trust agreements with respect to their Common Interests.

#### Governance of the Company

Section 8.1(a) of the LLC Agreement establishes the Board, which will be a "manager" of the Company within the meaning of the Delaware LLC Act. Each director shall be entitled to one vote. Section 8.1(b) of the LLC Agreement provides that the Board shall delegate the day-to-day operation of the Company and the management of the business and affairs of the Company to the officers of the Company and NYSE Group, a wholly-owned subsidiary of

NYSE Euronext, in accordance with the NYSE Euronext Agreement pursuant to which NYSE Group will perform certain information technology, operational, financial, compliance, management and other general corporate support services for the Company (except as otherwise provided in the LLC Agreement). The Board shall oversee the conduct and performance of the duties so delegated.

Pursuant to Section 8.1(c) of the LLC Agreement, the authorized number of directors is thirteen (13) as of the effective date of the LLC Agreement. The Board may be expanded by Supermajority Vote of the Board to include any number of independent directors as may be required by applicable law, *provided* that in the event the Board is so expanded, the Board shall determine, by Supermajority Vote, applicable independence criteria in accordance with, among other appropriate considerations, the requirements of applicable law which shall include, for this purpose, SEC guidelines, if any, regarding such criteria. The directors shall be appointed by the Members as described in the immediately following paragraphs and shall hold office until their respective successors are elected and qualified or until their earlier death, resignation or removal. In the event that the Company is not required to appoint independent directors, the Company will authorize one individual to be designated by NYSE Amex to participate as a non-voting observer in meetings of the Board, so long as the Options Exchange is operated as a facility of NYSE Amex.

Under Section 8.1(d) of the LLC Agreement, each Member agrees that it shall vote all of such Member's Common Interests and any other voting equity securities of the Company over which that Member has voting control and shall take all other actions reasonably necessary or desirable within that Member's control (whether in the Member's capacity as a Member, director, member of a Board committee or officer or otherwise, and including attendance at meetings in person or by proxy for purposes of obtaining a quorum and execution of written consents in lieu of meetings), and the Company shall take all necessary and desirable actions within its control (including calling special Board and Member meetings), so that the following persons shall be elected to the Board:

(i) Up to seven (7) representatives designated by NYSE Amex who shall initially be as specified in the LLC Agreement and, after the effective date of the LLC Agreement, such other persons who are designated by NYSE

Amex from time to time pursuant to this clause (i), one of whom may, in NYSE Amex's sole discretion, be the chief executive officer of the Company; *provided* that (x) upon any expansion of the Board to include any independent directors as described above, for so long as NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), NYSE Amex shall have the right to designate a number of additional directors equal to the aggregate number of independent directors added to the Board pursuant to Section 8.1(c) of the LLC Agreement or, if fewer, the largest number of additional directors allowable under applicable law, and the authorized number of directors shall be correspondingly increased and (y) upon any expansion of the Board to include any additional directors appointed by Members other than NYSE Amex pursuant to the LLC Agreement, NYSE Amex shall have the right to designate a number of additional directors equal to the aggregate number of directors so added to the Board and the authorized number of directors shall be correspondingly increased; *provided, further*, that each individual designated by NYSE Amex to serve as a director shall be reasonably acceptable to the Founding Firms; and *provided, further*, that NYSE Amex will appoint at least such number (not to exceed seven (7) directors) as is necessary to ensure that no single Founding Firm's designees to the Board constitute twenty percent (20%) or a greater percentage of the total number of directors on the Board; and

(ii) One (1) representative designated by each Founding Firm authorized to designate a representative pursuant to Section 8.1(d)(ii) of the LLC Agreement, who shall initially be as specified in the LLC Agreement and, after the effective date of the LLC Agreement, such other person who is designated by such Founding Firm from time to time pursuant to this clause (ii); *provided* that each individual designated by the Founding Firms to serve as a director shall be reasonably acceptable to NYSE Amex; *provided, further*, that if such Founding Firm's percentage ownership of Common Interests falls below, in the case of Goldman Sachs and Citadel, five percent (5%), and in all other cases, three percent (3%), the individual designated by such Founding Firm shall immediately cease to be a director, such Founding Firm shall cease to be authorized to designate a director, and the authorized number of directors shall be reduced accordingly; *provided, further*, that if such Founding Firm's Class B Common Interests are subject to

redemption, the Board (A) may require the individual designated by such Founding Firm to resign, (B) may permanently, or for such shorter period as the Board may designate, disqualify such Founding Firm from designating representatives to the Board pursuant to this clause (ii), and (C) pursuant to subclause (A) or (B) above, reduce the authorized number of directors accordingly; *provided* that the affected director shall not be authorized to participate in any such decision by the Board;

(iii) In the event the Board is expanded to include independent directors as described above and NYSE Amex's percentage ownership of Common Interests equals or exceeds fifteen percent (15%), NYSE Amex shall designate one-half of the total number of independent directors to be so included, in consultation with the Founding Firms, and the Founding Firms shall designate one-half of the total number of independent directors to be so included, in consultation with NYSE Amex; *provided* that if the number of independent directors to be so included is odd, NYSE Amex shall designate a number of independent directors that is equal to the number of independent directors designated by the Founding Firms plus one; *provided further* that if (A) two or fewer Members have the right to designate a director pursuant to clause (ii) above or (B) the aggregate Common Interests held by all Founding Firms, excluding any Non-voting Common Interests, falls below fifteen percent (15%) of the then issued and outstanding Common Interests, NYSE Amex shall have the exclusive right to designate all of the independent directors. The independent directors designated by NYSE Amex and the Founding Firms shall be subject to approval by a Supermajority Vote of the Board. In the event that NYSE Amex's percentage ownership of Common Interests is less than fifteen percent (15%), the independent directors shall be appointed by mutual agreement of NYSE Amex and a majority of the Founding Firms; and

(iv) If and for so long as NYSE Amex's then-current percentage ownership of Common Interests is less than fifteen percent (15%), the number of directors designated by NYSE Amex shall be decreased to a number equal to the then-current number of directors designated by Founding Firms, the aggregate number of representatives of the Board to be designated by NYSE Amex shall be decreased accordingly, and the number of directors shall be reduced accordingly, until such time as either (x) one or more Founding Firms become

eligible to designate a director, in which case the aggregate number of representatives of the Board to be designated by NYSE Amex shall simultaneously be increased to a number equal to the number of directors designated by Founding Firms or (y) NYSE Amex's then-current percentage ownership of Common Interests again equals or exceeds fifteen percent (15%), in which case the aggregate number of representatives of the Board to be designated by NYSE Amex shall be increased to a number equal to the number of directors designated by Founding Firms plus one (1) and, in each case, the number of directors shall be increased accordingly.

Section 8.1(e)(i) of the LLC Agreement provides that a director may be removed as a director at any time and for any reason by the Board, pursuant to the written request of the person(s) or entit(ies) entitled to designate such director as discussed above. A director may also be removed for cause (as defined in the LLC Agreement) by Majority Vote of the Board; *provided* that (i) representatives of the Member entitled to designate such director shall be given the opportunity to speak to the Board regarding such proposed removal prior to the Board voting on the removal of such director and (ii) the affected director shall not be authorized to participate in any such decision by the Board. In the event that a director designated by a Founding Firm fails to attend a majority of Board meetings during any 12-month period, the Board may require that Founding Firm to designate a replacement director.

In addition, Section 8.1(e)(ii) of the LLC Agreement provides that the Board may, by Supermajority Vote (excluding the vote of the directors designated by the Member subject to sanction), suspend or terminate a director's service as such to the Company in the event: (A) the director has materially violated any Regulatory Matters Provision or any applicable law or (B) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any such suspension or termination, (x) the Board shall deliver to the Founding Firm that appointed the director a written notice specifying in reasonable detail the basis for the proposed suspension or termination and (y) representatives of the Founding Firm shall be given an opportunity to address the Board regarding such proposed suspension or termination prior to the Board voting thereon. In the event of such suspension or termination, the individual designated by the Founding Firm shall immediately cease to be a director and

the resulting vacancy shall be filled pursuant to Section 8.1(f) of the LLC Agreement (as discussed below).

Section 8.1(e)(iii) of the LLC Agreement provides that any director who becomes subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act) shall be deemed to have automatically resigned from the Board.

Pursuant to Section 8.1(f) of the LLC Agreement, in the event that any director designated pursuant to the terms of the LLC Agreement for any reason ceases to serve as a director during his or her term of office, the resulting vacancy shall be filled by a representative designated by the person or persons entitled to designate such director.

Pursuant to Section 8.1(g) of the LLC Agreement, each Founding Firm will be permitted to appoint an alternate director, who will have the right to serve, act and vote as the director designated by that Founding Firm in the absence of the principal director from time to time in cases of necessity. The alternate will be permitted to attend all meetings of the Board even if the principal director is present at such meetings (it being understood that in such case the alternate will attend as an observer and shall not have the right to act or vote as a director at any such meeting). In the event a director is removed pursuant to Section 8.1(e)(ii) of the LLC Agreement as described above, the then-appointed alternate to such director shall immediately cease to be an alternate and shall, instead, become a director (unless the related Founding Firm appoints another person as its director, in which case the alternate shall remain an alternate). In the event a director is removed pursuant to Section 8.1(d)(ii) of the LLC Agreement as described above, any alternate to such director will immediately cease to be an alternate and will not become a director. To the extent a Founding Firm lacks representation on the Board, that Founding Firm shall have the right to appoint a non-voting observer to the Board.

Section 8.1(h) of the LLC Agreement outlines the basic qualifications of directors and alternate directors. Each individual designated to the Board as a director or as an alternate, prior to serving on the Board, must certify in writing to the Company that he or she is not subject to a "statutory disqualification" within the meaning of Section 3(a)(39) of the Act. Each Founding Firm, prior to designating an individual to the Board (as a director, alternate or observer) must certify in writing to the Company that such

individual is not then a director (or an alternate director or observer to the board or any committee of the board), officer or employee of a "Specified Entity," which is defined, as of any date, as (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (other than NYSE Amex or any of its affiliates) that lists for trading any option contract that competes with a contract listed for trading on the Options Exchange or a contract that is contemplated by the then-current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days of such date, (ii) any person or entity that owns or controls a U.S. securities option exchange or U.S. alternative trading system described in clause (i), and (iii) any affiliate of a person or entity described in clause (i) or (ii) above; *provided* that, in the event of a change in applicable law permitting the execution of transactions in exchange-listed securities options otherwise than on a national securities exchange or facility thereof (including, but not limited to, internalization of orders for exchange-listed securities options or the execution of such orders on an alternative trading system), (x) a system operated by or on behalf of a Founding Firm or its affiliates for purposes of the internalization or crossing of: (i) orders of customers of such Founding Firm or its affiliates, (ii) orders of such Founding Firm or its affiliates or (iii) orders routed from a retail broker-dealer or retail brokerage unit, shall not be considered a Specified Entity and (y) in addition to the matters covered in clause (x), NYSE Amex and the Founding Firms will negotiate in good faith the terms of an exception from the definition of Specified Entity for any alternative trading system owned solely by an individual Founding Firm or its affiliates that performs order crossing in a manner that does not substantially compete with the Options Exchange in terms of market share and other relevant factors. In the event an individual designated by a Founding Firm or appointed as an alternate becomes a member of the board of directors or similar governing body of a Specified Entity, that individual shall immediately cease to be a director, alternate or observer, as applicable, and the resulting vacancy shall be filled pursuant to the applicable procedures described above.

As provided in Section 8.1(i) of the LLC Agreement, a quorum of the Board for purposes of conducting business

consists of a combination of the directors representing greater than fifty percent (50%) of the votes of all directors who are elected and entitled to vote on such matter under the LLC Agreement, including, in the case of any matter subject to a Supermajority Vote, a combination of directors representing greater than fifty percent (50%) of the votes of all directors designated by Founding Firms. At all times when the Board is conducting business at a meeting of the Board, a quorum must be present at such meeting. If a quorum shall not be present at any meeting of the Board, then the directors present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present, *provided* that if, at any duly called meeting wherein a matter subject to a Supermajority Vote is being considered, a quorum is not met solely due to the fact that a requisite number of Founding Firm directors are not present, such meeting shall be rescheduled on, absent exigent circumstances, at least three (3) business days' prior written notice of such rescheduled meeting and, for purposes of such rescheduled meeting, the absence of the requisite number of Founding Firm directors shall not prevent the Board from taking action by Supermajority Vote. A director may vote or be present at a meeting either in person or by proxy.

The matters specified on Schedule 8.1(i)(v) of the LLC Agreement may only be taken (whether by the Company or any subsidiary) with approval by a Supermajority Vote of the Board; *provided* that any matter excepted from that schedule by any item on the schedule shall be deemed to be excepted from all items on the schedule except where expressly covered by another item on such schedule. Certain matters specified in Schedule 8.1(i)(v) of the LLC Agreement do not require a Supermajority Vote where NYSE Amex, acting in its capacity as an SRO, requires that such action be taken. These matters are (i) material amendments to the LLC Agreement or any other governing document of the Company or any subsidiary; (ii) approval of a capital expenditure (other than those approved in connection with the annual budget) that in the aggregate would exceed \$3 million, (iii) entering into, amending in any material respect or terminating any material contract and (iv) any material change to fees charged by the Options Exchange. In the event that at any given time, (A) two or fewer Founding Firms have the right to designate a director or (B) the aggregate

number of Class B Common Interests held by all Founding Firms, excluding Non-voting Common Interests, falls below twenty percent (20%) of the then issued and outstanding Common Interests, the list of matters that may be taken only with approval by a Supermajority Vote of the Board shall include only those actions specified in items 8, 12, 15, 16, 24 and 25 on Schedule 8.1(i)(v) of the LLC Agreement,<sup>15</sup> provided that in the event that the aggregate number of Class B Common Interests held by all Founding Firms, excluding Non-voting Common Interests, falls below fifteen percent (15%) of the then issued and outstanding Common Interests, a Supermajority Vote of the Board on such actions shall only be required to the extent that any such action would have a materially and disproportionately disadvantageous effect on the economic or voting rights of the Founding Firms; provided further that a material change to the pricing of the NYSE Euronext Agreement, subject to the provisions therein, that is not in good faith consideration of (i) documented additional or enhanced services (subject to such additional or enhanced services being provided at

<sup>15</sup> The six specified items are (1) material amendments to or termination of any of the NYSE Euronext Agreement; (2) material amendments to the LLC Agreement or any other governing document of the Company or any subsidiary (including to increase/decrease the number or makeup of the directors) other than any amendment directed by NYSE Amex in its capacity as an SRO in accordance with Section 16.1(a) of the LLC Agreement; (3) approval of any material related party transactions except (i) any transaction or arrangement that has been approved pursuant to a different item on Schedule 8.1(i)(v) of the LLC Agreement or explicitly excluded from approval by any item on that schedule, (ii) participation in any cash pooling program of NYSE Euronext and any of its affiliates, or (iii) any transaction or arrangement that requires the Company or any subsidiary to receive services under the NYSE Euronext Agreement; (4) approval of any dividend policy and any declaration, allocation or distributions of profits or capital other than a tax distribution and other than pursuant to the terms of the LLC Agreement or a Board adopted (by Supermajority Vote) dividend policy (and for the avoidance of doubt, other than the payment of the annual coupon on the Preferred Interest); (5) any action that would be likely to result in material change in the legal or tax structure of the Company or any subsidiary or entering into any new business that would subject the Options Exchange to a regulatory regime that previously it was not subject to and that would impose on Members, in their capacity as members, material additional regulatory obligations; and (6) any material change to fees charged by the Options Exchange other than any amendment directed by NYSE Amex in its capacity as an SRO in accordance with Section 16.1(a) of the LLC Agreement, to fund the operations and/or the regulation of the Options Exchange. An action directed by NYSE Amex in accordance with Section 16.1(a) of the LLC Agreement includes any action NYSE Amex deems necessary or appropriate to fulfill its obligations as an SRO and is not limited to those actions required by applicable law.

cost) or (ii) a documented increase in the aggregate cost of the services provided thereunder (net of any reductions in other costs of services provided thereunder) will *per se* be deemed to have a materially and disproportionately disadvantageous effect on the economic rights of Founding Firms.

Pursuant to Section 8.3 of the LLC Agreement, the Board will establish on the effective date of the LLC Agreement the Advisory Committee comprised of natural persons having the capacity to provide advice to the Board, which advice the Board will consider in good faith but shall not be bound by, with respect to subjects identified by the Board from time to time, including new products and market structure.

The authorized number of Advisory Committee members is initially nine (9), but may be increased or decreased by Majority Vote of the Board; provided, that at all times each Founding Firm shall be entitled to have one (1) representative on the Advisory Committee (except as otherwise provided in the LLC Agreement). The Advisory Committee members shall be appointed by the Members as follows: two (2) Advisory Committee members appointed by NYSE Amex and one (1) Advisory Committee member appointed by each Founding Firm. Advisory Committee members shall hold office until their respective successors are appointed or until their earlier death, resignation or removal.

Any Advisory Committee member may resign at any time and may be removed at any time and for any reason by the Board, at the request of the Member entitled to appoint such Advisory Committee member. In the event that any Advisory Committee member for any reason ceases to serve as an Advisory Committee member during his or her term of office, the resulting vacancy shall be filled by the Member entitled to appoint such Advisory Committee member.

Each individual designated to the Advisory Committee, prior to serving on the Advisory Committee, shall certify in writing to the Company that he or she is not subject to a "statutory disqualification" within the meaning of Section 3(a)(39) of the Act. Each Founding Firm, prior to designating an individual to the Advisory Committee shall certify in writing to the Company that such individual is not then a director (or an alternate director or observer to the board or any committee of the board), officer or employee of a Specified Entity. In the event an individual designated to the Advisory Committee becomes a member of the

board of directors or similar governing body of a Specified Entity, such individual shall immediately cease to be an Advisory Committee member and the resulting vacancy shall be filled as described above.

#### Transfers of Interests

Article XI of the LLC Agreement and Article III of the Members Agreement contain numerous requirements and restrictions relating to transfers of Interests by a Member. Section 11.1 of the LLC Agreement provides that the admission of any substitute Member will not become effective until (i) the Board gives its written consent, which shall be deemed given with respect to transfers made in accordance with Section 4.9 of the LLC Agreement relating to ownership limitations and Sections 11.3 and/or 11.4 of the LLC Agreement (whose provisions are discussed below) and/or Sections 3.2, 3.3 and/or 3.4 of the Members Agreement (whose provisions are discussed below) and (ii) such substitute Member and the withdrawing Member and/or the transferor Member, as the case may be, shall have executed, acknowledged and delivered such instruments as are required by the Board. Pursuant to Section 11.1 of the LLC Agreement, the additional or substitute Member shall thereafter have all of the rights and obligations of a Member and may, in the sole discretion of the Board, be deemed a Founding Firm and granted all of the rights and obligations of a Founding Firm. Further, unless approved by the Board, no transfer of Common Interests shall be permitted, nor shall any transferee become a beneficial owner of Common Interests pursuant to a transfer, if that transfer (i) could cause the Company to be treated as a publicly traded partnership within the meaning of Section 7704 of the Internal Revenue Code of 1986, as amended (the "Code"); or (ii) would result in the sale or exchange of fifty percent (50%) or more of the total Interests in the Company's capital and profits in one or more transactions in the aggregate within a 12-month period. No transfer of shares to any person or entity that is a Sanctioned Person will be permitted. A "Sanctioned Person" is a person or entity that the United States, the United Nations, Switzerland or the European Union (or any of its member states) has subjected to economic sanctions such as (i) blocking of assets, (ii) prohibiting any transactions with or involving such person or entity or (iii) any other regulatory action that restricts the ability of another person or entity lawfully to engage in business with,

make payments or distributions to, or receive payments or contributions from, such person or entity.

Section 11.2 of the LLC Agreement and Section 3.1 of the Members Agreement provide that no Member, or any assignee or successor in interest of any Member, will be permitted to sell, assign or otherwise transfer any Common Interests to any third party except, (i) in the case of a transfer of Class A Common Interests or Class B Common Interests, as applicable, pursuant to Section 4.9 of the LLC Agreement relating to ownership limitations or Sections 11.3, 11.4 or 11.6 of the LLC Agreement (whose provisions are discussed below) or Sections 3.3 or 3.4 of the Members Agreement (whose provisions are discussed below) or (ii) in the case of a transfer of Class B Common Interests, subject to Section 3.2 of the Members Agreement (whose provisions are discussed below), with the prior written consent of directors representing a Majority Vote of the Board without regard to the directors appointed by the Member or Members seeking such consent (which consent (a) may be withheld with or without cause in the Board's sole discretion in the case of a transferee that is not a Qualified Transferee<sup>16</sup> and (b) may not be unreasonably withheld, conditioned or delayed in the case of a transferee that is a Qualified Transferee); *provided*, in each case, that no such transfer may be made to any person or entity whose affiliation with the Company would, as reasonably determined by NYSE Amex, cause reputational damage to NYSE Amex or any of its affiliates. In addition, also subject to Section 11.3 of the LLC

<sup>16</sup> A "Qualified Transferee" is defined as (i) with respect to a transfer of Class B Common Interests pursuant to Section 3.2 of the Members Agreement, any person or entity that meets all of the following criteria: (a) such person or entity is not a Specified Entity, (b) the affiliation of such person or entity with the Company would not, as reasonably determined by NYSE Amex, cause reputational damage to NYSE Amex or any of its affiliates, and (c)(I) such person or entity can reasonably be expected to provide either (A) material liquidity to the Options Exchange or (B) other material commercial or strategic support to the Company or (II) NYSE Amex provides its prior written waiver to satisfaction of the conditions specified in clause (c)(I) of this definition, which waiver shall not be unreasonably withheld, conditioned or delayed or (ii) with respect to a transfer of Class A Common Interests pursuant to Section 3.3(a)(ii) of the Members Agreement, any person or entity that meets all of the following criteria: (a) the affiliation of such person or entity with the Company would not, as reasonably determined by NYSE Amex, cause reputational damage to the Members or the Company, and (b) such person or entity can reasonably be expected to provide either (A) material liquidity to the Options Exchange or (B) other material commercial or strategic support to the Company.

Agreement, no transfers of Class B Common Interests shall be permitted to a Specified Entity; *provided*, subject to the provisions of Section 11.4(c) of the LLC Agreement relating to such transfers, Class B Common Interests may be transferred to a Specified Entity if such transfer is a Permitted Transfer. No equity securities of the Company may be pledged except on terms and conditions satisfactory to the Board.

Following any transfer of Class A Common Interests or Class B Common Interests (including redemptions of the latter by the Company), the Aggregate Class A Allocation, the Aggregate Class B Allocation and each Member's percentage ownership of the Common Interests will be adjusted as provided in Section 11.2(b) of the LLC Agreement. Upon any transfer of Class A Common Interests to the Founding Firms or Class B Common Interests to NYSE Amex or its affiliates, as applicable, such Class A Common Interests or Class B Common Interests, as applicable, shall cease to be Class A Common Interests or Class B Common Interests, as applicable, and shall instead become Class B Common Interests or Class A Common Interests, respectively. Unless waived at the discretion of the Board, an opinion of counsel will be required in connection with the transfer of Interests by a Member stating that the transfer would not violate any Federal securities laws or any State or provincial securities or "blue sky" laws (including any investor suitability standards) applicable to the Company or the Interest to be transferred, or cause the Company to be required to register as an investment company under the Investment Company Act of 1940, as amended, or cause the Company to become a publicly traded partnership under Section 7704 of the Code.

Section 11.3 of the LLC Agreement provides for "drag-along rights" with respect to Common Interests being sold under certain circumstances. Specifically, if (i) a Member (the "Selling Member"), acting alone or together with any other Members, intends to make a transfer of seventy-five percent (75%) or more of the then-outstanding Common Interests (other than by a public offering or a transfer to a Permitted Transferee), and (ii) the Board, by Supermajority Vote, approves a sale of the Company to a person or entity that is not an affiliate of the Company (any such transfer of Common Interests, an "Approved Sale"), then (x) the Selling Member or the Board (as applicable) may deliver written notice to the Members notifying them of the exercise of the provisions described in Section 11.3 of the LLC Agreement, and

(y) all the Members (other than the Selling Member(s)) shall be obligated to participate in such transfer on a *pro rata* basis and/or to consent to, vote in favor of and raise no objections against the sale of the Company, as applicable. Additional provisions of Section 11.3 of the LLC Agreement require each Member to take certain affirmative actions in connection with an Approved Sale, such as making certain representations and warranties and to enter into certain indemnification obligations. Further, each holder of Common Interests shall, to the extent requested by the Company, pay such holder's *pro rata* portion of the expenses incurred by the holders in connection with an Approved Sale.

Section 11.4(a) of the LLC Agreement provides that the restrictions on transfers of Interests specified in Article XI of the LLC Agreement do not apply to Permitted Transfers (other than those restrictions in Section 11.1(c)(ii) relating to the admission of substitute Members, those in Section 11.1(d) relating to transfers that could cause the Company to be treated as a publicly traded partnership or would result in the sale or exchange of 50% or more of the total Interests in the Company's capital and profits within a 12-month period, those in Section 11.2(d) relating to potential violations of Federal, State or local securities laws or transfers that could cause the Company to be required to register as an investment company, those in Section 11.8 relating to (i) notice and rule filing requirements to the SEC on any acquisition of Interests that results in a Member's ownership of Common Interests exceeding certain thresholds and (ii) requirements regarding direct and indirect ownership of the Company and the rights triggered by Section 11.5(b) relating to the Company's right to redeem any or all of a Member's Class B Common Interests). In the case of a transfer required under, or effected to enable a Member to be in compliance with, applicable law or the requirements of a governmental authority or any SRO, any Founding Firm that is so required to make any such transfer shall submit the names of any potential transferees to the Board along with any information reasonably requested by the Board, and the Board shall identify which, if any, of the rights and obligations of a Founding Firm such potential transferees would have and any reasonable and conforming amendments to the LLC Agreement that would be appropriate as a result thereof and, in the event one of such transferees actually becomes a transferee pursuant to such transfer, then that transferee

shall have the rights and obligations of a Founding Firm so determined by the Board, *provided* that (x) the Board shall not unreasonably withhold, condition or delay its consent to granting such Required Transferee the rights of a Founding Firm, and (y) the transferring Founding Firm shall not have an obligation to be responsible for the performance of such Required Transferee under the LLC Agreement.

Pursuant to Section 11.4(c) of the LLC Agreement, in the event of a Permitted Transfer to a Specified Entity by a Founding Firm, the Board may:

(i) Require any individual, alternate or observer appointed by or representing such Founding Firm to the Board or individual appointed by such Founding Firm to the Advisory Committee to resign; (ii) disqualify such Specified Entity from voting for individuals to serve on the Board or the Advisory Committee (permanently or for such shorter period as the Board may designate), and (iii) redeem such Specified Entity's Interests pursuant to Section 11.5(b)(iii) of the LLC Agreement.

Section 3.2(a) of the Members Agreement provides that, each year, Founding Firms will be able to transfer, outside of a Public Offering, a certain amount of Class B Common Interests during a 3-week period commencing on the day that NYSE Euronext files its Form 10-K with the SEC (such period, the "Sale Period"). This provision does not restrict Permitted Transfers.

Pursuant to Section 3.2(b) of the Members Agreement, NYSE Amex will deliver to the Founding Firms relevant financial information for purposes of determining the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests the Founding Firms seek to transfer. Any Founding Firm that wishes to transfer any of its transferrable Class B Common Interests will disclose, by written notice to NYSE Amex and the other Founding Firms, the amount of Common Interests it intends to transfer. NYSE Amex may, by written notice to the transferring Founding Firm, elect to offer to purchase such Common Interests at a price equal to or greater than the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests. NYSE Amex may, in lieu of consummating the transfer contemplated hereunder, cause the Company to redeem any or all of such Common Interests at the same price and

on the same terms and conditions as were negotiated by NYSE Amex and the transferring Founding Firm. Any redemption by the Company pursuant to this provision shall be funded exclusively by the Redemption Reserve (as defined below) until the Redemption Reserve is exhausted, and thereafter no redemption pursuant to this provision may be made by the Company.

Pursuant to Section 3.2(c) of the Members Agreement, in the event that the transferring Founding Firm elects to reject NYSE Amex's offer, NYSE Amex elects not to make an offer, or the transfer has not occurred within the specified time period, the transferring Founding Firm may:

(i) Transfer such Common Interests to a third party; *provided* that no transferee under this provision, shall acquire the Founding Firm Right (as defined below) unless, in such transfer, such transferee acquires all of the Class B Common Interests of the transferring Founding Firm;

or  
(ii) Require that NYSE Amex acquire such Common Interests at a price equal to the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests (this right to require NYSE Amex to acquire the Common Interests, the "Founding Firm Right"). NYSE Amex may cause the Company to redeem any or all of such Common Interests at the same price and on the same terms and conditions (as applicable) as were negotiated by NYSE Amex and the transferring Founding Firm. Any such redemption by the Company pursuant to this provision shall be funded exclusively by the Redemption Reserve (as defined below) until the Redemption Reserve shall be exhausted, and no other funds of the Company may be used to fund any redemption by the Company pursuant to this provision. Subject to Section 4.9 of the LLC Agreement, which governs ownership limitations, NYSE Amex may assign to one of its affiliates the obligation to purchase Common Interests pursuant to the Founding Firm Right. Upon the acquisition of any Class B Common Interests by an affiliate pursuant to such an assignment, such Class B Common Interests will instead become Class A Common Interests in accordance with Section 11.2 of the LLC Agreement.

Pursuant to Section 3.2(d) of Members Agreement, if (x) a transferring Founding Firm desires to exercise a Founding Firm Right and (y) prior to

notifying NYSE Amex of its Founding Firm Right, NYSE Amex has notified in writing such transferring Founding Firm that it has identified one or more bona fide third party purchasers to which such Common Interests could be transferred pursuant to Section 3.1 of the Members Agreement and that are interested in purchasing all of such transferring Founding Firm's Common Interests (such sale, an "Alternative Sale"), then such transferring Founding Firm shall engage in good faith discussions and negotiations with respect to the sale of the Common Interests; *provided* that (A) the transferring Founding Firm shall not be obligated to transfer its Common Interests at a price less than the fair market value of such Common Interests (nor will it insist on a higher price than such fair market value) and (B) such transfer shall be on terms no less favorable to the transferring Founding Firm than the terms agreed to between NYSE Amex and such transferring Founding Firm.

Section 3.2(e) of the Members Agreement provides that the transferring Founding Firm must notify the Company of its intent to either pursue the Alternate Sale or exercise the Founding Firm Right, *provided* that if such transferring Founding Firm determines to pursue an Alternate Sale, such transferring Founding Firm shall forfeit the right to exercise the Founding Firm Right with respect to the applicable Sale Period.

Section 3.2(f) of the Members Agreement provides that NYSE Amex may elect to acquire any of the Class B Common Interests to be purchased by it pursuant to Section 3.2 of the Members Agreement by installment payments: one-third of the purchase price payable upon tender and the remainder in equal payments made on each of the two succeeding calendar year anniversaries of such date of tender, with the unpaid portion of the purchase price bearing interest at a specified rate, reset daily and payable on each payment date. Notwithstanding any installment payment, NYSE Amex shall become the owner of the entirety of such Class B Common Interests and the transferring Founding Firm shall cease to be a Member of the Company with respect to such Class B Common Interests upon tender and payment by NYSE Amex of the first installment payment. In the event that NYSE Amex causes the Company to redeem such Class B Common Interests pursuant to Sections 3.2(b)(iii) or 3.2(c)(ii) of the Members Agreement, the Company shall not be entitled to acquire such Class B

Common Interests by installment payments.

Section 3.2(h) of the Members Agreement provides that, in the event that the financial information regarding the Company delivered pursuant to Section 3.2(b) of the Members Agreement is not provided at least five (5) business days prior to end of the Sale Period, NYSE Amex shall have the right to rescind its offer to purchase the Common Interests or the transferring Founding Firm shall have the right to rescind its election to exercise its Founding Firm Right, if the initial determination of the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by the Class B Common Interests the Founding Firms seek to transfer differs by more than an agreed percent from the final determination.

A redemption of Class B Common Interests by the Company under Sections 3.2(b)(iii) or 3.2(c)(ii) of the Members Agreement is required to be funded by the Redemption Reserve (originally funded by NYSE Amex). Pursuant to Section 3.2(i) of the Members Agreement, NYSE Amex has the right to determine the size of the increase in the Aggregate Class A Allocation (and corresponding decrease in the Aggregate Class B Allocation) and, thereby, (x) cause the Company to treat such a redemption as if it were a purchase of Class B Common Interests by NYSE Amex, by directing an increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) equal to the entire percentage represented by the Class B Common Interests so redeemed; (y) cause the Company to treat such a redemption as an ordinary redemption, by directing only a pro rata increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) proportional to the aggregate Class A and Class B allocations; or (z) cause the Company to treat such a redemption as a hybrid purchase and redemption, by directing a disproportional increase in the Aggregate Class A Allocation (and a corresponding decrease in the Aggregate Class B Allocation) that is less than the entire percentage represented by the redeemed Class B Common Interests.<sup>17</sup>

<sup>17</sup> Consider, by way of example, an Aggregate Class A Allocation of 60% and an Aggregate Class B Allocation of 40% prior to a redemption of Class B Common Interests corresponding to 10% of the aggregate number of Common Interests. If NYSE Amex elected to treat such a redemption as though it were a purchase of these Class B Common Interests by NYSE Amex, it could direct an increase in the Class A Allocation equal to the entire 10%

If NYSE Amex elects to receive an upward adjustment of the Aggregate Class A Allocation Percentage described above, the Priority Claim of NYSE Amex will be reduced by the amount paid by the Company that is attributable to the excess of such allocation over the allocation NYSE Amex would have received on a pro rata basis.

The Company is required to update and distribute to each Member a revised Members' Schedule reflecting the adjustments made pursuant to Section 3.2(i) of the Members Agreement. Any Member that would exceed the 19.9% Maximum Percentage as a result of these adjustments will be subject to the provisions of Section 4.9(c) of the LLC Agreement.

Section 3.2(j) of the Member's Agreement provides that, in the event that the effective date of the LLC Agreement occurs on or after March 11, 2011 and before June 30, 2011, then, solely with respect to the Sale Period occurring in 2011, (i) the phrase "during any Sale Period" in Section 3.2(a) of the Members Agreement shall be deemed to be a reference to "during the 10 day period following the later of (x) effective date of the LLC Agreement and (y) the day on which NYSE Euronext files its Form 10-K with the SEC," (ii) NYSE Amex and the Company shall deliver on the effective date of the LLC Agreement the financial information specified in Section 3.2(b)(i) of the Members Agreement and required to be delivered by NYSE Amex and the Company, respectively, prior to or concurrent with the start of the Sale Period, (iii) any disputes referred to in Section 3.2(b)(i) of the Members Agreement shall be resolved as promptly as practicable following the effective date of the LLC Agreement, and (iv) the reference to "end of the Sale Period" in Section 3.2(h) of the Members Agreement shall

represented by the redeemed Class B Common Interests. The result would be an Aggregate Class A Allocation of 70% and an Aggregate Class B Allocation of 30%.

Alternatively, if NYSE Amex elected to treat such a redemption as an ordinary redemption, the 10% represented by the redeemed Class B Shares would effectively cease to exist and the Aggregate Class A Allocation would increase to (60/90)% or 66.6% (and the Aggregate Class B Allocation would decrease to (30/90)% or 33.3%). NYSE Amex could cause this result by directing a pro rata increase to the Aggregate Class A Allocation (and corresponding decrease in the Aggregate Class B Allocation), proportional to the aggregate Class A and Class B allocations.

Finally, if NYSE Amex elected a hybrid treatment, it could direct that the Aggregate Class A Allocation be increased to a value between 66.6% and 70% (and that the Aggregate Class B Allocation be correspondingly decreased). As further described below, such a direction would reduce the Priority Claim by the amount paid in respect of the allocation in excess of 66.6%.

be deemed to be a reference to the end of the period referred to in clause (i) of this paragraph.

Section 3.3 of the Members Agreement provides for a limited "right of first offer" exercisable by each Founding Firm with respect to any Common Interests NYSE Amex proposes to transfer. Pursuant to Section 4.9 of the LLC Agreement, no Founding Firm will be permitted to so acquire Common Interests if such acquisition would result in the Founding Firm holding Excess Interests.

Pursuant to Section 3.3(a) of the Members Agreement, in the event that NYSE Amex intends to transfer any Class A Common Interests (other than by a Public Offering or a transfer to a Permitted Transferee), NYSE Amex shall deliver a written notice to the Founding Firms disclosing the amount of Class A Common Interests proposed to be transferred and the identity of the prospective transferee, which transferee shall be an NYSE Amex Qualified Transferee.

Pursuant to Section 3.3(b) of the Members Agreement, each Founding Firm may elect to offer to purchase (each such Founding Firm, an "Offering Founding Firm"), by written notice to NYSE Amex, its *pro rata* portion of the Class A Common Interests proposed to be so transferred. If the Founding Firms have not elected to fully purchase all of the Interests proposed to be transferred, NYSE Amex shall provide written notice to all Offering Founding Firms specifying the number of remaining Class A Common Interests, and each Offering Founding Firm may elect to purchase such remaining Class A Common Interests by written notice to NYSE Amex; *provided* that if the Offering Founding Firms collectively elect to purchase more than the remaining number of Class A Common Interests, each Offering Founding Firm shall be entitled to purchase its *pro rata* portion thereof (with such *pro rata* portion determined solely by reference to the Offering Founding Firms' respective percentage of Common Interests). The Founding Firms' right to purchase Class A Common Interests pursuant to this provision shall be contingent on the purchase by one or more Founding Firms of all of the Class A Common Interests proposed to be transferred by NYSE Amex. The Offering Founding Firms shall collectively determine the proposed price and such other terms and conditions of the proposed transfer. If NYSE Amex rejects the offer(s) of the Founding Firm(s), NYSE Amex may transfer such Class A Common Interests to the prospective transferee identified

by NYSE Amex in its notice at a price greater than the price offered by the Offering Founding Firms and on other terms and conditions no more favorable to the transferee(s) thereof than the terms offered by the Founding Firms. In the event that the Founding Firms elect not to make an offer, NYSE Amex may transfer such Class A Common Interests to the prospective transferee identified by NYSE Amex at a price and on other terms and conditions as determined by NYSE Amex.

Pursuant to Section 3.3(c) of the Members Agreement, prior to, and subject to the completion by NYSE Amex of a transfer of Class A Common Interests that would result in NYSE Amex and its affiliates, in the aggregate, ceasing to own at least an agreed percent of the Aggregate Class A Allocation (such transfer a "Complete Transfer") (other than pursuant to Section 3.3(d) of the Members Agreement described below), the Members and NYSE Euronext shall, acting reasonably and in good faith, consider and implement any applicable and necessary amendments to the Members Agreement and the LLC Agreement. Until such time as NYSE Amex has completed a Complete Transfer, NYSE Euronext shall provide to or procure services for the Company materially similar to those provided by NYSE Group pursuant to the NYSE Euronext Agreement and on the pricing terms and other terms provided in the NYSE Euronext Agreement. Upon a Complete Transfer, at NYSE Euronext's discretion, the NYSE Euronext Agreement may be terminated or assigned and the NYSE Amex Qualified Transferee shall agree to provide to or procure services for the Company or NYSE Euronext shall agree to continue to provide such services pursuant to such terms. NYSE Amex shall reasonably compensate the Company to the extent the NYSE Amex Qualified Transferee agrees to provide or procure services on pricing terms less favorable to the Company or on other terms which are materially more disadvantageous to the Company than those provided for by the NYSE Euronext Agreement. NYSE Amex shall continue to provide services or compensate the Company as described above for a period of time equal to the lesser of (x) four years from the time of such transfer and (y) the minimum time necessary, at the time of such transfer, for all Founding Firms to transfer their Class B Common Interests in accordance with the limitations of Section 3.2(a) of the Members Agreement, assuming such Founding Firms transfer the maximum amount of

Class B Common Interests permitted thereunder as quickly as permitted thereunder. Following such period, to the extent not previously terminated or assigned, the NYSE Euronext Agreement shall terminate.

Section 3.3(d) of the Members Agreement provides that, in the event of a Complete Transfer by NYSE Amex to one of its affiliates, such transferee shall be deemed to be NYSE Amex for all purposes under the Members Agreement and the LLC Agreement and be subject to the same rights and obligations as NYSE Amex thereunder, except in respect to NYSE Amex's rights and obligations as the SRO of the Options Exchange, which rights and obligations shall remain with NYSE Amex irrespective of any such Complete Transfer.

Section 3.4 of the Members Agreement provides for a "call option" exercisable by NYSE Amex. Specifically, the Members grant NYSE Amex, the right and the option to require the Members (other than NYSE Amex) (and a transferee of a Member or a transferee of a transferee) collectively to transfer to NYSE Amex any or all of the aggregate Class B Common Interests held by all Members (other than NYSE Amex) (and such transferees) at a price equal to the *pro rata* portion of the fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests (such right, the "Call Option"). NYSE Amex shall have the right, but not the obligation, to exercise the Call Option, in whole or in part, in its sole discretion at any time on or after the tenth anniversary of the effective date of the LLC Agreement. Each Member (other than NYSE Amex) (and each such transferee, if any) shall tender to NYSE Amex such person's *pro rata* portion of the Class B Common Interests NYSE Amex desires to purchase and NYSE Amex shall pay to each such Member (other than NYSE Amex) (and transferee) the purchase price. Subject to Section 4.9 of the LLC Agreement, which governs ownership limitations, NYSE Amex may assign to one of its affiliates the right to purchase Class B Common Interests pursuant to the Call Option. Upon the acquisition of any Class B Common Interests by an affiliate pursuant to such an assignment, such Class B Common Interests will instead become Class A Common Interests in accordance with Section 11.2 of the LLC Agreement.

#### Redemption of Interests

Section 11.5(a) of the LLC Agreement provides that the Company may, by

Majority Vote of the Board, redeem any or all of the Preferred Interests at any time; *provided* that only such funds as are available in the Redemption Reserve may be used to fund any such redemption. The "Redemption Reserve" is an independent cash reserve established by the Board as of the effective date of the LLC Agreement and which will be designated for the sole purpose of funding any redemptions of (i) Preferred Interests (at any time, by Majority Vote of the Board) or (ii) Class B Common Interests, and shall not be used for any other purpose. The amount of the Redemption Reserve will be agreed upon by the Members and will be increased to the extent of any amount accrued and unpaid on the unpaid Priority Claim.

With respect to the Class B Common Interests, Section 11.5(b) of the LLC Agreement provides that the Company shall have the right, by Majority Vote of the Board, to redeem any or all of a Member's Class B Common Interests, at a redemption price equal to the lower of (x) the balance of that Member's capital account (subject to certain adjustments) with respect to the Class B Common Interests so redeemed and (y) the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding month) represented by such Class B Common Interests:

(i) If that Member fails to make a Regulatory Capital Contribution on or before the payment date identified in the relevant written notice and fails to timely cure such non-payment;

(ii) If that Member directly or indirectly acquires a controlling interest in or becomes the direct or indirect beneficial owner of a controlling interest in, grants a controlling interest to or becomes directly or indirectly beneficially owned by, or comes under common control with, a Specified Entity (for purposes hereof, "controlling interest" means greater than fifty percent (50%) of the voting equity of the applicable entity) and, in the event such Member becomes directly or indirectly beneficially owned by or comes under common control with a Specified Entity, has not cured such event within a specified time period;

(iii) If such Member makes a Permitted Transfer to a Specified Entity; or

(iv) Pursuant to Section 2.1(i) of the Members Agreement (as described below).

In connection with the Plan, Section 2.1(i) of the Members Agreement provides that the Company also has the right, by Majority Vote of the Board, to redeem on the same terms as above any

or all of the Class B Common Interests of a Founding Firm that, as of a quarterly determination date, (i) has failed to satisfy a minimum volume threshold during the preceding 12-month period or (ii) has (A) failed to satisfy a minimum volume threshold during the preceding three-month period and (B) entered into an agreement or economic arrangement with (i) a Specified Entity or (ii) an affiliate of NYSE Amex that is a U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (an "Affiliate Exchange") under which such Founding Firm receives equity (whether provided through a primary issuance or a secondary sale) or equity-like consideration in exchange for market making or the provision of liquidity, order flow or volume (except under any volume-based fee discount or rebate program or any program or arrangement open to market participants generally) in any contract that competes with a contract that is then listed for trading by the Options Exchange or that is contemplated by the then current business plan of the Company to be listed for trading by the Options Exchange within ninety (90) days following the date on which such Founding Firm has entered into the agreement with the Specified Entity or an Affiliate Exchange, subject to certain exceptions.

The Redemption Reserve shall not be used to fund any purchase of Class B Common Interests pursuant to Section 11.5(b) of the LLC Agreement or Section 2.1(i) of the Members Agreement.

Section 11.5(c) of the LLC Agreement provides that in the event a Founding Firm (A) determines that (x) a Member has become a Sanctioned Person and (y) regulatory or other requirements necessitate such Member's withdrawal as a Member if such Founding Firm were to remain a Member and (B) provides notice of such determination to the Company, the Company may redeem all Common Interests owned by the Sanctioned Person by Supermajority Vote of the Board (excluding the vote of the affected Member), at a redemption price equal to the lower of (I) the balance of the Member's capital account (subject to certain adjustments) and (II) the fair market value of the Sanctioned Person's Common Interests; *provided* that if the Company fails to redeem the Sanctioned Member's Common Interests, such Founding Firm shall have the right to put its Common Interests to the Company at a price equal to one dollar (\$1).

Section 11.5(f) of the LLC Agreement provides that all redemptions of Class B Common Interests by the Company pursuant to Section 11.5 of the LLC Agreement shall be subject to applicable restrictions contained in the Delaware LLC Act and in the Company's debt financing agreements, and if any such restrictions prohibit the redemption of Class B Common Interests pursuant to Section 11.5 of the LLC Agreement which the Company is otherwise entitled or required to make, the time periods provided in Section 11.5(e) of the LLC Agreement will be suspended, and the Company may make such redemptions as soon as any applicable restrictions allow; *provided* that the price at which such redemption is made shall be fixed as of the date such redemption would have occurred had there not existed any restrictions on such redemption. Furthermore, nothing shall require the Company to segregate or set aside any funds or other property for the purpose of making any payment or distribution pursuant to Section 11.5 of the LLC Agreement. The right of any Member or beneficiary thereof to receive any payment or distribution under those provisions will be an unsecured claim against the general assets of the Company. Notwithstanding anything to the contrary in the LLC Agreement, if the application of the restrictions in Section 11.5(f) described in this paragraph prohibits the redemption of the Class B Common Interests of a Sanctioned Person, the Company must redeem such Class B Common Interests by providing the Sanctioned Person a promissory note, the terms of which will be determined by the Majority Vote of disinterested directors, in a principal amount equal to the lower of (I) the balance of that Member's capital account (subject to certain adjustments) and (II) the fair market value of the Sanctioned Person's Common Interests, in each case, determined as of the date the Company determines to redeem the Sanctioned Person's Common Interests, payable at such time as any applicable restrictions allow, and the Company shall become the owner of such Class B Common Interests upon tender of the promissory note.

In the event the Company elects not to exercise its option to redeem all or any portion of the Class B Common Interests under Section 11.5(b) of the LLC Agreement as discussed above, NYSE Amex shall have the right, but not the obligation, within thirty (30) days of the event triggering such right, to require the applicable Founding Firm to transfer any or all of such unredeemed Class B Common Interests to NYSE

Amex at a price equal to the *pro rata* portion of fair market value (over the twelve-calendar-month period ended at the end of the immediately preceding calendar month) represented by such Class B Common Interests. NYSE Amex may assign to an affiliate the right to purchase Class B Common Interests pursuant to this paragraph.

Section 11.6 of the LLC Agreement provides the requirements for an initial public offering of the Company's securities, whether primary or secondary, pursuant to a registration statement filed under the Securities Act of 1933, as amended (the "Securities Act"). At any time upon the determination of the Board that an initial public offering is in the best interests of the Company and the Members, and upon approval by a Supermajority Vote of the Board if such initial public offering does not constitute a Qualified Public Offering (defined as giving rise to at least \$175,000,000 in gross proceeds and resulting in an implied valuation for the equity securities of the Company as a whole that will be no less than \$550,000,000), subject to applicable law and receipt of applicable regulatory approvals, either (a) the Company shall be required to contribute all or a specified portion of the assets of the Company to a corporation newly formed under the laws of the State of Delaware (the "New Company"), or (b) the Members shall be required to contribute their Interests to the New Company, in each case in exchange for shares of the New Company's stock having substantially the same equity interests and voting rights as the Interests being contributed (the "New Company Shares"), and the Company shall cause the New Company to file and use its best efforts to have declared effective a registration statement under the Securities Act for an initial public offering, and to cause the New Company and its officers and employees to use their best efforts to market the New Company Shares, subject to all applicable Securities Act restrictions. To the extent required by the underwriters managing a registered public offering of the New Company Shares, each Member agrees to complete and execute all customary questionnaires and similar documents so required under the terms of such underwriting agreements. Upon the consummation of an initial public offering, certain specified portions of the LLC Agreement and such other provisions as the Board may determine, including the LLC Agreement in its entirety, shall terminate automatically

and be of no further force and effect. Notwithstanding anything to the contrary in the LLC Agreement, as a condition to an initial public offering, the Company or any successor thereto shall enter into a registration rights agreement, upon commercially reasonable terms, with any Member requesting such agreement with respect to the registration of its equity securities with customary terms and conditions and in form and substance reasonably satisfactory to the Board and such Member; *provided* that such registration rights agreement shall include (i) demand registration rights that apply (A) equally to all Members, (B) only after an initial public offering, and (C) subject to customary minimum thresholds and (ii) piggyback registration rights for all Members on a *pro rata* basis in proportion with their relative common equity interests.

#### **Certain Regulatory and Compliance Matters**

As provided in Section 8.1(m) of the LLC Agreement, (A) the Board in carrying out its duties and without limitation on its other obligations under applicable law or otherwise and (B) each director, in carrying out his or her duties and without limitation on his or her other obligations under applicable law or otherwise (but subject to the waiver of fiduciary duties otherwise provided for in the LLC Agreement), shall be obligated to (x) comply with the Federal securities laws and the rules and regulations promulgated thereunder and (y) cooperate with NYSE Amex pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC. Furthermore, each director must take into consideration whether his or her actions would cause the Options Exchange or the Company to engage in conduct that fosters and does not interfere with NYSE Amex's or the Company's ability to carry out their respective responsibilities under the Act and to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

As further provided in Section 8.1(m) of the LLC Agreement, NYSE Amex must receive notice of planned or proposed changes to the Company (but

not to include changes relating solely to non-market matters) or the Options Exchange and NYSE Amex must not object affirmatively to such changes prior to implementation, not inconsistent with the LLC Agreement. NYSE Amex, in the performance of its obligations as the SRO for the Options Exchange, shall following receipt of such notice and without undue delay, notify the Company whether or not it has any objection to such a change based on the potential for such change to give rise to a Regulatory Deficiency (as defined below). In the event that NYSE Amex, in its sole discretion, determines that such planned or proposed changes to the Company or the Options Exchange could cause a Regulatory Deficiency if implemented, NYSE Amex may direct the Company to, and the Company shall, modify the planned or proposed changes as necessary to ensure that it does not cause a Regulatory Deficiency. In the event that NYSE Amex, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, NYSE Amex may direct the Company to, and the Company shall, undertake such modifications to the Company (other than as to non-market matters) as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Amex to perform and fulfill its regulatory responsibilities under the Act.

A "Regulatory Deficiency" is defined in the LLC Agreement as the operation of the Options Exchange or the Company (in connection with matters other than non-market matters) in a manner that is not consistent with any Regulatory Matters Provision, the rules of NYSE Amex, as amended from time to time, or the Federal securities laws and the rules and regulations promulgated thereunder, applicable to the Exchange or NYSE Amex options trading permit holders, or that otherwise impedes NYSE Amex's ability to regulate the Options Exchange or NYSE Amex options trading permit holders or to fulfill its obligations under the Act as a SRO.

Section 8.1(n) of the LLC Agreement states that NYSE Euronext has developed corporate compliance policies that govern the conduct of its employees, officers, and directors and the employees, officers, and directors of its affiliates. The Board will adopt these policies on the effective date of the LLC Agreement, but these policies shall not apply to directors, alternate directors or observers to the Board appointed by a Founding Firm except as described in Sections 8.1(n)(ii) and 8.1(n)(iii) of the LLC Agreement (as described below).

These policies (except for their application to directors, alternate directors or observers to the Board appointed by a Founding Firm) may be revised from time to time by NYSE Euronext, *provided* that the personal trading policy referred to in Section 8.1(n)(ii) of the LLC Agreement, as it applies to directors, alternate directors and observers to the Board appointed by a Founding Firm, may only apply to stock and other securities issued by NYSE Euronext and its affiliates. Any such revised policies will be promptly provided to the Company. Subject to applicable law, all employees, officers, and directors (other than directors, alternate directors and observers to the Board appointed by a Founding Firm) of the Company or its affiliates will be expected to comply with these policies, except as described in Sections 8.1(n)(ii) and 8.1(n)(iii) of the LLC Agreement. Section 8.1(n)(ii) of the LLC Agreement provides that the personal trading policy of NYSE Euronext, including any modifications or revisions thereto, shall apply to directors, alternate directors, and observers to the Board appointed by the Founding Firms solely in their personal capacities and not in such a director's capacity as an employee of any Founding Firm. Section 8.1(n)(iii) of the LLC Agreement provides for a representation by NYSE Euronext that it has obtained a waiver by the audit committee of the board of directors of NYSE Euronext exempting the directors, alternate directors and observers to the Board appointed by the Founding Firms from all of its corporate compliance policies (other than its personal trading policy, as and to the extent described in Section 8.1(n)(ii)).

Section 8.1(o) of the LLC Agreement provides that NYSE Euronext or one of its affiliates has the right to conduct audits of all operations of the Company. The NYSE Euronext internal audit group will have access to all records and employees of the Company and will determine which audits to conduct and the timetable for such work. Any such audit will be considered in a manner consistent with the NYSE Euronext audit group charter, which mandates the independent role of the group and which is approved by the NYSE Euronext Audit Committee. If the Company engages an external party to conduct an audit, the NYSE Euronext audit group will have the right to review with the external party the nature and extent of the work and any resulting report and supporting written work product. NYSE Euronext will bear all of the costs and expenses incurred by the Company and its representatives related

to the exercise of its rights pursuant to this paragraph.

Pursuant to Section 11.8(a) of the LLC Agreement, beginning after SEC approval of the LLC Agreement, the Company shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition of an Interest by a person or entity that results in a Member's ownership of Common Interests, alone or together with any affiliate, meeting or crossing the threshold level of five percent (5%) or the successive five percent (5%) ownership levels of ten percent (10%) and fifteen percent (15%) of the aggregate Common Interests.

Section 11.8(b) of the LLC Agreement establishes certain requirements regarding direct ownership of the Company. Beginning after SEC approval of the LLC Agreement, no person or entity that is not a Member as of the effective date of the LLC Agreement, either alone or together with its affiliates, at any time, may directly own Common Interests that would result in such person or entity having ownership of Common Interests representing more than the 19.9% Maximum Percentage or any successive five percent (5%) ownership threshold (*i.e.*, 24.9%, 29.9%, etc) (the "Concentration Limitation"). The Concentration Limitation shall apply to each person or entity (other than NYSE Amex alone or together with its affiliates, as applicable) unless and until: (A) Such person or entity has delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any Common Interests that would cause such person or entity (either alone or together with its affiliates) to exceed the Concentration Limitation, of such person or entity's intention to acquire such Common Interests; (B) such notice has been filed with, and approved by, the SEC under Section 19(b) of the Act and has become effective thereunder; and (C) the Board has not determined to oppose such person or entity's acquisition of such Common Interests.

Pursuant to Section 11.8(b)(iii) of the LLC Agreement, the Board shall oppose an ownership of Common Interests by a person or entity if the Board shall have determined, in its sole discretion, that (A) such ownership of Common Interests by the person or entity, either alone or together with its affiliates, will impair the ability of the Company and the Board to carry out their functions and responsibilities, including but not limited to, under the Act, or is otherwise not in the best interests of the Company; (B) such ownership of

Common Interests by the person or entity, either alone or together with its affiliates, will impair the ability of the SEC to enforce the Act; (C) the person or entity or its affiliates are subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act); or (D) if such Common Interests would result in the person or entity (alone or together with its affiliates) having an ownership interest of more than twenty percent (20%) of the aggregate Common Interests and the person or entity or one of its affiliates is either a "member" or "member organization" of NYSE Amex (as defined in the rules of NYSE Amex, as such rules may be in effect from time to time). In making a determination pursuant to clause (C) of the preceding paragraph, the Board may impose such conditions and restrictions on the person or entity and its affiliates owning any Common Interests as the Board may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act and the governance of the Company.

Section 11.8(c) of the LLC Agreement establishes certain requirements regarding NYSE Amex's ownership of the Company. Beginning after SEC approval of the LLC Agreement, the aggregate percentage of Common Interests held by NYSE Amex and its affiliates, as applicable, shall not decline below fifteen percent (15%) unless and until: (A) NYSE Amex has delivered to the Board a notice in writing, not less than forty-five (45) days (or such shorter period as the Board shall expressly consent to) prior to the transfer of any Common Interests that would result in such a decline, of NYSE Amex's intention to transfer such Common Interests; and (B) such notice has been filed with, and approved by, the SEC under Section 19(b) of the Act and has become effective thereunder.

Section 11.8(d) of the LLC Agreement establishes certain requirements regarding indirect ownership of the Company. Except as described in the last sentence of this paragraph, a "Controlling Person" (defined as a person or entity that, alone or together with any affiliate, owns a Controlling Interest in a Member, where a "Controlling Interest" means the direct or indirect ownership of 25% or more of the total voting power of that Member by any person or entity, alone or together with any affiliate) will be required to execute, and the relevant Member shall take such action as is necessary to ensure that each of its Controlling Persons executes, an amendment to the LLC Agreement upon establishing a Controlling Interest in any

Member that, alone or together with any affiliate, holds an ownership interest in the Company equal to or greater than 20% of the aggregate Common Interests. In such an amendment, the Controlling Person must agree (A) to become a party to the LLC Agreement and (B) to abide by all the provisions of the LLC Agreement relating to regulatory matters. Notwithstanding the foregoing, a person or entity will not be required to execute an amendment to the LLC Agreement pursuant to Section 11.8(d) of the LLC Agreement if the person or entity does not, directly or indirectly, hold any interest in a Member.

Beginning after SEC approval of the LLC Agreement, any amendment to the LLC Agreement executed pursuant to Section 11.8(d) of the LLC Agreement is subject to the rule filing process pursuant to Section 19 of the Act. The non-economic rights and privileges, including all voting rights, of the Member in which a Controlling Interest is held under the LLC Agreement and the Act will be suspended until such time as the amendment executed pursuant to Section 11.8(d) of the LLC Agreement has become effective pursuant to Section 19 of the Act or the Controlling Person no longer holds a Controlling Interest in the Member.

Section 13.2(c) of the LLC Agreement requires the books and records of the Company to be subject at all times to inspection and copying by the SEC and NYSE Amex at no additional charge to the SEC or NYSE Amex. The books, records, premises, officers, directors, agents and employees of the Company shall be deemed the books, records, premises, officers, directors, agents and employees of NYSE Amex for purposes of and subject to oversight pursuant to the Act. To the extent related to the Company's business, the books, records, premises, officers, directors, agents and employees of each Member will be deemed the books, records, premises, officers, directors, agents and employees of NYSE Amex for purposes of and subject to oversight pursuant to the Act.

Section 16.1 of the LLC Agreement provides requirements regarding regulatory approvals and compliance. Section 16.1(a) provides that so long as the Options Exchange is a facility of NYSE Amex, in the event that NYSE Amex, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of NYSE Amex's regulatory functions, its responsibilities under the Act or as specifically required by the SEC, NYSE Amex shall have the sole and exclusive authority to direct that any such

required, necessary or appropriate action, as it may determine in its sole discretion, be taken or transaction be undertaken by or on behalf of the Company without regard to the vote, act or failure to vote or act by any other party in any capacity.<sup>18</sup>

Pursuant to Section 16.1(b) of the LLC Agreement, the Company will use commercially reasonable efforts to obtain such regulatory approval(s) as may be necessary for the Company to engage in its business on such schedule as shall be reasonably determined by the Board to be in the best interests of the Company. The Founding Firms will agree to cooperate with the Company as reasonable and necessary to obtain and maintain all regulatory approvals.

Section 16.1(d) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group, each Member, and the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and each Member irrevocably submit to the jurisdiction of the U.S. Federal courts, the SEC and NYSE Amex (in its capacity as an SRO) for purposes of any suit, action or proceeding pursuant to U.S. Federal securities laws, and the rules and regulations promulgated thereunder, arising out of, or relating to, activities of the Company and agree to waive, and not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the SEC, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.

Section 16.1(e) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group, each Member, and the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and each Member agree to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to cooperate with NYSE Amex pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC; and to engage in conduct that fosters and does not interfere with the Company's and NYSE

Amex's ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

Section 16.1(f) of the LLC Agreement provides that the Company, NYSE Euronext, NYSE Group and each Member shall take such action as is necessary to ensure that the officers, directors, agents, and employees of the Company, NYSE Euronext, NYSE Group and such Member who are involved in the activities of the Company or the Options Exchange, with respect to their activities relating to the Company or the Options Exchange, consent in writing to the application to them of Section 13.2(c) of the LLC Agreement relating to inspection of books and records for purposes of oversight pursuant to the Act; Section 16.1(d) of the LLC Agreement relating to submission to the jurisdiction of the U.S. Federal courts, the SEC and NYSE Amex (in its capacity as an SRO) and waiver of certain legal claims; Section 16.1(e) of the LLC Agreement relating to the matters described in the immediately preceding paragraph; the last sentence of Section 8.1(d)(iv) of the LLC Agreement and Section 8.1(m)(i) of the LLC Agreement relating to each director's compliance with Federal securities laws and the rules and regulations thereunder and cooperation with NYSE Amex pursuant to its regulatory authority and with the SEC; Section 8.1(m)(ii) of the LLC Agreement relating to NYSE Amex's authority and responsibility to eliminate or prevent Regulatory Deficiencies; Section 14.1(i) of the LLC Agreement relating to the prompt return of certain confidential information to the other Members who disclosed it; as applicable, with respect to their activities relating to the Company upon the dissolution or termination of the Company; and Section 14.1(j) of the LLC Agreement relating to the confidentiality of all Confidential Information (as defined below) pertaining to the self-regulatory function of NYSE Amex.

#### Volume-Based Equity Plan<sup>19</sup>

Pursuant to Section 2.1 of the Members Agreement, for an initial

period of five (5) years and three (3) months, each Founding Firm will have to satisfy certain minimum volume requirements. Under the Plan, for each measurement period, the Company will issue Annual Incentive Shares. Each Founding Firm will be entitled to receive, for no additional consideration, a portion of the Annual Incentive Shares such that it dilutes, maintains or increases its equity interest in the Company (relative to the other Founding Firms) based on the degree to which the Founding Firm has failed to achieve, achieved or exceeded its "Individual Target" during the measurement period. A Founding Firm's Individual Target will be its *pro rata* portion of an aggregate Founding Firm target contribution to the annual volume of the Options Exchange. This *pro rata* calculation will be performed once, based on the Founding Firm's holdings of Class B Common Interests relative to the other Founding Firms at the time the Company is formed and will not change as a Founding Firm's equity holdings fluctuate as a result of the Plan. The Plan will not affect the equity holdings of NYSE Amex and the Plan will not increase or decrease the aggregate equity interest of the Founding Firms relative to NYSE Amex.

The Annual Incentive Shares not allocated to one or more Founding Firms by virtue of each such Founding Firm failing to achieve its respective Individual Target will be either partially or fully reallocated among those Founding Firms that exceed their respective Individual Targets.

The Company will not allocate Annual Incentive Shares to a Founding Firm if such allocation would result in the Founding Firm holding Common Interests in excess of the 19.9% Maximum Percentage or the Alternate Maximum Percentage. Rather, the Company will allocate such Annual Incentive Shares at the direction of the affected Founding Firm or, if the Founding Firm is prohibited from directing the allocation of these Annual Incentive Shares, at the direction of a Supermajority Vote of the Board.

Pursuant to Section 2.2 of the Members Agreement, Annual Incentive Shares that are not allocated (or reallocated) as described above will be included in a pool of undistributed Annual Incentive Shares. The Board will, in its discretion, determine whether and how to dispose of this pool of undistributed Annual Incentive Shares; *provided* that (i) NYSE Amex will work in good faith with Founding

<sup>18</sup> Nothing contained in the LLC Agreement or the Members Agreement limits the ability of NYSE Amex, in its capacity as an SRO, (i) to take any action or to direct the taking of any action that it determines is necessary or appropriate for the performance or fulfillment of its obligations as an SRO or (ii) to direct that an action that it determines interferes with the performance or fulfillment of its obligations as an SRO not be taken.

<sup>19</sup> It is the Exchange's view that the Plan does not constitute a proposed rule change within the

meaning of Section 19(b)(1) of the Act and Rule 19b-4 thereunder.

Firms that achieve their respective Individual Targets in determining whether and how to distribute this pool and (ii) the Company will be obligated to dispose of this pool within eighteen (18) months unless otherwise agreed by a Supermajority Vote of the Board.

### Confidentiality

Article XIV of the LLC Agreement contains provisions for the protection of "Confidential Information," which is defined in Section 14.1(a) of the LLC Agreement as any confidential information (i) relating to the Company or any Member, or the business, financial structure, financial position or financial results, clients or affairs of the Company or any Member or (ii) that is provided to any Member or the Company or their representatives or to which the Company or any Member or their representatives has access as a result of the LLC Agreement, activities conducted pursuant to or in connection with the LLC Agreement or activities conducted by the Company or on behalf of the Company that is either (x) marked as confidential, (y) the disclosing party informs the receiving party at or prior to the time of disclosure is confidential or (z) should be reasonably understood by the receiving party to be confidential. Certain exceptions are provided for information that is otherwise publicly available; was previously known to the receiving party; was received by the receiving party from a source lawfully having possession of such information and the right to disclose it; is released or disclosed to the public by the disclosing party; or is independently developed by the receiving party. When the Company or any Member or its representative directly or indirectly receives Confidential Information, or access to it, from another person or entity, Section 14.1(b) of the LLC Agreement requires that the receiving party will not directly or indirectly (i) disclose any of the Confidential Information to any third party except as specifically permitted by the LLC Agreement or (ii) use any of the Confidential Information for any purpose except as specifically permitted by the LLC Agreement or otherwise required to conduct the activities contemplated by the LLC Agreement.

Section 14.1(c) of the LLC Agreement requires the party receiving Confidential Information to take all reasonable precautions and actions, which must be at least the same precautions and actions as the receiving party takes to prevent the disclosure of its own comparable confidential information, to prevent the disclosure to third parties of the Confidential Information of the

disclosing party, or any part of it, and to ensure that the receiving party's representatives comply with Article XIV of the LLC Agreement.

Notwithstanding the foregoing, Section 14.1(e) of the LLC Agreement provides that a receiving party or its affiliates may provide the Confidential Information to those third parties who have a legitimate "need to know" if specifically permitted by the LLC Agreement. Other exceptions to non-disclosure requirements are provided in the case of (i) information that is required to be filed with any governmental authority or SRO, (ii) information that is requested by a governmental authority or SRO having regulatory authority over the receiving party or its affiliates or (iii) a determination by the receiving party in its sole discretion that it is necessary or appropriate to provide such Confidential Information to a governmental authority or SRO. Additional exceptions are provided for information (a) required by an auditor for the purpose of an audit, (b) necessary in connection with any tax return, (c) provided to a lender, professional adviser, vendor or service provider for a bona fide business purpose (subject to customary restrictions on further disclosure or use), (d) provided to a third party to which the receiving party sells or offers to sell its Interest or any part thereof (if the third party has agreed in writing to be bound by confidentiality obligations at least as protective of the disclosing party as the provisions of Article XIV of the LLC Agreement), or (e) reasonably necessary in connection with the enforcement or defense of any rights or remedies under the LLC Agreement or arising out of the transactions contemplated thereby or the related transaction documents.

Section 14.1(i) of the LLC Agreement provides that the confidentiality obligations in Article XIV of the LLC Agreement will be effective from the effective date of said agreement and will continue to apply (A) with respect to the Company, after dissolution or termination of the Company pursuant to Article XII of the LLC Agreement for a period of three (3) years, (B) with respect to any Member, for a period of three (3) years after the date on which such Member ceases to be a Member of the Company and (C) with respect to NYSE Euronext, for a period of three (3) years after the date on which NYSE Amex ceases to be a Member of the Company. Section 14.1(i) also contains requirements, with exceptions, for the prompt return of Confidential Information to the disclosing party upon

written request, or the prompt destruction (with prior written consent) of such Confidential Information by the party that received it, upon the effective date of dissolution or termination of the Company.

Pursuant to Section 14.1(j) of the LLC Agreement, all Confidential Information pertaining to the self-regulatory function of NYSE Amex (including but not limited to disciplinary matters, trading data or information about trading practices and audit information) contained in the books and records of the Company shall: (i) Not be made available to any persons or entities other than to those officers, directors, employees and agents of the Company that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Company and its officers, directors, employees and agents; and (iii) not be used for any non-regulatory purposes. This provision shall not limit a Founding Firm's ability to use its own trading data.

Section 14.1(k) of the LLC Agreement states that nothing in the LLC Agreement shall be interpreted to limit or impede the rights of the SEC or NYSE Amex to access and examine confidential information of the Company pursuant to U.S. Federal securities laws and the rules and regulations promulgated thereunder, or, subject to the notice requirements of Section 14.1 of the LLC Agreement, to limit or impede the ability of a member of the Board, Member, officer, director, agent or employee of a Member or of the Company to disclose confidential information of the Company to the SEC or NYSE Amex.

### Amendment

Unless the contrary is otherwise specifically stated in the LLC Agreement, the LLC Agreement and the Members Agreement may be amended by Supermajority Vote of the Board; *provided*, that: (i) Section 8.1(d)(ii) of the LLC Agreement relating to the designation of directors by Founding Firms and Article XIV of the LLC Agreement relating to confidentiality may not be materially amended, Section 13.8 of the LLC Agreement relating to restrictions on foreign operations and Section 3.1 of the Members Agreement relating to the transfer of Interests may not be amended, without the prior written consent of each Member; (ii) any amendment that would have a disproportionate, material and adverse effect on the rights of one or more Members (other than amendments of the type described in clause (iii) below) shall require such Member's prior written consent; (iii) any amendment

that would have a material adverse effect on the rights of the Members of a class of Interests (irrespective of whether such amendment has a material adverse effect on the rights of NYSE Amex) shall require the prior written consent of Members (other than NYSE Amex) representing two thirds (2/3) of the Interests held by such Members; (iv) any amendment that would impose a new and material obligation or liability applicable by its terms to any Member or materially increase any existing material obligation or liability of any Member shall require the prior written consent of such Member and (v) any matter specified in the LLC Agreement as subject to agreement by the Members may be modified by Supermajority Vote of the Board if so agreed by the Members, *provided* that this clause (v) does not apply to the matters addressed in clause (i) above and the application of this clause (v) shall nevertheless be subject to the application of clauses (ii), (iii) and (iv) above. Notwithstanding any of the foregoing, for so long as the Company operates a facility of NYSE Amex or a successor of NYSE Amex that is an SRO, any proposed amendment or repeal of any provision of the LLC Agreement or Members Agreement shall be submitted to the board of directors of NYSE Amex and, if such amendment or repeal is required under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the SEC before such amendment or repeal may be effective, then such amendment or repeal shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.

#### Redactions to the Members Agreement

Certain information in the Members Agreement has been redacted in order to preserve the confidentiality of commercially sensitive information. The redacted provisions are limited to (i) numerical dollar amounts and percentage thresholds, (ii) commercially sensitive terms and provisions related to the calculation of "Fair Market Value" and (iii) certain competitive information.

#### Regulation

NYSE Regulation, Inc. ("NYSE Regulation"), an indirect wholly-owned subsidiary of NYSE Euronext, and the Exchange entered into a regulatory services agreement (an "RSA") dated October 1, 2008 pursuant to which NYSE Regulation performs all of the Exchange's regulatory functions on the Exchange's behalf. However, certain of these member and market regulatory functions, which include surveillance,

examination, investigation and related disciplinary functions, are performed by FINRA pursuant to a June 14, 2010 RSA among FINRA, NYSE Group, Inc., New York Stock Exchange LLC, NYSE Regulation, NYSE Arca, Inc. and the Exchange. FINRA and the Exchange have also entered into an allocation agreement pursuant to Section 17(d)(1) of the Act, and Rule 17d-2 thereunder, whereby FINRA assumed regulatory responsibility for specified rules that are common to FINRA and the Exchange and for common members. Because the Options Exchange is a facility of the Exchange, FINRA performs the applicable regulatory functions and responsibilities with respect to activity on or through the Options Exchange, including both general regulatory functions, as noted above, and targeted regulatory reviews as applicable.

Pursuant to the RSA between NYSE Regulation and the Exchange, NYSE Regulation exercises oversight, on behalf of the Exchange, of FINRA's performance of the regulatory functions performed by FINRA as described above. NYSE Regulation also has responsibilities with respect to the Options Exchange for rule interpretation, regulatory policy and participation in rule development. NYSE Regulation periodically reports on regulatory matters to the board of directors of the Exchange, which has appointed a Chief Regulatory Officer ("CRO") who is also the Chief Executive Officer of NYSE Regulation. The Exchange does not have a regulatory oversight committee of the board, but the CRO is also an officer of the Exchange, and in that capacity is charged with reporting on regulatory matters to the Exchange board. Notwithstanding the foregoing, the Exchange will still retain ultimate legal responsibility for the performance of all of its regulatory obligations as an SRO, including with respect to the Options Exchange, as well as the ability to take action as required to meet that responsibility.

The board of directors of the Exchange currently consists of five (5) directors, a majority of whom are required to be individuals domiciled in the U.S. who are classified as independent members of the NYSE Euronext board of directors. At least twenty percent of the Exchange's directors (currently one individual) must be "non-affiliated" directors who are not members of the NYSE Euronext board of directors and need not be independent under the independence requirements of NYSE Euronext. Any required non-affiliated directors of the Exchange are nominated and elected

through a process designed to ensure fair representation of members of the Exchange on the Exchange's board. The Exchange does not have any committees of its board that perform functions relating to audit, governance and compensation. Instead, such functions are performed for the Exchange by related committees of the NYSE Euronext board of directors that are comprised solely of NYSE Euronext directors who meet the independence requirements of NYSE Euronext.

Decisions on the listing of options that will trade on the Options Exchange will be made by the business side at the Exchange in accordance with the Exchange's rules. The business side will also continue to be responsible for new product development, participation in rule development, strategic analysis, administering Exchange programs, business development and client outreach.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>20</sup> of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(1) <sup>22</sup> of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change does not modify the Option Exchange's trading or compliance rules and preserves the existing mechanisms for ensuring the Exchange's compliance with the Act. The structure of the proposed joint venture maintains NYSE Amex's regulatory control over the Options Exchange and includes provisions specifically designed to ensure the independence of its self-regulatory function and to ensure that any regulatory determinations by NYSE Amex, as SRO, are controlling with respect to the actions and decisions of the Options Exchange.

Additionally, the LLC Agreement requires the Company, its Members and its directors to comply with the Federal securities laws and the rules and regulations promulgated thereunder and to engage in conduct that fosters and does not interfere with the Exchange's or the Company's ability to carry out its respective responsibilities under the Act.

The Exchange believes the proposed rule change is also consistent with, and

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78.

<sup>22</sup> 15 U.S.C. 78f(b)(1).

further the objectives of Section 6(b)(5)<sup>23</sup> of the Act, in that it preserves all of NYSE Amex's existing rules and mechanisms to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Furthermore, by establishing a new corporate structure for the Company that includes new owners and a new governance structure, the Exchange believes the proposed rule change will increase [sic] the breadth of representation in the governance of the Options Exchange to include buy side, principal trading and sell side representatives. The increased representation of different market constituencies in the governance of the Options Exchange will foster cooperation and coordination with persons engaged in facilitating transactions in securities, will contribute to the identification of opportunities for innovation and will enhance competition.

Finally, the Exchange believes that the proposed rule change accomplishes the goals of Section 6(b) of the Act by improving the quality and depth of the listed options market. Specifically, with the approval of this proposed rule change, Members will have an incentive, through equity ownership, to offer an options market that provides products, services and fees that are competitive with those of other options markets. Moreover, given the substantial options experience and resources of the Members, the approval of this proposed rule change will provide the opportunity for enhanced liquidity and price discovery for the Options Exchange, thereby creating the opportunity for better-priced executions for options investors. A more competitive marketplace within the Options Exchange will also foster increased competition across all options markets with concomitant benefits to all U.S. options investors.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2011-18 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2011-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2011-18 and should be submitted on or before April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-7935 Filed 4-1-11; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #12503 and #12504]**

##### **Hawaii Disaster #HI-00022**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Hawaii dated 03/29/2011.

*Incident:* Honshu Tsunami.

*Incident Period:* 03/11/2011.

*Effective Date:* 03/29/2011.

*Physical Loan Application Deadline Date:* 05/31/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/29/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 17 CFR 200.30-3(a)(12).