

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 036

Amendment No. (req. for Amendments *)

Proposed Rule Change by NASDAQ OMX BX, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Rule

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

BX proposes to amend the Grandfathered Rules. BOX Trading Rules, BOXR By-laws and Operating Agreement and the BX By-laws and Rules.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name *	Maura	Last Name *	Looney
Title *	Associate Vice President		
E-mail *	maura.looney@nasdaqomx.com		
Telephone *	(617) 235-2073	Fax	<input type="text"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 05/14/2012

By Edward S. Knight
(Name *)Executive Vice President and General Counsel
(Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Edward S Knight,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of Proposed Rule Change

a) NASDAQ OMX BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to amend the Grandfathered Rules, the Boston Options Exchange Group LLC (“BOX”) Trading Rules, remove the Boston Options Exchange Regulation LLC (“BOXR”) By-laws and the Amended and Restated Limited Liability Company Agreement (“BOXR Operating Agreement”), and amend the BX By-Laws and the BX Rules, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5a, 5b and 5c.

b) Not applicable.

c) Not applicable.

Item 2. The Procedures of the Self-Regulatory Organization

The proposed changes to the By-Laws were approved by the Board of Directors of the Exchange on May 10, 2012. In addition, the proposed change was approved by senior management of BX pursuant to authority delegated by the Board of Directors of BX on August 19, 2011. BX staff will advise the Board of Directors of BX of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Questions and comments on the proposed rule change may be directed to Maura Looney at 617-235-2073.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a) Purpose

Boston Options Exchange LLC (“BOX”) is ceasing to operate as an options trading facility of the Exchange.³ BX and BOX have entered into a Regulatory Services Agreement which specifies, among other matters, that BX will terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfies all of the conditions required for BOX to operate as a national securities exchange (“the facility termination effective date”).⁴ As proposed, the BOX Trading Rules will no longer be operative to permit options trading on BX as of the facility termination effective date. If BOX meets the requirements and operates as an exchange, it will be a self-regulatory organization responsible for the activities occurring on BOX after the facility termination effective date. BX is not the Designated Options Examining Authority (“DOEA”) for any BOX Options Participant.

BX will continue to have certain responsibility for the trading activities and the actions of the BOX Options Participants for the time period during which BOX was

³ Currently, BOX is a facility of the Exchange under Section 3 (a) (2) of the Act. *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (“BOXR Order”); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). *See also* Release No. 34-58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

⁴ BOX has filed an application with the Commission for registration as a national securities exchange under Section 6 of Act. *See* Securities Exchange Act Release No. 66242 (January 26, 2012), 77 FR 4841 (January 31, 2012). The application has been granted and is conditioned on the satisfaction of certain requirements. *See* Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 86 (May 3, 2012).

operating as a facility of the Exchange (“BOX legacy matters”).⁵ BX has always retained the ultimate authority and responsibility for the rules and regulations and the activities of the BOX facility. However, BX had delegated to BOXR the authority to act on behalf of the Exchange regarding regulatory matters relating to the BOX facility. The sole purpose of BOXR has been to regulate the BOX facility. As such, after BOX ceases to be a facility of the Exchange, the delegation of regulatory authority to BOXR will be terminated and BX will retain all such responsibilities for BOX legacy matters.

Currently, for matters pertaining to BOX Options Participants, BOXR utilizes procedural rules regarding discipline and arbitration found in the “Grandfathered Rules,” which will be defined below. As proposed, rather than have two sets of procedural rules for discipline and arbitration, BX will utilize the procedural rules governing disciplinary matters and arbitrations which currently exist in the BX Rules⁶ and are used for the Equity market. Currently, there are no formal disciplinary proceedings or arbitrations pending against BOX Options Participants.⁷ As such, there is no need for temporary rules to be implemented.⁸ All formal proceedings, if any are commenced, will utilize the new procedural rules.

⁵ For example, potential BOX legacy matters may include disciplinary matters and arbitrations.

⁶ These Rules are also known as the Equity Rules. The definition of Equity Rules is found at BX Rule 0120(p).

⁷ Currently, formal proceedings are commenced by a notice of specific charges set forth in a charge memorandum. *See* current Grandfathered Rules, Chapter XXX, Section 2(a). *See also* BX Rule 9211. A disciplinary proceeding shall begin when the complaint is served and filed. Although there are currently no formal proceedings that have been commenced, there is one Options Participant reviewing a Letter of Acceptance, Waiver and Consent. *See* Chapter XXX, Section 10 and Chapter XXXIV.

⁸ Compare to American Stock Exchange (“AMEX”), which implemented temporary rules to avoid potential confusion to respondents where formal proceedings had commenced by AMEX and were still pending at the Transaction date, on which date new procedural disciplinary rules were to be effective. *See* Securities Exchange Act Release Nos. 58286 (August 1, 2008), 73 FR 46097

These proposed changes are not intended to change any underlying rules, rather these proposed changes and the reliance on existing BX Rules are intended to permit the use of BX's current discipline and arbitration procedures for BOX legacy matters. These procedures are substantially similar to those in the Grandfathered Rules. These BX disciplinary procedures provide fair procedures for the discipline of the former BOX Options Participants and persons who were associated persons of former BOX Options Participants and for arbitration proceedings stemming from activities which occurred while BOX was a facility of the Exchange.

There are also some amendments updating outdated references. Finally, references to BOX and BOX related matters (i.e. BOX, BOXR) which are no longer needed in the BX By-Laws and Rules, once BOX is no longer a facility of the Exchange, are being removed. For these reasons, as will be explained more fully below, BX proposes to amend the Grandfathered Rules and the BOX Trading Rules, and to remove the BOXR By-Laws and BOXR Operating Agreement, in their entirety, and the BX By-Laws, the BX Rules, with an effective date of the facility termination effective date.

Grandfathered Rules

First, BX is proposing to amend the "Grandfathered Rules." The Grandfathered Rules are the Rules of Board of Governors of the Boston Stock Exchange as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. Currently, as set forth in BX Rules 0210(r), the Grandfathered Rules are operative to the extent that such rules are applicable to BOX and to Options Participants and to activities of members, members organizations, persons associated with members, and

(August 7, 2008); and 35678 (September 29, 2008), 73 FR 57705 (October 3, 2008) (SR-Amex-2008-64)("Amex Proposal").

other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. As proposed, the Grandfathered Rules will be amended, as explained below, to apply to the activities of BOX and the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange. These rules however, will not be operative to permit trading.

The Grandfathered Rules currently consist of two sections: The Provisions of the Former Constitution of the Boston Stock Exchange, Inc. That Have Been Incorporated Into the Grandfathered Rules; and the Rules of the Board of Governors. A heading will be added to refer to these as the Grandfathered BSE Rules. As will be described more fully below, BX also proposes to incorporate the BOX Trading Rules, as amended in the manner described below, (“The Grandfathered BOX Rules”) into the Grandfathered Rules. For this new third section, a heading will be added to refer to these as the Grandfathered Trading Rules of the Boston Options Exchange Group, LLC. The Grandfathered Rules will remain posted on the BX website.

The opening explanatory paragraph to the Grandfathered Rules is being amended to reflect that the rules apply to activities of former BOX Options Participants and associated persons subject to the jurisdiction of the Exchange; in addition, the rules continue to apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the post-acquisition Equity Rules. In Chapter I, Section I, BX is also clarifying that references to the Board of Governors, where appropriate for the affected rules, mean the Board of Directors of the Exchange and that references to the Constitution shall mean the BX By-Laws where applicable. There are also references to

the Constitution that will be renamed as “Incorporated Constitution Provision” to refer to the provisions of the Former Constitution which were incorporated into the Grandfathered Rules.⁹ As proposed, in other sections where there is an applicable rule with a reference to a specific provision of the former Constitution, sections will be amended to replace the term Constitution with the term BX By-Laws. For example, Chapter II, Sections 14 and 25 have references to penalties provided for in Article XIV, Section 4 of the Constitution. Article XIV, Section 4 was not incorporated into the rules, as the By-Laws replaced this section of the former Constitution; this section will now reflect that penalties are provided for in the BX By-Laws. These amendments do not substantially alter the rules in their current format, but rather provide the correct reference.

Chapter IA is being removed, because, as noted above and discussed in more detail in the paragraph below, the procedural rules for disciplinary proceedings will be the current BX Rule 9000 Series. Similarly, Section 4 (Imposition of Fines for Minor Violation(s) of Rule and Floor Decorum Policies) of Chapter XVIII (Conduct) is being amended to reflect that Chapter XXX is being removed, as described below, as proceedings involving discipline will be governed by the BX Rule 9000 Series. In particular, in subsection (a), it will be referenced that BX Rule 9216 governs when BX imposes a fine for a minor rule violation. Sections 4(b) through (d) and 4(f) are being removed as they relate to disciplinary proceedings, which, as proposed, will be governed by the BX Rule 9000 Series. In addition, a cross reference to the Grandfathered BOX Rules Chapter X, Section 2 is being added to note that it will provide for rule violations

⁹ See e.g., Chapter XXXIII, Section 7 regarding BEACON Liability.

that may be considered minor in nature. Section 4(e) is being removed as unnecessary, because it is almost identical to Chapter X, Section 2(e) of the current BOX Trading Rules and proposed Grandfathered BOX Rules. Grandfathered Chapter XVIII, Section 6 is being removed as is it no longer applicable.

BX is proposing to remove Chapter XXX, Disciplining Members, Denial of Membership. The Principal Considerations in Determining Sanctions found in Chapter XXX have been incorporated in the BOXR Sanctioning Guidelines.¹⁰ BX will continue to follow the Guidelines. The remainder of Chapter XXX sets forth the procedural rules to be followed for disciplining members. As proposed, in its place, BX will utilize the 9000 Series of the BX Rules,¹¹ which is the Code of Procedure that sets forth the rules regarding disciplining a member or person associated with a member and will now govern the disciplinary process for any legacy disciplinary matter. Under Chapter XXX, an explanatory sentence is being added stating the 9000 Series of BX Rules will now govern the disciplinary process. BX is removing Chapter XXXII regarding Arbitration Rules from the Grandfathered Rules because it has proposed utilizing the BX 10000 Series, which is the Code of Arbitration Procedure. As proposed, in its place will be a sentence that reflects that arbitrations will be governed by the BX 10000 Series.

Chapter XXXIV (Minor Rule Violations) is being amended to add a reference to Chapter X of the proposed, Grandfathered BOX Trading Rules. This section provides for rule violations deemed minor in nature. In addition, for the reasons noted above,

¹⁰ The BOXR Sanctioning Guidelines are not set forth in the rules, but are part of the policies and procedures that are followed once a determination has been made that sanctions are to be imposed.

¹¹ Not every section of these procedures may apply to former BOX Participants. For example, because there will be no on-going activities, there may be no reason for a former BOX Participant to avail itself of the 9600 Series regarding exemptions.

references to the 9000 Series governing discipline and BX Rule 9216 regarding Acceptance, Waiver and Consent are being amended, as appropriate.

BX is terminating its delegation of authority to BOXR, and as such is proposing to remove the Delegation of Authority language from the Grandfathered Rules. Chapter XXXVI of the Grandfathered Rules sets forth the Rules under which BX has granted BOXR authority to carry out certain regulatory responsibilities over the BOX facility. BX has always retained the ultimate regulatory responsibility for the oversight of the BOX facility with oversight conducted by BX's Regulatory Oversight Committee. For any BOX legacy matter, all regulatory responsibilities will be carried out in the manner set forth in the BX By-Laws and the BX Rules, and with continued oversight by the BX Regulatory Oversight Committee. Finally, Chapter XXXIX, Affiliation with NASDAQ OMX Group, Inc., Section 2(c) is being removed, as BOX will no longer be a facility of the Exchange.

BOX Trading Rules

BX also proposes to incorporate the Trading Rules of the Boston Options Exchange Group LLC, with the amendments described below, (“BOX Trading Rules”) into the Grandfathered Rules and locate them at end of current Grandfathered Rules by creating a new section of the Grandfathered Rules called Grandfathered BOX Trading Rules. As stated above, these rules apply to activities of the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange, during the time period that BOX was a facility of the Exchange. As proposed, a new paragraph will be added to the Grandfathered BOX Trading Rules section, before the General Provisions, to set forth that BOX is no longer a facility of the Exchange. These Grandfathered BOX Trading

Rules and the applicable Grandfathered BSE Rules continue to apply to the activities of BOX and Options Participants and associated persons subject to the jurisdiction of the Exchange that occurred during the time that BOX was a facility of the Exchange. Terms below must be read in context regarding activities which occurred when BOX was a facility of the Exchange and also regarding activities relating to continued Exchange jurisdiction, such as disciplinary matters.

As proposed, certain definitions found in Section 1 of the Grandfathered BOX Trading Rules will be amended to reflect that BOX is no longer a facility of the Exchange: (6) the term "BOX" will mean the Boston Options Exchange or Boston Stock Exchange Options Exchange, *formerly* an options trading facility of the Exchange under Section 3(a)(2) of the Act; (7) the term "BOX Rules" or "Rules of BOX" will mean the Rules of the former Boston Options Exchange Facility. Where applicable, it may mean Grandfathered BOX Rules, in context, but it may also mean the rules in place while BOX was a facility of the Exchange; (9) the term "BOXR" or "BOX Regulation" will mean Boston Options Exchange Regulation LLC, which was a wholly-owned subsidiary of the Exchange; where applicable for the Grandfathered BOX Rules, it may mean the Exchange; (10) the term "BSE Rules" will mean the Grandfathered Rules; (24) the term "Exchange" will mean the Boston Stock Exchange, now known as NASDAQ OMX BX, Inc.; (42) the term "Options Participant" or "Participant" or "Former BOX Options Participant" is being amended to reflect that the Participants *were* registered with the Exchange pursuant to the BOX Trading Rules; (61) the term "Rules of the Exchange" will mean the BX By-Laws, where applicable, the BX Rules and the Grandfathered Rules, including these Grandfathered BOX Rules.

Prior to being granted BOX Options Participant status, by executing the Options Market Participation Agreement, every Participant acknowledged that the Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange. Rather than solely relying upon an open ended contractual jurisdiction provision, as proposed Chapter II, Section I (h) is being added to codify that acknowledgment in the Rules and add a two year provision for filing a complaint that is similar to that set forth in the BX Rules, providing as follows: “A Participant or an person associated with a Participant that has had its Participant status terminated or revoked shall continue to be subject to the filing of a complaint under these Rules based upon conduct that commenced prior to the effective date of the Participant's termination of its Participation. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.” This provision is similar to that found in BX Rules 1012 and 1031.

Outdated references to the specific sections of the Constitution that are unnecessary are being removed. To avoid confusion, now that certain sections of the BX Rules are being relied upon, certain references to the “Rules of the Exchange” will be referred to as the BSE Rules. For the reasons described above, references to Grandfathered BSE Chapter XXX will be removed and instead the BX Rule 9000 Series will apply.¹² References to Grandfathered BSE Rules, Chapter XXX in proposed Grandfathered BOX Trading Rules, Chapter X, Section 1, regarding the procedures to be followed for imposing a Minor Rule Violation Plan fine will be replaced by BX Rule 9216, and, where appropriate, BX Rule 9000 Series, which will govern this process going

¹² See Proposed Grandfathered BOX Trading Rules, Chapter III, Sections 8(c) and 13, Chapter VI, Section 4, and Chapter VIII, Section 5.

forward. The Minor Rule Violation penalties and the references to underlying Grandfathered BOX Trading Rules governed by the Minor Rule Violation Plan will remain in the proposed Grandfathered BOX Trading Rules, Chapter X, Section 2 and will not be added into the BX Rules. Similarly, procedures to be followed for letters of Acceptance, Waiver and Consent will be set forth in BX Rule 9216; therefore, the section regarding Acceptance, Waiver and Consent procedures found in Grandfathered BOX Trading Rules, Chapter X, Section 3 is being removed. In addition, the Appendix is being amended to reflect that BOX will no longer be facility of the Exchange, to remove outdated references to the former Constitution, to refer to the the former Incorporated Constitution Provisions where appropriate, and to reflect that the disciplinary and arbitration procedures will be found in the 9000 and 1000 Series of the BX Rules.

BOXR Operating Agreement and BOXR By-laws

BX is proposing to eliminate the BOXR By-Laws and Operating Agreement in their entirety. As stated above, once BOX ceases to be a facility of the Exchange, BOXR will no longer have a purpose, as BOXR's sole purpose was to regulate the BOX facility. BOXR LLC will be merged into its parent, BX.

NASDAQ OMX BX Rules and By-Laws

In addition, BX proposes to amend the Rules of BX. Specifically, Rule 0015 (b) provides that the Options Rules (including the Grandfathered Rules) shall apply to all Options Participants, and will be amended to: (i) remove the reference to Options Rules as there will no longer be a set of rules called Options Rules; (ii) reflect that the 9000 Series and the 10000 Series of these Rules (meaning the BX Rules) and the Grandfathered Rules shall apply to former BOX Options Participants and associated

persons for activities that occurred during the time that BOX was a facility of the Exchange; and (iii) remove the provision that “[t]he Equity Rules shall apply to Options Participants only if they are also members of the Exchange,” because, as will be explained below, as proposed, the term Options Participant is being removed from the rules.

As proposed, the following definitions found in Rule 0120 will be amended. Specifically, Definition (q) "Options Rules" will be reserved. Definition (r) "Grandfathered Rules" will be amended to mean the Rules of the Board of Governors of the Boston Stock Exchange, as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. and as such rules may be subsequently amended, to the extent that such rules are applicable to BOX and to Options Participants that occurred while BOX was a facility of the Exchange. The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. Definitions (s) Options Participant, (t) BOXR, (u) BOX LLC, (v) BOX and (w) BOX Rules will be reserved, because BOX will no longer be a facility of the Exchange. Similarly, as proposed, Article I of the BX By-Laws will be amended to reflect that BOX will no longer be a facility of the Exchange. Specifically, Sections (d) through (h) will now be reserved, as these definitions are no longer needed once BOX ceases to be a facility of BX. Section 4.3(a) regarding qualifications for the Board of Directors will be amended to remove the requirement that one Industry Director shall represent BOX Participants as that is no longer needed. Subsection (b) will be removed as it references actions which occurred after the adoption

of the By-Laws after the NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange. Finally, Section 4.14, Committees Not Composed Solely of Directors, will be amended to remove the manner in which an Industry Director who is a representative of BOX Participants is nominated to the Board as it is no longer needed.

b) Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹³ in general, and Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Further, BX believes that the proposal is consistent with Sections 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. Specifically, the proposal is intended to address the relationship between BX and the former BOX Participants that will exist for BOX legacy matters once BOX is no longer a facility of BX. The disciplinary procedures provide for fair procedures for the discipline of the former BOX Participants and persons who were associated persons of former BOX Participants for activities which occurred while BOX was a facility of the Exchange, consistent with

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

Section 6(b)(7) of the Act.¹⁵ BX believes that with the removal of the BOX-related provisions the composition and selection of the BX Board of Directors will continue to satisfy the requirement in Section 6(b)(3) of the Act¹⁶ that the rules of the Exchange provide for the fair representation of members in the selection of directors and administration of the Exchange.

Item 4. 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 not necessary or appropriate in furtherance of the purposes of the Act.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Periods for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

(b) This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or

¹⁵ 15 U.S.C. 78f(b)(7).

¹⁶ 15 U.S.C. 78f(b)(7).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange is amending its Rules to provide for the changes needed once BOX is no longer a facility of the Exchange. It is utilizing the rules which currently exist in the BX Rules to take the place of certain responsibilities which have been vested in BOXR. The Exchange requests that the proposed rule change be effective upon the facility termination effective date.¹⁹ On that the date, BOX will become a self-regulatory organization completely separate from BX and will have its own set of rules.²⁰ The Exchange believes that it will avoid potential confusion for BOX Options Participants that may result from a new set of rules pertaining to the new BOX Exchange, to have to the changes described above in effect on the facility termination effective date.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Item 8. Proposed Change Based Upon Rules of Another Self-Regulatory Organization or of the Commission

As noted above, the Exchange is proposing changes to further utilize rules already in effect on the Exchange, for BOX Options Participants for activities which occurred while BOX was a facility of the Exchange. The proposal is similar to SR-Amex-2008-64, in that it establishes new procedural rules for a transition. However, unlike the Amex Proposal,

¹⁹ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

²⁰ See *supra* note 4.

temporary Rules are not needed, because there are no BOX pending arbitrations or formal disciplinary matters.²¹ This proposal is also based on the creation of grandfathered rules.²²

Item 9. Exhibits

1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.
- 5a. Text of the Proposed Rule Changes to the Grandfathered Rules, including the Grandfathered Boston Options Exchange Group LLC Rules
- 5b. Text of the Proposed Rule Changes to the By-Laws of NASDAQ OMX BX, Inc. and Rules of NASDAQ OMX BX
- 5c. Text of the Proposed Rule Changes to the BOXR Operating Agreement and the BOXR By-Laws

²¹ AMEX, for example, implemented temporary rules to avoid potential confusion to respondents where formal proceedings had commenced by AMEX and were still pending at the Transaction date, on which date new procedural disciplinary rules were to be effective. *See supra* note 9.

²² *See* Securities Exchange Act Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-BX-2012-036

_____, 2012

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Grandfathered Rules, BOX Trading Rules, BX By-Laws, BX Rules and Remove the BOXR Operating Agreement and By-Laws

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 14, 2012, NASDAQ OMX BX (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend proposal to amend the Grandfathered Rules, the Boston Options Exchange Group LLC (“BOX”) Trading Rules, remove the Boston Options Exchange Regulation LLC (“BOXR”) By-laws and the Amended and Restated Limited Liability Company Agreement (“BOXR Operating Agreement”), and amend the BX By-Laws and the BX Rules. The text of the proposed rule change is available from

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet website

at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

Boston Options Exchange LLC ("BOX") is ceasing to operate as an options trading facility of the Exchange.⁴ BX and BOX have entered into a Regulatory Services Agreement which specifies, among other matters, that BX will terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfies all of the conditions required for BOX to operate as a national securities exchange ("the facility termination effective date").⁵ As proposed, the BOX Trading Rules will no longer be operative to

⁴ Currently, BOX is a facility of the Exchange under Section 3 (a) (2) of the Act. *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) ("BOXR Order"); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). *See also* Release No. 34-58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.").

⁵ BOX has filed an application with the Commission for registration as a national securities exchange under Section 6 of Act. *See* Securities Exchange Act Release No. 66242 (January 26,

permit options trading on BX as of the facility termination effective date. If BOX meets the requirements and operates as an exchange, it will be a self-regulatory organization responsible for the activities occurring on BOX after the facility termination effective date. BX is not the Designated Options Examining Authority (“DOEA”) for any BOX Options Participant.

BX will continue to have certain responsibility for the trading activities and the actions of the BOX Options Participants for the time period during which BOX was operating as a facility of the Exchange (“BOX legacy matters”).⁶ BX has always retained the ultimate authority and responsibility for the rules and regulations and the activities of the BOX facility. However, BX had delegated to BOXR the authority to act on behalf of the Exchange regarding regulatory matters relating to the BOX facility. The sole purpose of BOXR has been to regulate the BOX facility. As such, after BOX ceases to be a facility of the Exchange, the delegation of regulatory authority to BOXR will be terminated and BX will retain all such responsibilities for BOX legacy matters.

Currently, for matters pertaining to BOX Options Participants, BOXR utilizes procedural rules regarding discipline and arbitration found in the “Grandfathered Rules,” which will be defined below. As proposed, rather than have two sets of procedural rules for discipline and arbitration, BX will utilize the procedural rules governing disciplinary matters and arbitrations which currently exist in the BX Rules⁷ and are used for the Equity market. Currently, there are no formal disciplinary proceedings or arbitrations

2012), 77 FR 4841 (January 31, 2012). The application has been granted and is conditioned on the satisfaction of certain requirements. See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 86 (May 3, 2012).

⁶ For example, potential BOX legacy matters may include disciplinary matters and arbitrations.

⁷ These Rules are also known as the Equity Rules. The definition of Equity Rules is found at BX Rule 0120(p).

pending against BOX Options Participants.⁸ As such, there is no need for temporary rules to be implemented.⁹ All formal proceedings, if any are commenced, will utilize the new procedural rules.

These proposed changes are not intended to change any underlying rules, rather these proposed changes and the reliance on existing BX Rules are intended to permit the use of BX's current discipline and arbitration procedures for BOX legacy matters. These procedures are substantially similar to those in the Grandfathered Rules. These BX disciplinary procedures provide fair procedures for the discipline of the former BOX Options Participants and persons who were associated persons of former BOX Options Participants and for arbitration proceedings stemming from activities which occurred while BOX was a facility of the Exchange.

There are also some amendments updating outdated references. Finally, references to BOX and BOX related matters (i.e. BOX, BOXR) which are no longer needed in the BX By-Laws and Rules, once BOX is no longer a facility of the Exchange, are being removed. For these reasons, as will be explained more fully below, BX proposes to amend the Grandfathered Rules and the BOX Trading Rules, and to remove the BOXR By-Laws and BOXR Operating Agreement, in their entirety, and the BX By-Laws, the BX Rules, with an effective date of the facility termination effective date.

⁸ Currently, formal proceedings are commenced by a notice of specific charges set forth in a charge memorandum. *See* current Grandfathered Rules, Chapter XXX, Section 2(a). *See also* BX Rule 9211. A disciplinary proceeding shall begin when the complaint is served and filed. Although there are currently no formal proceedings that have been commenced, there is one Options Participant reviewing a Letter of Acceptance, Waiver and Consent. *See* Chapter XXX, Section 10 and Chapter XXXIV.

⁹ Compare to American Stock Exchange ("AMEX"), which implemented temporary rules to avoid potential confusion to respondents where formal proceedings had commenced by AMEX and were still pending at the Transaction date, on which date new procedural disciplinary rules were to be effective. *See* Securities Exchange Act Release Nos. 58286 (August 1, 2008), 73 FR 46097 (August 7, 2008); and 35678 (September 29, 2008), 73 FR 57705 (October 3, 2008) (SR-Amex-2008-64)("Amex Proposal").

Grandfathered Rules

First, BX is proposing to amend the "Grandfathered Rules." The Grandfathered Rules are the Rules of Board of Governors of the Boston Stock Exchange as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. Currently, as set forth in BX Rules 0210(r), the Grandfathered Rules are operative to the extent that such rules are applicable to BOX and to Options Participants and to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. As proposed, the Grandfathered Rules will be amended, as explained below, to apply to the activities of BOX and the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange. These rules however, will not be operative to permit trading.

The Grandfathered Rules currently consist of two sections: The Provisions of the Former Constitution of the Boston Stock Exchange, Inc. That Have Been Incorporated Into the Grandfathered Rules; and the Rules of the Board of Governors. A heading will be added to refer to these as the Grandfathered BSE Rules. As will be described more fully below, BX also proposes to incorporate the BOX Trading Rules, as amended in the manner described below, ("The Grandfathered BOX Rules") into the Grandfathered Rules. For this new third section, a heading will be added to refer to these as the Grandfathered Trading Rules of the Boston Options Exchange Group, LLC. The Grandfathered Rules will remain posted on the BX website.

The opening explanatory paragraph to the Grandfathered Rules is being amended to reflect that the rules apply to activities of former BOX Options Participants and

associated persons subject to the jurisdiction of the Exchange; in addition, the rules continue to apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the post-acquisition Equity Rules. In Chapter I, Section I, BX is also clarifying that references to the Board of Governors, where appropriate for the affected rules, mean the Board of Directors of the Exchange and that references to the Constitution shall mean the BX By-Laws where applicable. There are also references to the Constitution that will be renamed as “Incorporated Constitution Provision” to refer to the provisions of the Former Constitution which were incorporated into the Grandfathered Rules.¹⁰ As proposed, in other sections where there is an applicable rule with a reference to a specific provision of the former Constitution, sections will be amended to replace the term Constitution with the term BX By-Laws. For example, Chapter II, Sections 14 and 25 have references to penalties provided for in Article XIV, Section 4 of the Constitution. Article XIV, Section 4 was not incorporated into the rules, as the By-Laws replaced this section of the former Constitution; this section will now reflect that penalties are provided for in the BX By-Laws. These amendments do not substantially alter the rules in their current format, but rather provide the correct reference.

Chapter IA is being removed, because, as noted above and discussed in more detail in the paragraph below, the procedural rules for disciplinary proceedings will be the current BX Rule 9000 Series. Similarly, Section 4 (Imposition of Fines for Minor Violation(s) of Rule and Floor Decorum Policies) of Chapter XVIII (Conduct) is being

¹⁰ See e.g., Chapter XXXIII, Section 7 regarding BEACON Liability.

amended to reflect that Chapter XXX is being removed, as described below, as proceedings involving discipline will be governed by the BX Rule 9000 Series. In particular, in subsection (a), it will be referenced that BX Rule 9216 governs when BX imposes a fine for a minor rule violation. Sections 4(b) through (d) and 4(f) are being removed as they relate to disciplinary proceedings, which, as proposed, will be governed by the BX Rule 9000 Series. In addition, a cross reference to the Grandfathered BOX Rules Chapter X, Section 2 is being added to note that it will provide for rule violations that may be considered minor in nature. Section 4(e) is being removed as unnecessary, because it is almost identical to Chapter X, Section 2(e) of the current BOX Trading Rules and proposed Grandfathered BOX Rules. Grandfathered Chapter XVIII, Section 6 is being removed as is it no longer applicable.

BX is proposing to remove Chapter XXX, Disciplining Members, Denial of Membership. The Principal Considerations in Determining Sanctions found in Chapter XXX have been incorporated in the BOXR Sanctioning Guidelines.¹¹ BX will continue to follow the Guidelines. The remainder of Chapter XXX sets forth the procedural rules to be followed for disciplining members. As proposed, in its place, BX will utilize the 9000 Series of the BX Rules,¹² which is the Code of Procedure that sets forth the rules regarding disciplining a member or person associated with a member and will now govern the disciplinary process for any legacy disciplinary matter. Under Chapter XXX, an explanatory sentence is being added stating the 9000 Series of BX Rules will now govern the disciplinary process. BX is removing Chapter XXXII regarding Arbitration

¹¹ The BOXR Sanctioning Guidelines are not set forth in the rules, but are part of the policies and procedures that are followed once a determination has been made that sanctions are to be imposed.

¹² Not every section of these procedures may apply to former BOX Participants. For example, because there will be no on-going activities, there may be no reason for a former BOX Participant to avail itself of the 9600 Series regarding exemptions.

Rules from the Grandfathered Rules because it has proposed utilizing the BX 10000 Series, which is the Code of Arbitration Procedure. As proposed, in its place will be a sentence that reflects that arbitrations will be governed by the BX 10000 Series.

Chapter XXXIV (Minor Rule Violations) is being amended to add a reference to Chapter X of the proposed, Grandfathered BOX Trading Rules. This section provides for rule violations deemed minor in nature. In addition, for the reasons noted above, references to the 9000 Series governing discipline and BX Rule 9216 regarding Acceptance, Waiver and Consent are being amended, as appropriate.

BX is terminating its delegation of authority to BOXR, and as such is proposing to remove the Delegation of Authority language from the Grandfathered Rules. Chapter XXXVI of the Grandfathered Rules sets forth the Rules under which BX has granted BOXR authority to carry out certain regulatory responsibilities over the BOX facility. BX has always retained the ultimate regulatory responsibility for the oversight of the BOX facility with oversight conducted by BX's Regulatory Oversight Committee. For any BOX legacy matter, all regulatory responsibilities will be carried out in the manner set forth in the BX By-Laws and the BX Rules, and with continued oversight by the BX Regulatory Oversight Committee. Finally, Chapter XXXIX, Affiliation with NASDAQ OMX Group, Inc., Section 2(c) is being removed, as BOX will no longer be a facility of the Exchange.

BOX Trading Rules

BX also proposes to incorporate the Trading Rules of the Boston Options Exchange Group LLC, with the amendments described below, (“BOX Trading Rules”) into the Grandfathered Rules and locate them at end of current Grandfathered Rules by

creating a new section of the Grandfathered Rules called Grandfathered BOX Trading Rules. As stated above, these rules apply to activities of the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange, during the time period that BOX was a facility of the Exchange. As proposed, a new paragraph will be added to the Grandfathered BOX Trading Rules section, before the General Provisions, to set forth that BOX is no longer a facility of the Exchange. These Grandfathered BOX Trading Rules and the applicable Grandfathered BSE Rules continue to apply to the activities of BOX and Options Participants and associated persons subject to the jurisdiction of the Exchange that occurred during the time that BOX was a facility of the Exchange. Terms below must be read in context regarding activities which occurred when BOX was a facility of the Exchange and also regarding activities relating to continued Exchange jurisdiction, such as disciplinary matters.

As proposed, certain definitions found in Section 1 of the Grandfathered BOX Trading Rules will be amended to reflect that BOX is no longer a facility of the Exchange: (6) the term "BOX" will mean the Boston Options Exchange or Boston Stock Exchange Options Exchange, *formerly* an options trading facility of the Exchange under Section 3(a)(2) of the Act; (7) the term "BOX Rules" or "Rules of BOX" will mean the Rules of the former Boston Options Exchange Facility. Where applicable, it may mean Grandfathered BOX Rules, in context, but it may also mean the rules in place while BOX was a facility of the Exchange; (9) the term "BOXR" or "BOX Regulation" will mean Boston Options Exchange Regulation LLC, which was a wholly-owned subsidiary of the Exchange; where applicable for the Grandfathered BOX Rules, it may mean the Exchange; (10) the term "BSE Rules" will mean the Grandfathered Rules; (24) the term

"Exchange" will mean the Boston Stock Exchange, now known as NASDAQ OMX BX, Inc.; (42) the term "Options Participant" or "Participant" or "Former BOX Options Participant" is being amended to reflect that the Participants *were* registered with the Exchange pursuant to the BOX Trading Rules; (61) the term "Rules of the Exchange" will mean the BX By-Laws, where applicable, the BX Rules and the Grandfathered Rules, including these Grandfathered BOX Rules.

Prior to being granted BOX Options Participant status, by executing the Options Market Participation Agreement, every Participant acknowledged that the Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange. Rather than solely relying upon an open ended contractual jurisdiction provision, as proposed Chapter II, Section I (h) is being added to codify that acknowledgment in the Rules and add a two year provision for filing a complaint that is similar to that set forth in the BX Rules, providing as follows: "A Participant or an person associated with a Participant that has had its Participant status terminated or revoked shall continue to be subject to the filing of a complaint under these Rules based upon conduct that commenced prior to the effective date of the Participant's termination of its Participation. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation." This provision is similar to that found in BX Rules 1012 and 1031.

Outdated references to the specific sections of the Constitution that are unnecessary are being removed. To avoid confusion, now that certain sections of the BX Rules are being relied upon, certain references to the "Rules of the Exchange" will be referred to as the BSE Rules. For the reasons described above, references to

Grandfathered BSE Chapter XXX will be removed and instead the BX Rule 9000 Series will apply.¹³ References to Grandfathered BSE Rules, Chapter XXX in proposed Grandfathered BOX Trading Rules, Chapter X, Section 1, regarding the procedures to be followed for imposing a Minor Rule Violation Plan fine will be replaced by BX Rule 9216, and, where appropriate, BX Rule 9000 Series, which will govern this process going forward. The Minor Rule Violation penalties and the references to underlying Grandfathered BOX Trading Rules governed by the Minor Rule Violation Plan will remain in the proposed Grandfathered BOX Trading Rules, Chapter X, Section 2 and will not be added into the BX Rules. Similarly, procedures to be followed for letters of Acceptance, Waiver and Consent will be set forth in BX Rule 9216; therefore, the section regarding Acceptance, Waiver and Consent procedures found in Grandfathered BOX Trading Rules, Chapter X, Section 3 is being removed. In addition, the Appendix is being amended to reflect that BOX will no longer be facility of the Exchange, to remove outdated references to the former Constitution, to refer to the the former Incorporated Constitution Provisions where appropriate, and to reflect that the disciplinary and arbitration procedures will be found in the 9000 and 1000 Series of the BX Rules.

BOXR Operating Agreement and BOXR By-laws

BX is proposing to eliminate the BOXR By-Laws and Operating Agreement in their entirety. As stated above, once BOX ceases to be a facility of the Exchange, BOXR will no longer have a purpose, as BOXR's sole purpose was to regulate the BOX facility. BOXR LLC will be merged into its parent, BX.

NASDAQ OMX BX Rules and By-Laws

¹³ See Proposed Grandfathered BOX Trading Rules, Chapter III, Sections 8(c) and 13, Chapter VI, Section 4, and Chapter VIII, Section 5.

In addition, BX proposes to amend the Rules of BX. Specifically, Rule 0015 (b) provides that the Options Rules (including the Grandfathered Rules) shall apply to all Options Participants, and will be amended to: (i) remove the reference to Options Rules as there will no longer be a set of rules called Options Rules; (ii) reflect that the 9000 Series and the 10000 Series of these Rules (meaning the BX Rules) and the Grandfathered Rules shall apply to former BOX Options Participants and associated persons for activities that occurred during the time that BOX was a facility of the Exchange; and (iii) remove the provision that “[t]he Equity Rules shall apply to Options Participants only if they are also members of the Exchange,” because, as will be explained below, as proposed, the term Options Participant is being removed from the rules.

As proposed, the following definitions found in Rule 0120 will be amended. Specifically, Definition (q) "Options Rules" will be reserved. Definition (r) "Grandfathered Rules" will be amended to mean the Rules of the Board of Governors of the Boston Stock Exchange, as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. and as such rules may be subsequently amended, to the extent that such rules are applicable to BOX and to Options Participants that occurred while BOX was a facility of the Exchange. The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. Definitions (s) Options Participant, (t) BOXR, (u) BOX LLC, (v) BOX and (w) BOX Rules will be reserved, because BOX will no longer be a facility of the Exchange. Similarly, as proposed, Article I of the BX By-Laws

will be amended to reflect that BOX will no longer be a facility of the Exchange. Specifically, Sections (d) through (h) will now be reserved, as these definitions are no longer needed once BOX ceases to be a facility of BX. Section 4.3(a) regarding qualifications for the Board of Directors will be amended to remove the requirement that one Industry Director shall represent BOX Participants as that is no longer needed. Subsection (b) will be removed as it references actions which occurred after the adoption of the By-Laws after the NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange. Finally, Section 4.14, Committees Not Composed Solely of Directors, will be amended to remove the manner in which an Industry Director who is a representative of BOX Participants is nominated to the Board as it is no longer needed.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Further, BX believes that the proposal is consistent with Sections 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

rules and regulation thereunder, and the rules of the exchange. Specifically, the proposal is intended to address the relationship between BX and the former BOX Participants that will exist for BOX legacy matters once BOX is no longer a facility of BX. The disciplinary procedures provide for fair procedures for the discipline of the former BOX Participants and persons who were associated persons of former BOX Participants for activities which occurred while BOX was a facility of the Exchange, consistent with Section 6(b)(7) of the Act.¹⁶ BX believes that with the removal of the BOX-related provisions the composition and selection of the BX Board of Directors will continue to satisfy the requirement in Section 6(b)(3) of the Act¹⁷ that the rules of the Exchange provide for the fair representation of members in the selection of directors and administration of the Exchange.

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 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 either solicited or received.

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

Effectiveness

¹⁶ 15 U.S.C. 78f(b)(7).

¹⁷ 15 U.S.C. 78f(b)(7).

This proposed rule change is filed for immediate effectiveness pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange is amending its Rules to provide for the changes needed once BOX is no longer a facility of the Exchange. It is utilizing the rules which currently exist in the BX Rules to take the place of certain responsibilities which have been vested in BOXR. The Exchange requests that the proposed rule change be effective upon the facility termination effective date.²⁰ On that the date, BOX will become a self-regulatory organization completely separate from BX and will have its own set of rules.²¹ The Exchange believes that it will avoid potential confusion for BOX Options Participants that may result from a new set of rules pertaining to the new BOX Exchange, to have to the changes described above in effect on the facility termination effective date.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

²¹ *See supra* note 4.

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Please include File Number SR-BX-2012-036 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-BX-2012-036. 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 website (<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

website 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 also will be available for inspection and copying at the principal office 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-BX-2012-036 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5a

New text is underlined; deleted text is in brackets.

GRANDFATHERED RULES

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GRANDFATHERED RULES

Upon the acquisition of the Boston Stock Exchange by The NASDAQ OMX Group and its renaming as NASDAQ OMX BX, the rules of the Exchange under its former name remained in effect. These rules, as amended subsequent to that acquisition, are entitled the “Grandfathered Rules.” The Grandfathered Rules shall apply to the Boston Options Exchange Group LLC (“BOX”) and Options Participants and associated persons subject to the jurisdiction of the Exchange that occurred during the time that BOX was a facility of the Exchange. The Grandfathered Rules, where applicable, shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. [are operative to the extent that they apply to the Boston Options Exchange Group LLC (“BOX”) and to Options Participants on the Exchange, and are to be read in conjunction with the BOX Rules.](The Exchange adopted new, different rules for equities trading, the “Equity Rules”). Certain provisions of the former Constitution of the Boston Stock Exchange also have been incorporated in amended form into these Grandfathered Rules, as set forth below.

GRANDFATHERED BSE RULES

Provisions Of The Former Constitution Of The Boston Stock Exchange, Inc., That Have Been Incorporated Into the Grandfathered Rules

No change

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Rules of the Board of Governors or BSE Rules

Chapter I – Definitions

SEC. 1. Exchange --Board of Governors

The terms "Exchange" and "Board of Governors" when used with reference to the administration of any rule, shall, whenever appropriate, include or mean [the Chairman,] any other officer or employee or any committee to whom the BX Board of Directors [Governors] shall have delegated any of its powers or duties. References to the Constitution shall mean the BX By-laws, where applicable.

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SEC. 2- 3. No change.

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[Chapter I-A – Access to Records Restrictions on Access --Copies

Any member, allied-member or member-organization, in connection with any appeal to the Board of Governors, proposed or taken in good faith under a provision of the Constitution, shall be entitled to examine those portions of the minutes or other records of the Board of Governors or of any committee which specifically relate to any disciplinary action against such member, allied-member or member-organization. The Exchange may deliver to the member, allied-member or member-organization a true copy of any such excerpt in lieu of permitting examination of the actual minutes or records. Except as herein expressly set forth, no member, allied-member or member-organization shall have any right to examine any minutes or other records of the Board of Governors or of any committee except that any Governor shall have complete access to the minutes and records of the Board of Governors or of any committee and any member of a committee shall have complete access to the minutes and records of such committee.]

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Chapter I-B

SEC. 1-2. No change.

SEC. 3. Dealings on Floor --Persons

Only members shall be permitted to make or accept bids and offers, consummate transactions or otherwise transact business on the Floor in any security admitted to dealings on the Exchange,[except that the provisions of this Rule shall not apply in the case of a person authorized to transact business on the Floor pursuant to Article XVI, Section 7 of the Constitution.]

••• Supplementary Material: ...

.10 No change.

SEC. 4 Registration

(a) Each member, and member and/or participant organization shall register with the

Exchange, on forms provided by the Financial Industry Regulatory Authority, Inc. ("FINRA") for registration with the Web Central Registration Depository ("Web CRD"). Registration forms shall include, information relating but not limited to, (i) the name and address of the individual member having qualified such member or participant organization [in accordance with Article IX of the Constitution] and (ii) the name and address of the Member Organization Representative designated by such member or participant organization[in accordance with Article IX. Members, and member and/or participant organizations must use FINRA'S Web CRD to file Form U4], Uniform Application for Securities Industry Registration or Transfer. Members, and member and/or participant organizations shall amend Form U4 not later than thirty (30) days after the filer knew of or should have known of the need for the amendment.

(b) No change.

SEC. 5 through SEC. 7 No change.

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Chapter II – Dealings on the Exchange

SEC. 1. through SEC. 13. No change.

SEC. 14.

Unbusinesslike Dealing

Reckless or unbusinesslike dealing is contrary to just and equitable principles of trade, and the offending member or allied-member may be subject to the penalties provided in the By-Laws[in Article XIV, Section 4 of the Constitution].

SEC. 15. through SEC. 24. No change.

SEC. 25.

Violation of Securities Exchange Act of 1934

Any member, allied-member or associate member who wilfully violates any provision of the Securities Exchange Act of 1934, or any rule or regulation thereunder, shall be deemed guilty of an act inconsistent with just and equitable principles of trade, and the offending member, allied-member or associate member shall be subject to the penalties provided in the By-Laws[Article XIV, Section 5 of the Constitution.]

SEC. 26. through SEC. 43. No change.

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Chapter VII – Carrying of Accounts – Customers’ Securities – Give-Up Orders

SEC. 1. through SEC. 2. No change.

SEC. 3.

Improper Use of Customer's Securities

The improper use of a customer's securities by a member, allied-member or member-organization is an act not in accordance with just and equitable principles of trade, and the offending member, allied-member or member-organization shall be subject to the penalties provided in the By-Laws[Section 5 of Article XVI of the Constitution.]

SEC. 4. through **SEC. 5.** No change.

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Chapter XI – Alternate Specialists

SEC. 1. through **SEC. 2.** No change.

SEC. 3.

Negligence

Gross negligence in the handling of an order by a Regular Specialist or Alternate Specialists or improper execution of an order shall be regarded as an act detrimental to the interest and welfare of the Exchange, and may be subject to penalties in the By-Laws[in accordance with Article XVI, Section 6 of the Constitution].

* * * * *

Chapter XV – Specialists

SEC.1-2. No change.

SEC. 3.

Code of Acceptable Business Practices for Specialists

(a)(1) No change.

(2) While the Specialist is required to act in accordance with the specific rules and policies which govern his activities, he should avoid actions which are not in keeping with the spirit and intent of those rules and policies or not in accordance with high standards of business and ethical conduct.[This duty is formalized by the Exchange Constitution, Article XIV, Section 4.]

(3) No change.

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Chapter XVIII – Conduct

SEC. 1. through **SEC. 2.** No change.

SEC. 3.

Other Penalties

Any of the acts enumerated in this Rule may be found to be acts detrimental to the interest or welfare of the Exchange or to constitute fraud or conduct inconsistent with just and equitable principles of trade, subject to the penalties provided in the By-Laws[Constitution].

SEC. 4.**Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies**

(a) In lieu of commencing a "disciplinary proceeding" as provided in BX Rules 9000 Series [that term is used in Chapter XXX of the Exchange Rules], the Exchange may, subject to the requirements set forth in BX Rules 9216 [this Rule], impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature, or for any violation of the Exchange's Floor Decorum and Security Policies ("policies"). (See Grandfathered Boston Options Exchange Group LLC Rules, Chapter X, Section 2.)

[(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by a Floor Official or officer of the Exchange, setting forth (i) the rule(s) or policy(ies) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided in paragraph (d), such date to be not less than 10 days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of such person's right to an appeal to a Hearing Panel.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the determination by filing with the General Counsel of the Exchange ("General Counsel") not later than the date by which such determination must be contested, a written response meeting the requirements of an Answer as provided in Chapter XXX of the Exchange Rules at which point the matter shall become a "Disciplinary Proceeding" subject to the provisions of Chapter XXX. In any such disciplinary proceeding, if the Hearing Panel ("Panel") determines that the person charged is guilty of the rule or policy violation(s) charged, the Panel shall (i) be free to impose any one or more of the disciplinary sanctions provided in Chapter XXX and (ii) determine whether the violation(s) is minor in nature. The General Counsel, the person charged, and any member of the Board of Governors of the Exchange may require a review by the Board of any determination by the Panel.

(e) Failure to Timely File Amendments to Form U4, Form U5 and Form BD

Any member, and member and/or participant organization that is required to file Form U4, Form U5 or Form BD pursuant to Chapter I-B, Section 4 through Section 6 of the Boston Stock Exchange rules, or the Securities Exchange Act of 1934 and the rules promulgated thereunder, is required to file the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Members, member and/or participant organizations shall file an amendment to Form U4, Form U5 or Form BD not later than thirty (30) days after the filer knew of or should have known of the need for the amendment.

FINE SCHEDULE (Implemented on a running 12 month period)

1st Occurrence	500.00
2nd Occurrence	1,000.00
3rd Occurrence	2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with BSER

(f) The Exchange shall prepare and announce to its members and member organizations from time to time a listing of the Exchange rules and policies as to which the Exchange may impose fines as provided in this Rule. Such listing shall also indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such rule or policy, or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation. Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under Chapter XXX rather than under this Rule.]

SEC. 5

Failure to Respond to Exchange Inquiries

(a) In accordance with Article XIV of the Incorporated Constitution Provisions, for any regulatory purpose that the Exchange deems appropriate under its Constitution and Rules, all Members and Member Organizations of the Exchange, and all associated persons thereof, shall be required to (1) respond orally or in writing to any Exchange inquiry and (2) provide access to its books, records and accounts, as required to be maintained under Section 17(a) of the Securities Exchange Act of 1934, within the timeframe specified by the Exchange in its request.

[SEC. 6

Upon learning of a Member's failure to comply with Article IX, Section 12 of the Constitution, the Exchange shall: (1) provide notice to the Member within five business days; (2) allow the Member fifteen calendar days to respond; (3) absent an adequate response, schedule a hearing before a Hearing Panel consisting of a Hearing Officer who shall be the Chairman of the Panel and at least two members of the Hearing Committee within thirty calendar days; and (4) render its decision as to the existence of a violation no later than ten calendar days following the date of such hearing. Should the Hearing Panel determine a violation exists, all trading rights and privileges of the Member shall be suspended.]

* * * * *

Chapter XXX – Disciplining of Members[– Denial of Membership]

BX Rules 9000 Series (Code of Procedure) are the applicable procedures governing disciplining of Members, Participants and associated persons.

[Disciplining of Members --Denial of Membership

The following are the considerations and procedures to be followed in connection with the disciplining of members and persons associated with members, the denial of membership to any person seeking membership in the Exchange, the barring of any person from becoming associated with a member of the Exchange, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In lieu of formal disciplinary action, a member may opt for Acceptance Waiver and Consent Procedures pursuant to Section 10 of this Chapter.

Principal Considerations In Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list other factors. As appropriate, the Exchange will consider case-specific factors in addition to those listed here and in individual guidelines.

- (1) The named party's relevant disciplinary history including any fines imposed under the Minor Rule Violation Fine Plan.
- (2) Whether the named party accepted responsibility for and acknowledged the misconduct to an employer (in the case of an employee of a member or member organization or an approved person) or a regulator prior to detection and intervention by the employer or regulator.
- (3) Whether the named party voluntarily employed subsequent corrective measures, prior to detection or intervention by an employer (in the case of an employee of a member or member organization or an approved person) or a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
- (4) Whether the named party voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
- (5) Whether the named party demonstrated reasonable reliance on competent legal or accounting advice.
- (6) Whether the named party engaged in numerous acts and/or a pattern of misconduct.
- (7) Whether the named party engaged in the misconduct over an extended period of time.
- (8) Whether the named party attempted to conceal misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or an employer (in the case of an employee of a member or member organization or an approved person).
- (9) With respect to other parties, including the investing public and/or other market participants, (a) whether the named party's misconduct resulted directly or indirectly in injury to such other parties; and (b) the extent of the injury.
- (10) Whether the named party provided substantial assistance to regulators in its examination and/or investigation of the underlying misconduct, or whether the named party attempted to delay an investigation, to conceal information, or to provide inaccurate or misleading testimony or documentary information to the BSE or another regulator.
- (11) Whether the named party's misconduct was the result of an intentional act, recklessness, or negligence.
- (12) Whether the named party engaged in the misconduct at issue notwithstanding prior warnings from BSE staff, another regulator, or a supervisor (in the case of an approved person or employee of a member or member organization) that the conduct violated BSE Rules or applicable securities laws or regulations.
- (13) Whether the named party's misconduct resulted in the potential for monetary or other gain.
- (14) The number, size, and character of the transactions at issue.
- (15) The level of sophistication of the injured or affected customer. (Generally a violation affecting an unsophisticated customer should be considered as an aggravating factor.)
- (16) Whether, at the time of the violation, the named member or member organization had developed reasonable supervisory, operational, and/or technical procedures or controls that were properly implemented.
- (17) Whether, at the time of the violation, the named member or member organization had

developed adequate training and educational initiatives.

(18) Whether the named member or member organization can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of its historical compliance record.

(19) Whether the member or member organization with which a named party is/was associated disciplined the party for the misconduct at issue prior to regulatory detection.

SEC. 1. Notification. The notices required by Section 6(d) of the Securities Exchange Act of 1934 as amended (the "1934" Act) and Sec. 9 hereof shall be given by certified or registered mail, receipt requested, addressed to the member or person to receive such notice at such member's or person's address as appearing on the records of the Exchange. Such notice under said Sec. 6(d)(2) shall (a) contain the specific charges against, or specific grounds for denial, bar, prohibition or limitations ("denial") of, such member or person, (b) in case of disciplinary charges, set forth the date, time and place at which the member may be heard with respect to such charges, (c) set forth the board, committee or individual ("Panel") before which the member may be heard with respect to such charge or denial, and (d) advise such member or person of his right to file an answer to Sec. 2 of this Rule or request a hearing regarding such denial.

SEC. 2. (a) Charges. Notice of specific disciplinary charges as required by 1(a) above shall be in the form of a written statement ("charge memorandum") and shall be signed by an authorized officer of the Exchange. The charge memorandum shall set forth the specific facts upon which the charges are based, the specific provisions of the Exchange Constitution and Rules alleged to have been violated and the persons or organization alleged to have committed each of the violations ("respondents").

(b) Answer or Request for Hearing. A member or person against whom charges have been made or who has been the subject of a denial shall have twenty-five (25) days from the date of receipt of the notice referred to in Sec. 1 hereof to file an answer to said charge or request a hearing concerning such denial with the Secretary of the Exchange. Any such answer or request shall be in writing, signed by or on behalf of the member or other person involved. The answer to a charge memorandum shall admit or deny each of the specific allegations set forth in the charge memorandum and contain, in reasonable detail, any affirmative defense or explanatory material which the respondent wishes to set forth. Any allegation in the charge memorandum not specifically denied in the answer may for all purposes, be deemed admitted and failure to file an answer within the specified time or such other extended time period as may be approved by the Hearing Officer may be deemed an admission of any facts and charges asserted in the charge memorandum.

(c) Forwarding of Charges. The Secretary of the Exchange shall forward copies of the charges and any answer received in the case of disciplinary proceedings and the specific grounds in the case of any other proceedings, to the member or members of the Panel which is to hear the matter.

SEC. 3. Hearing Panels. Hearings with respect to a charge memorandum shall be held before a Hearing Panel consisting of at least three persons: A Hearing Officer who shall be the Chairman of the Panel and at least two members of the Hearing Committee.

The Chairman of the Board shall, from time to time, subject to the approval of the Board of Governors, appoint members of the Hearing Committee as the Chairman may deem necessary. Subject to the approval of the Board of Governors, the Chairman of the Board shall appoint a Chairman of the Hearing Committee who shall also serve as the Chief Hearing Officer.

Prior to a hearing, the Chief Hearing Officer shall select at least two prospective panelists to serve on the Hearing Panel. Such prospective panelists may not have any direct or indirect

interest in the outcome of the matter to be heard or any knowledge, opinions or relationship which would make their services on the Panel inappropriate. In the event that the Chief Hearing Officer is disqualified from serving on a Panel, he should appoint a member of the Hearing Committee to serve as Hearing Officer for the hearing.

Parties to the hearing (the respondent and an authorized officer of the Exchange) shall be sent a list of prospective Panelists and the name of the Hearing Officer. Following such notification, the parties may, within ten days, file with the Hearing Officer one objection for cause as to any or all of the prospective Panelists, or as to the Hearing Officer. The parties are prohibited from contacting, directly or indirectly, the prospective members of the Hearing Panel. The Chief Hearing Officer, or the Hearing Officer appointed by him, shall rule on all such objections and shall determine which of the remaining prospective Panelists shall serve on the Hearing Panel. In the event that the Chief Hearing Officer, or the Hearing Officer appointed by him, is thus disqualified, the Chief Hearing Officer shall appoint another member of the Hearing Committee to serve as the Hearing Officer.

A final notice of the Hearing, listing the date, time and location of the Hearing and the names of the members of the Panel shall then be sent to the respondent by the Exchange in the same manner as notice of charges was provided under Sec. 1 above.

SEC. 4. Hearings. Hearings shall be conducted in accordance with the following procedures:

(a) Time and Place for Hearings. No hearing shall be held on any matter prior to five (5) days following (a) the last date upon which an answer may be filed in case of disciplinary matters or (b) the date upon which a person requests a hearing in other matters. The time and place for any such hearing shall be set by the Executive Vice President of the Exchange except in cases of hearings before the Board of Governors, in which case the time and place shall be set by the Chairman of the Board.

(b) Either party, prior to the hearing, may apply to the Chief Hearing Officer to resolve procedural matters relating to the case. After the hearing has begun such application should be made to the Hearing Officer assigned to the Hearing. Such applications must be made through the Hearing Committee with notice to all parties. Ex parte communications with any Panelist or Hearing Officer are forbidden. The Chief Hearing Officer or a Hearing Officer designated by him shall, upon request, permit a respondent or the Exchange to inspect and copy documents or records in possession of either party which are material to the defense or are intended for use as evidence at the hearing. This does not authorize the discovery or inspection of reports, memoranda or other internal Exchange documents prepared by the Exchange in connection with the proceedings. Similarly, the respondent may be required by the Hearing Officer to permit access by the Exchange to documents or records in his possession or control. A Hearing Officer may require a pre-hearing conference on any case. Any appeal of procedural determinations of the Hearing Officer may only be made after a Panel has issued its final decision on the charges.

The Exchange and any member or person shall be entitled to be represented by counsel at any hearing held hereunder. The Hearing Board may assist in attempting to obtain at the Hearing the presence of witnesses from the member firm community whose testimony is relevant and necessary.

(c) Conduct of Hearing. The Hearing Officer shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the Exchange who, along with respondent, may present evidence and produce witnesses who shall testify under oath, shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses. A transcript of the hearing shall be made and shall become a part of the record and one copy shall be made available to each party.

(d) In lieu of the procedures set forth in paragraph (c) above, a Hearing Panel, at a Hearing called for that purpose, shall also conduct disciplinary hearings on the basis of a written Stipulation and Consent entered into between the respondent and any authorized officer of the Exchange. Any such Stipulation and Consent shall contain a stipulation with respect to the facts, or the basis for findings of fact by the Hearing Panel; a consent to findings of fact by the Hearing Panel, including a finding that a specified offense had been committed; and a consent to the imposition of a specified penalty. Neither of the parties will be permitted to offer any argument which is inconsistent with the stipulated facts or to ask for the imposition of any penalty other than that agreed upon in the stipulation. In any such Hearing, if the Hearing Panel determines that the respondent has committed an offense, it may impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, as it deems appropriate. In addition, a Hearing Panel may reject such Stipulation and Consent.

Such rejection shall not preclude the parties to the proceeding from entering into a modified Stipulation and Consent which shall be presented to a Hearing Panel in accordance with the provisions of this section nor shall such rejection preclude the Exchange from bringing or presenting the same or different charges to a Hearing Panel in accordance with the provisions of paragraph (c) above.

(e) Counsel. The Exchange and any member or person shall be entitled to be represented by counsel at any hearing held hereunder.

SEC. 5. Decision. After a hearing held pursuant to Sec. 4 hereof, the Panel shall:

(a) In the case of disciplinary hearings, not resulting from a Stipulation and Consent, determine by majority vote of all members of the Panel whether the respondent is guilty or not guilty with respect to each specific charge. If the Panel determines that the respondent is guilty with respect to one or more charges, the Panel shall reconvene with the parties, announce their decision and state whether it was by majority or unanimous vote. The parties shall then be given an opportunity to present to the Panel their recommendation as to the appropriate penalty including arguments in support of such penalty and mitigating or aggravating circumstances. The Panel shall then, by majority vote of all members of the Panel, determine the penalty to be imposed.

(b) In the case of a disciplinary hearing to consider a Stipulation and Consent, determine by majority vote whether to accept the Stipulation and Consent, reduce the penalty or reject it.

(c) In the case of denial hearings, pursuant to the denial of membership to any person seeking membership in the Exchange, the barring of any person from becoming associated with a member of the Exchange, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, determine by majority vote of all members of the Panel whether or not such denial should be upheld or modified.

In all cases the Panel shall accompany such determination with the appropriate statement required pursuant to Sec. 6(d)(1) or (2) of the 1934 Act.

In the case of disciplinary hearings the Hearing Panel shall issue a written decision including a statement of findings and conclusions, with the reasons therefor, upon all material issues, presented in the record, and whether each violation alleged in the charge memorandum has occurred.

Statements and written decisions of the Panel shall be promptly served to the parties to the Hearing in accordance with Sec. 1 contained therein.

SEC. 6. Request for Review. Except for decisions made by the Board of Governors, which shall become final when made, any determination made pursuant to Sec. 5 shall become final within twenty (20) days after its filing with the Secretary of the Exchange unless a request for review thereof by the Board of Governors is filed with the Secretary prior to the end of such period. Such requests may be filed either by or on behalf of the Board or committee originally bringing the disciplinary charges or making the decision of denial or the member or person subject of such charge or denial. Upon such request the Secretary shall make the record of the proceedings available to the Board of Governors.

SEC. 7. Review. Upon review the Board of Governors may, by majority vote, sustain any such determination including any sanction imposed or reverse, modify, limit or increase such determination or return the matter to the Panel for further findings. The decision of the Board shall be final and conclusive.

SEC. 8. Summary Proceedings. Summary action to be taken by the Exchange under Sec. 6(d)(3) of the 1934 Act may be administered by the Executive Committee of the Board of Governors.

SEC. 9. Notice of Decisions. The Secretary of the Exchange shall file notice of any final decision hereunder or under Sec. 6 hereof with the Securities and Exchange Commission.

Sec. 10. Acceptance, Waiver and Consent. Failure to comply with any of the Rules of the Exchange may result in a violation. Upon the determination of a violation by the Enforcement Department, the member will be notified of specific charges. If member does not dispute the violation, he may execute a letter, prepared by the Enforcement Department. The letter shall contain the member's (1) acceptance of finding a violation(s), (2) consent to the imposition of sanctions, and (3) agreement to waive the right to a hearing of appeal to challenge the validity of the letter.

(a) Execution of the Letter. The letter shall describe (1) the act or practice engaged or omitted, (2) rule, regulation or statutory provision violated, (3) sanction(s) to be imposed, (4) effective date of sanction(s) imposed.

(b) Waiver. If the member executes the letter of Acceptance, Waiver and Consent ("AWC"), and it is accepted, the member waives the right to a hearing before a Hearing Panel of the Exchange, the Commission, and the courts or to otherwise challenge the validity of the letter, based on the subject of the act or practice engaged or omitted, as specified in the letter.

(c) Submission of the Letter. If member executes a letter of AWC, it shall be submitted to the General Counsel of the Exchange or his/her delegatee. The General Counsel or his/her delegatee may accept, reject or refer the letter to the Board of Governors for acceptance or rejection.

(d) Rejection of the Letter. If the member rejects the letter of AWC, the Exchange may pursue formal disciplinary proceedings according to the procedures set forth in this Chapter.

(e) Decision. If the letter is accepted by the General Counsel of the Exchange, his/her delegatee or the Board of Governors, it shall be deemed final in regards to the complaint, answer, and decision in the matter.

If the letter is rejected by the General Counsel or his/her delegatee or the Board of Governors, (1) the Exchange may take any other appropriate disciplinary actions with respect to the alleged violation(s), including formal disciplinary action pursuant to this Chapter, (2) the member shall not be prejudiced by the execution of the letter of AWC, and (3) the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or other proceeding.

Sec. 11. In addition to the provisions set forth in the Constitution, Article X, Sec.2, the Exchange may issue a late charge in the amount of \$500 where a member fails to pay any fees, fines or any assessment or other sum on the due date.]

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Chapter XXXII – Arbitration

BX Rules 10000 Series (Code of Arbitration Procedure) are the applicable procedures governing arbitrations.

[SEC. 1.

Arbitration Code

(a) Members --Except as provided in subparagraph (c)(1) below, any controversy between parties who are members, allied members, member firms or member corporations arising out of the business of such member, allied member, member firm or member corporation, or the dissolution of a member firm or member corporation, shall at the instance of any such party, be submitted for arbitration, in accordance with the provisions of the Rules of the Board of Governors.

(b) Customers or Non-Members --Except as provided in subparagraph (c)(1) below, any dispute, claim or controversy between a customer or non-member and a member, allied member, member organization and/or associated person arising in connection with the business of such member, allied member, member organization and/or associated person in connection with his activities as an associated person shall be arbitrated in accordance with the Rules of the Board of Governors as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-member.

(c) Jurisdiction --Under this Code, the Boston Stock Exchange, Inc. ("Exchange") shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where having due regard for the purposes of the Exchange, and the intent of this Code such dispute, claim or controversy is not a proper subject matter for arbitration.

(1) A claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

SEC. 2.

Simplified Arbitration

(a) Limitation --Any dispute, claim or controversy, arising between a public customer(s) and an associated person, member, allied member or member organization, subject to arbitration under the Rules of the Board of Governors involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

(b) Statement of Claim --The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the claim. Sufficient copies of the Submission Agreement, the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) Fees --The Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Code upon filing of the Submission Agreement. The final disposition of the sum shall be determined by the arbitrators.

(d) Answer, Defenses and Claims --The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third Party Claim, and a copy of the original Claim filed by the Claimant. A copy of the Third Party Claim shall be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s). The Third Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000, the arbitrator may refer the Claim, Counterclaim and/or Third Party Claim, if any, to a panel of no less than three (3) arbitrators in accordance with Section 8 of this Code or he may dismiss the Counterclaim and/or Third Party Claim without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30.

(e) Service --All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrators, a copy of the Answer, Counterclaim, Third Party Claim or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either: (i) serve on each party and on the Director of Arbitration with sufficient additional copies for the arbitrator(s) a reply to any Counterclaim, or (ii) if the amount of the Counterclaim exceeds the Claim, have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) Hearing Option --The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator(s) calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) Extension of Time --The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h) Submission and Production of Documents --

(1) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

(2) If a hearing is demanded in accordance with Section 2(f) the general provisions governing a pre-hearing proceeding under Section 20 shall apply.

(3) If no hearing is demanded, all requests for document production shall be submitted in writing to the Director of Arbitration within 10 business days of the notification of the identity of the arbitrator selected to decide the case. The requesting party shall serve simultaneously its request

for document production on all parties. Any response or objections to the requested document production shall be served on all parties and filed with the Director of Arbitration within ten (10) business days of receipt of the requests for production. The selected arbitrator shall resolve all requests under this section on the papers submitted.

(4) In his discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(i) Additional Arbitrators --Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to the panel which shall decide the matter in controversy.

(1) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(j) Except as otherwise provided herein, the general arbitration rules of the Boston Stock Exchange, Inc. shall be applicable to proceedings instituted under this Code.

Hearing Requirement --Waiver of Hearing

(a) Any dispute, claim or controversy, except as provided in Section 2 (Simplified Arbitration), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

SEC. 4.

Time Limitation Upon Submission

No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

SEC. 5.

Dismissal of Proceedings

At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to the remedies provided by law. The arbitrators shall upon the joint request of the parties dismiss the proceedings.

SEC. 6.

Settlements

All settlements upon any matter submitted shall be at the election of the parties.

SEC. 7.

Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration

(a) Tolling --Where permitted by law, the time limitation(s) which would otherwise run or accrue

for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the claimant(s). The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) Legal Proceeding --The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

SEC. 8.

Designation of Number of Arbitrators

(a) Composition of Panels --(1) In all arbitration matters involving public customers, and non-members, where the matter in controversy exceeds \$10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry unless the public customer or non-member requests a panel consisting of at least a majority from the securities industry.

(2) **Industry Panelist** --An arbitrator will be deemed as being from the securities industry if he or she:

- i. is a person associated with a member, or, broker/dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment adviser, or
- ii. has been associated with any of the above within the past five (5) years, or
- iii. is retired from or spent a substantial part of his or her business career in any of the above, or
- iv. is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(3) **Public Panelist** --An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment adviser.

(b) Selection of Panels --The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of each panel.

SEC. 9.

Notice of Selection of Arbitrators

The Director of Arbitration shall inform the parties of the names and employment histories of the arbitrators for the past ten years, as well as information disclosed pursuant to Section 11 of this Code at least eight (8) business days prior to the date fixed for the initial hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that any arbitrator, after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the replacement

arbitrator for the past ten years, as well as information disclosed pursuant to Section 11 as soon as possible. A party may make further inquiry of the Director of Arbitration concerning the background of the replacement arbitrator and within the time remaining prior to the first hearing session or the five (5) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 10.

SEC. 10.**Peremptory Challenge**

In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple claimants, respondents and/or third party respondents, the claimants shall have one peremptory challenge, the respondents shall have one peremptory challenge and the third party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

SEC. 11.**Disclosures Required of Arbitrators**

(a) Required Disclosure --Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families or their current employers, partners or business associates.

(b) Obligation to Inform --Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in subsection (a) above.

(c) Continuing Duty --The obligation to disclose interests, relationships, or circumstances which might preclude an arbitrator from rendering an objective and impartial determination described in subsection (a) hereof is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances which arise, or which are recalled or discovered.

(d) Removal Authority --Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section, if the arbitrator who disclosed the information is not removed.

SEC. 12.

Disqualification or Other Disability of Arbitrators

In the event that any arbitrator, after the commencement of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill the vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history for the past ten (10) years of the replacement arbitrator, as well as information disclosed pursuant to Section 11. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Section 10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 10.

SEC. 13.

Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) **Statement of Claim** --The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim together with documents in support of the claim and required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) **Service and Filing with the Director of Arbitration** --For purposes of the Code of Arbitration, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing with first-class postage pre-paid or by means of overnight mail service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) **Answer, Defenses, Counterclaims and/or Cross Claims** --

(1) **Answers** --Within twenty (20) business days from receipt of the Statement of Claim, the Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. An executed Submission Agreement and Answer of the Respondent(s) shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and the relevant facts that will be relied upon at the hearing and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s) and any Third Party Claim against any other party or person upon any existing dispute, claim or controversy subject to arbitration under this Code.

(2) **Defenses** -

(i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent or Third Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the

hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third Party Respondent who fails to specify all available defenses and relevant facts in such party's answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's answer at the hearing.

(iii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third Party Respondent who fails to file an answer within twenty (20) business days from receipt of service of a claim, unless the time to answer has been extended pursuant to subsection (5), may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

(3) **Third-Party Claims** --Respondent(s) shall serve each party with a copy of any Third Party Claim. The Third Party Claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. Third Party Respondent(s) shall respond in the manner provided for response to the Claim, as provided in (1) and (2) above.

(4) **Counter Claims** --The Claimant shall serve each party with a reply to a Counterclaim within ten (10) business days of receipt of an Answer containing a Counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

(5) **Extension of Time** --The Director of Arbitration may extend any time period in this section whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading.

(d) Joint and Consolidation --Multiple Parties

(1) **Permissive Joinder.** All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2) In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.

(3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.

(4) Further determinations with respect to joining, consolidation and multiple parties under this subsection may be made by the arbitration panel and shall be deemed final.

Designation of Time and Place of Hearing

The time and place for the initial hearing shall be determined by the Director of Arbitration and

each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

SEC. 15.**Representation by Counsel**

All parties shall have the right to representation by counsel at any stage of the proceedings.

SEC. 16.**Attendance at Hearings**

The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

SEC. 17.**Failure to Appear**

If any of the parties, after due notice, fails to appear at a hearing or at any continuance of a hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

SEC. 18.**Adjournments**

(a) Authority --The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) Adjournment Fee --A party requesting an adjournment after arbitrators have been appointed shall, if an adjournment is granted, deposit a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of this fee or in their awards may direct the return of the adjournment fee.

(c) Dismissal --Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the claimant filing a new arbitration.

SEC. 19.**Acknowledgement of Pleadings**

The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

SEC. 20.**General Provisions Governing Pre-Hearing Proceedings**

(a) Requests for Documents and Information --The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information should be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

(b) Document Production and Information Exchange --

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving an objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

(3) Any response to objections to an information request shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.

(4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under subsection (d) of this section or to a selected arbitrator under subsection (e) of this section.

(c) Pre-Hearing Exchange --At least ten (10) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. The arbitrator(s) may exclude from the arbitration any documents not exchanged or witnesses not identified at that time. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference

(1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issues that relate to the pre-hearing process or to the hearing, including but not limited to the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulations of fact, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings.

(2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single public member of the Arbitration Panel for decision.

(e) Decisions by Selected Arbitrators --The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this section. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to fully develop its case. Decisions under this subsection shall be made upon the papers submitted by the parties, unless

the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this subsection to the full panel. In any claim involving a public customer the Selected Arbitrator shall be a public arbitrator unless the public customer demands, in writing, a securities arbitrator.

(f) Subpoenas --The arbitrator(s) and any counsel of record to the proceedings shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) Power to Direct Appearances and Production of Documents --The arbitrator(s) shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any member or member organization of the Exchange, and/or the production of any records in the possession or control of such persons or members. Unless the arbitrators direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

SEC. 21.

Evidence

The arbitrators shall determine the materiality and relevance of any evidence proffered and shall not be bound by rules governing the admissibility of evidence.

SEC. 22.

Interpretation of Code

The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code which interpretation shall be final and binding upon the parties.

SEC. 23.

Determination of Arbitrators

All rulings and determinations of the panel shall be by a majority of the arbitrators.

SEC. 24.

Record of Proceedings

A verbatim record by stenographic reporter or high quality tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request unless the arbitrations direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

SEC. 25.

Oaths of the Arbitrators and Witnesses

Prior to the commencement of the first hearing session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

SEC. 26.

Amendments

(a) Notice and Filing --After the filing of any pleading, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise upon all other parties a copy of said change. The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration.

(b) Limitations --After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

SEC. 27.

Reopening of Hearings

Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

SEC. 28.

Awards

(a) Writing Required --All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Finality --Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.

(c) Notification --The Director of Arbitration shall endeavor to serve a copy of the award: (i) by registered or certified mail upon all parties, or their counsel, at the address of record; or, (ii) by personally serving the award upon the parties; or, (iii) by filing or delivering the award in such manner as may be authorized by law.

(d) Rendition of Award --The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) Contents --The award shall contain the names of the parties, the name(s) of counsel, if any, a summary of the issues, including the types of any security or product, in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the dates the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing, and the signatures of the arbitrators concurring in the award.

(f) Public Availability --The awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

(g) Award Payment and Interest --All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction, or unless the arbitrator(s) have specified a different time period for the payment of the award. An award shall bear interest from the date of the award: (i) if not paid within thirty (30) days of receipt, (ii) if

the award is the subject of a motion to vacate which is denied, or (iii) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

SEC. 29.**Agreement to Arbitrate**

Article XVIII, Section 3 of the Constitution and Chapter XXXII of the Rules shall be deemed a part of and be incorporated by reference in every agreement to arbitrate under the Constitution and Rules of the Boston Stock Exchange, Inc.

SEC. 30.**Schedule of Fees**

(a) Fees and Deposits --At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit with the Exchange in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration. Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedule below.

(b) Hearing Session --A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules below as a hearing session deposit for a hearing with a single arbitrator.

(c) Assessment of Fees --The arbitrators, in their award, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party, except in a case where claims have been joined subsequent to filing in which cases hearing session fees shall be computed as provided in paragraph (d). The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

If a customer is assessed forum fees in connection with an industry claim, forum fees assessed against the customer shall be based on the hearing deposit required under the industry claims schedule for the amount awarded to industry parties to be paid by the customer and not based on the size of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim under the procedure set out above.

Amounts deposited by a party as hearing deposits shall be applied against forum fees, if any.

In addition to forum fees, the arbitrator(s) may determine in the award the amount of costs incurred pursuant to Sections 18, 20, and 24 and, unless applicable law directs otherwise, other costs and expenses of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the

hearing deposit will be refunded unless the arbitrators determine otherwise.

(d) Consolidations --For claims filed separately and subsequently joined or consolidated under Section 13(d), the hearing deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(e) Unspecified Claims --If the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee will be \$250 and the hearing session deposit to be [deposited] remitted by a party shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,500.

(f) Retention Date --The Exchange shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or withdrawn within eight

(8) business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Additional Costs Assessed --Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Sections 18, 20, and 24 based on hearing sessions held and scheduled within eight

(8) business days of the Exchange receiving notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) Pre-Hearing Conference Fees --The fee for a pre-hearing conference with an arbitrator shall be:

Fee Schedule for Claims:

Amount in Controversy	Conference Fee
\$1,000 or less.....	\$15.00
\$1,000.01 up to \$2,500	\$25.00
\$2,500.01 up to \$5,000	\$100.00
\$5,000.01 up to \$10,000	\$200.00
\$10,000.01 up to \$30,000	\$300.00
\$30,000.01 up to \$50,000	\$300.00
\$50,000.01 up to \$100,000	\$300.00
\$100,000.01 up to \$500,000	\$300.00
\$500,000.01 up to \$5 million.....	\$300.00
Greater than \$5 million.....	\$300.00

(i) Schedule of Fees --For purposes of the schedule of fees the term claim includes Claims, Counterclaims, Third-Party Claims or Cross-Claims. Any such claim submitted by a customer is a customer claim. Any such claim submitted by a member, allied member, registered representative, member firm or member corporation against a public customer or other nonmember is an industry claim.

**CUSTOMER CLAIMANT
DEPOSIT**

Amount of Dispute (Exclusive of Interest and Expenses)	Filing Fee	Simplified	Hearing
\$1,000 or less.....	\$15	\$15	\$15
\$1,000.01 to \$2,500	\$25	\$25	\$25
\$2,500.01 to \$5,000	\$50	\$75	\$100
\$5,000.01 to \$10,000	\$75	\$75	\$200
\$10,000.01 to \$30,000	\$100	N/A	\$400
\$30,000.01 to \$50,000	\$120	N/A	\$400
\$50,000.01 to \$100,000	\$150	N/A	\$500
\$100,000.01 to \$500,000	\$200	N/A	\$750
\$500,000.01 to \$5,000,000	\$250	N/A	\$1,000
Over \$5,000,000	\$300	N/A	\$1,500

**INDUSTRY CLAIMANT*
HEARING
DEPOSIT**

Amount of Dispute (Exclusive of Interest and Expenses)	Filing Fee	1 Arb.	3 Arbs.
\$1,000 or less	\$500	\$300	\$600
\$1,000.01 to \$2,500.....	\$500	\$300	\$600
\$2,500.01 to \$5,000.....	\$500	\$300	\$600
\$5,000.01 to \$10,000.....	\$505	\$300	\$600
\$10,000.01 to \$30,000.....	\$500	\$300	\$600
\$30,000.01 to \$50,000.....	\$500	\$300	\$600
\$50,000.01 to \$100,000.....	\$500	\$300	\$600
\$100,000.01 to \$500,000.....	\$500	\$300	\$750
\$500,000.01 to \$5,000,000.....	\$500	\$300	\$1,000
Over \$5,000,000	\$500	\$300	\$1,500

This is the fee schedule for claims submitted by members, member firms, member corporations or allied members against public customers, registered representatives or non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members, member firms, member corporations, allied members or non-members. The one arbitrator column is for pre-hearing conferences and for simplified arbitrations where the industry party is a claimant against a public customer.

SEC. 31.

Uniform Arbitration Code

The provisions of the Uniform Arbitration Code contained in this chapter shall also apply to controversies between members, allied members, member-firms, and/or non-members who are not public customers, except in so far as such provisions specifically apply to matters involving

public customers.

SEC. 32.

Member Controversies

(a) Arbitration Committee --Any controversy between parties who are members, allied members, member firms or member corporations shall be submitted to arbitration, through the Director of Arbitration, to members of the Arbitration Committee, unless non-members are also parties to the controversy. If the amount (exclusive of interest and costs) involved in the controversy is less than \$10,000 the controversy shall be heard by one arbitrator. If the amount is \$10,000 or more the controversy shall be heard by at least three but not more than five arbitrators. If non-members are also parties to such controversies, the arbitrators shall be appointed in accordance with Section 8 unless the non-members consent to arbitration before members of the Arbitration Committee.

(b) Fees --At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and remit a hearing session deposit with the Boston Stock Exchange, Inc. in the amounts indicated below:

Filing

Amount in Dispute	Fee	Hearing Deposit
\$5,000 or less	\$100	\$200
\$5,000.01 to \$100,000.....	\$200	\$750
\$100,000.01 or more	\$300	\$1,000

(c) Unspecified Claims --Where the claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be \$300 and the hearing session deposit shall be \$1,000 per hearing session.

(d) Pre-Hearing Conference Fee --The fee for a Pre-Hearing Conference with an arbitrator in a member controversy shall be as follows:

Conference

Amount in Dispute	Fee
\$5,000 or less	\$150
\$5,000.01 to \$100,000.....	\$300
\$100,000.01 or more	\$500

SEC. 33

Requirements When Using Pre-Dispute Arbitration Agreements With Customers

(a) Disclosure Requirement --Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

- (1) Arbitration is final and binding on the parties.
- (2) The parties are waiving their right to seek remedies in court, including the right to jury trial.
- (3) Pre-arbitration discovery is generally more limited than and different from court proceedings.
- (4) The arbitrators' award is not required to include factual findings or legal reasoning and any

party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(b) Notice of Pre-dispute Arbitration Clause --Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a pre-dispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(c) Acknowledgement of Receipt --A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(d) Restriction on Limitations --No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.

SEC. 34.

Director of Arbitration

Chairman of the Board of Governors shall designate one of the officers or other employees of the Exchange as Director of Arbitration. The Director of Arbitration shall be charged with the duty of performing all ministerial duties in connection with matters submitted for arbitration pursuant to this Code.

Failure to Honor Award

Any member, allied member, registered representative or member organization who fails to honor an award of arbitrators appointed in accordance with these rules shall be subject to disciplinary proceedings in accordance with Article XII of the Boston Stock Exchange Constitution and Chapter XVIII of the Rules.]

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Chapter XXXIII – Boston Exchange Automated Communication Order-routing Network (BEACON)

SEC. 1 through **SEC. 6** No change.

SEC. 7

BEACON Liability

In accordance with [Article IX, Section 10 of the [Exchange] Incorporated Constitution Provision the Exchange shall not be liable for any loss sustained by a member or member organization resulting from the use of the BEACON System. Generally, a loss pertaining to an order that is entered through the BEACON System and which does not appear on the BEACON System's Member Firm Interface Safe-Store File will be absorbed by the entering member organization. A loss pertaining to an order that is entered through the BEACON System which was designated for a particular specialist's post and which does appear on the BEACON System's Member Firm Interface Safe-Store File will generally be absorbed by the specialist.

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Chapter XXXIV – Minor Rule Violations

Sec. 1

General

The following rule and policy violations may be determined by the Exchange to be minor in nature. (See also Grandfathered Boston Options Exchange Group LLC Rules, Chapter X). If so, the Exchange may, with respect to any such violation, proceed under Sec. 4 of Ch. XVIII and impose the fine set forth below. The Exchange is not required to proceed under said Section as to any rule violation and may, whenever such action is deemed appropriate, such as in the case of intent or a pattern of offenses, commence a disciplinary proceeding under [Chapter XXX]BX Rule 9000 Series as to any such violation. In lieu of formal disciplinary action, a member may opt for Acceptance Waiver and Consent Procedures pursuant to [Section 10 of this Chapter XXX] BX Rule 9216. [A subsequent violation is calculated on the basis of a rolling 12-month period.]

* * * * *

Chapter XXXVI – Reserved.

[SEC. 1.

Delegation, Authority and Access

(a) The Boston Stock Exchange, Inc., delegates to its subsidiary (Boston Options Exchange Regulation, L.L.C, hereinafter "BOXR") the authority to act on behalf of the Exchange as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 ("Act").

(b) Notwithstanding any delegation of authority to BOXR pursuant to this rule, the staff, books, records and premises of BOXR are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, directors, employees and agents of BOXR are the officers, directors, employees and agents of the Exchange for purposes of the Act.

SEC. 2.

Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc., to Boston Options Exchange Regulation, LLC

The Boston Stock Exchange, Inc. ("BSE" or "Exchange"), the registered national securities exchange pursuant to Section 6 of the Act, is the parent company of the wholly-owned subsidiary BOXR. The Boston Options Exchange ("BOX") is a facility of the BSE pursuant to Section 3(a) of the Act operated by Boston Options Exchange Group, L.L.C. ("BOX LLC")

A. Functions and Authority of the BSE

The BSE shall have ultimate responsibility for the rules and regulations of the Exchange and its

operation and administration. As set forth below, the BSE has delegated certain authority and functions to its subsidiary, BOXR. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the BSE Board of Governors in accordance with procedures established by that Board. Any function or responsibility of the BSE as a registered national securities exchange under the Act, or as set forth in the Certificate of Incorporation of the Exchange, the Constitution, the By-laws, the BSE Rules, or the L.L.C. Agreement of Boston Options Exchange Group, is hereby reserved, except as expressly delegated to BOXR. In addition, the BSE expressly retains the following authority and functions:

- (1) To exercise overall responsibility for ensuring that BSE's statutory and self-regulatory obligations and functions are fulfilled.
- (2) To delegate authority to BOXR to take actions on behalf of the Exchange.
- (3) To appoint the BOXR Options Officials (an "Options Official" is "an officer of BOXR vested by the BOXR Board with certain authority to supervise option trading on BOX." See Rules of the Boston Options Exchange Facility, Chapter I, Section 1).
- (4) To review the rulemaking and disciplinary decisions of BOXR.
- (5) To coordinate actions of BOXR and BOX as necessary.
- (6) To resolve any regulatory disputes among BOXR and BOX LLC.
- (7) To administer common overhead and technology of BOXR and BSE
- (8) To administer internal reviews of BOX LLC and BOXR as deemed necessary.
- (9) To manage external BSE relations on major regulatory policy and/or surveillance issues regarding the BOX options market.
- (10) To direct BOXR and BOX LLC to take action necessary to effectuate the purposes and functions of BOX as a facility of the Exchange.
- (11) In the BSE's role as the sole owner of BOXR, to incorporate in its Board of Governors and Nominating Committee responsibilities, a process to elect the Board of Directors of BOXR ("BOXR Board") pursuant to the BOXR L.L.C. Agreement and BOXR By-Laws.
- (12) To take action in an area of responsibility delegated to BOXR below.

B. Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of BOX LLC.

- (1) Notwithstanding the delegation of authority to BOXR, as set forth below, the books, records, premises, officers, directors, agents and employees of BOX LLC shall be the books, records, premises, officers, directors, agents and employees of BSE for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of BOX LLC shall be subject at all times to inspection and copying by the BSE, BOXR and the Securities and Exchange Commission ("Commission").
- (2) BOX LLC is required to maintain all books and records related to BOX within the United States.
- (3) Paragraph (1) above shall not create any rights or benefits for any person or entity other than the Commission, the BSE and BOXR.

C. Delegation of Responsibilities and Functions

Subject to Section A(12) above and the review, ratification, or rejection by the BSE Board, the BSE hereby delegates to BOXR and BOXR assumes the following responsibilities and functions with respect to the options business of the Exchange:

- (1) To interpret rules and regulations including, but not limited to, trading rules, fees, access to and use of system facilities and participation requirements.
- (2) To determine regulatory and trading policies, including developing and recommending necessary or appropriate rule changes to the BSE Board, relating to the business conduct, trading activities and sales practices of BOX Participants and associated persons with respect to, but not limited to, (i) financial responsibility, (ii) qualifications for BOX participation and association with BOX Participants, (iii) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting BOX Participants in general and the securities listed on BOX, (iv) BOX Participant advertising practices, (v) administration, interpretation and enforcement of the Rules of the Boston Options Exchange Facility ("BOX Rules"), including determination of appropriate exemptions for BOX Participants (vi) administration and enforcement of the Options Clearing Corporation ("OCC") rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce and (vii) standards of proof for violations and sanctions imposed on BOX Participants and associated persons in connection with disciplinary actions.
- (3) To take necessary or appropriate action to assure compliance with BSE and BOX policies and rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.
- (4) To administer programs and systems for the surveillance and enforcement of rules governing BOX Participants' conduct and trading activities in BOX.
- (5) To examine and investigate BOX Participants and associated persons to determine if they have violated BSE or BOX rules, the federal securities laws, and other laws, rules, and regulations that the BSE has the authority to administer, interpret, or enforce.
- (6) To administer the BOXR's enforcement and disciplinary programs regarding BOX Participants, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- (7) To conduct qualification examinations and continuing education programs.
- (8) To determine whether applicants for BOX participation have met the requirements for participation established by the BSE.
- (9) To place restrictions on the business activities of BOX Participants consistent with the public interest, the protection of investors, and the federal securities laws.
- (10) To determine whether persons seeking to register as BOX Participants have met such qualifications for participation as may be established by the BSE, including whether statutorily disqualified persons will be permitted to associate with particular BOX Participants and the conditions of such association.
- (11) To oversee all trading activities on BOX.
- (12) To propose and assess fees and other charges on BOX Participants, associated persons and others using the products, services or facilities of the Exchange.

- (13) To develop, administer and enforce policies and rules of BOX governing listing standards applicable to securities traded on BOX.
- (14) To establish the annual budget and business plan for BOXR.
- (15) To determine allocation of BOXR resources.
- (16) To administer the Exchange's involvement in National Market System Plans related to BOX.
- (17) To manage external relations on enforcement, regulatory, and other policy issues regarding BOX and BOX Participants with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.
- (18) To establish internal procedures for considering complaints by Participants, associated persons, and members of the public who request an investigation or disciplinary action by BOXR.

D. Rule Filings.

The BSE Board shall review and ratify a rule change recommended by the BOXR Board before the rule change becomes a final action of the Exchange.

E. Supplemental Delegation Regarding Management and Committees.

The BOXR Board may designate the Chief Executive Officer, another designated officer or one or more committees and delegate to such person or committee such powers and authority, as necessary and appropriate, to act on behalf of the BOXR Board in carrying out the functions and authority delegated to BOXR by the BSE. Such delegations shall be in conformance with law and the By-laws of BOXR and the BOX Rules. Any action taken by a BOXR officer or committee pursuant to delegated authority shall be subject to review, ratification or rejection by the BOXR Board in accordance with procedures established by the BOXR Board.]

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Chapter XXXIX – Affiliation with The NASDAQ OMX Group, Inc.

Section 1. -2. No change.

[(c) The NASDAQ OMX Group, Inc., which owns NASDAQ Options Services, LLC and is affiliated with BOX through its ownership of the Exchange, of which BOX is a facility, shall establish and maintain procedures and internal controls reasonably designed to ensure that NASDAQ Options Services, LLC does not develop or implement changes to its system on the basis of non-public information regarding planned changes to BOX systems, obtained as a result of its affiliation with BOX, until such information is available generally to similarly situated BOX participants in connection with the provision of inbound routing to BOX.]

* * * * *

GRANDFATHERED BOSTON OPTIONS EXCHANGE GROUP LLC RULES

Boston Options Exchange Group LLC (“BOX”) is no longer a facility of the Exchange. These rules and the applicable Grandfathered BSE Rules continue to apply to BOX and Options Participants and associated persons subject to the jurisdiction of the Exchange that occurred during the time that BOX was a facility of the Exchange. Terms below must be read in context regarding activities which occurred when BOX was a facility of the Exchange and regarding activities relating to continued Exchange jurisdiction, such as disciplinary matters.

CHAPTER I. GENERAL PROVISIONS

Sec. 1 Definitions

(a) With respect to these BOX Rules, the following terms shall have the meanings specified in this Section 1. A term defined elsewhere in the Rules of the Exchange shall have the same meaning with respect to this Chapter I, unless otherwise defined below.

- (1) through (5) No change.
- (6) The term "**BOX**" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, formerly an options trading facility of the Exchange under Section 3(a)(2) of the Exchange Act.
- (7) The term "**BOX Rules**" or "**Rules of BOX**" means these Grandfathered Rules of the Boston Options Exchange Facility. Where applicable, it may mean the rules in place while BOX was a facility of the Exchange.
- (8) No change.
- (9) The term "**BOXR**" or "**BOX Regulation**" means Boston Options Exchange Regulation LLC, a which was a wholly-owned subsidiary of the Exchange. Where applicable for these Grandfathered Rules, it may mean the Exchange.
- (10) The term "**BSE Rules**" means the Grandfathered BSE Rules[of the Board of Governors of the Boston Stock Exchange, Inc.]
- (11) through (23) No change.
- (24) The term "**Exchange**" means the Boston Stock Exchange, Inc now known as NASDAQ OMX BX.
- (25) through (41) No change.
- (42) The term "**Options Participant**" or "**Participant**" or "**Former Options Participant**" means a firm, or organization that [i]was registered with the Exchange pursuant to Chapter II of these

Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker".

(43) through (60) No change.

(61) The term "**Rules of the Exchange**" means the [Constitution and Rules of the Board of Governors of the Boston Stock Exchange, Incorporated, the Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc. to Boston Options Exchange Regulation, LLC,]the BX By-Laws [of Boston Options Exchange Regulation] and, where applicable, the BX Rules and the Grandfathered Rules.

(62) through (71) No change.

Sec. 2 Applicability

(a) No change.

(b) Except to the extent that specific BOX Rules govern or unless the context otherwise requires, the provisions of the Grandfathered Rules and BX By-laws [Boston Stock Exchange, Incorporated's Constitution of the Exchange and the Rules of the Board of Governors of the Exchange]shall be applicable to Options Participants and to the trading of option contracts on BOX and, for purposes of their application with respect to Options Participants and options trading, shall be interpreted in light of the nature of options trading and the BOX market, and the fact that options on BOX shall be traded electronically through the Trading Host. To the extent that the provisions of this Chapter are inconsistent with any other provisions of the Rules of the Exchange, this Chapter shall control.

(c) through (e) No change.

* * * * *

CHAPTER II. PARTICIPATION

Sec. 1 Options Participation

(a) through (b) No change.

(c) Upon completion of the application, the Exchange, or person(s) designated by the Exchange ("designee") shall consider whether to approve the application, unless there is just cause for delay. In its consideration process, the Exchange may conduct such investigation as it deems appropriate and may take such steps as it deems necessary to confirm the information provided by the applicant. Within 30 days after the Exchange or its designee has completed its consideration of an application, it shall provide written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefore. (See Incorporated Constitution Provision [of the Boston Stock Exchange, Inc. ("Constitution"), Article IX, ["Membership",] Section 6, "Investigation and Acceptance by Exchange").

(d) through (g) No change.

(h) Retention of Jurisdiction. A Participant or an person associated with a Participant that has had its Participant status terminated or revoked shall continue to be subject to the filing of a complaint under the BX Bylaws, the BX Rules, the Grandfathered Rules and these Rules based upon conduct that commenced prior to the effective date of the Participants termination or revocation of its Participation. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

Sec. 2 No change.

Sec. 3 Denial of and Conditions to Participation

(a) No change.

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

i. through iii. No change.

[(See Constitution Article IX, "Membership", Section 3, "Qualification for Membership").]

(c) No change.

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

i. through iv. No change.

[(See BSE Rules Chapter XXX, "Disciplining of Members - Denial of Membership", generally).]

(e) No change.

(f) Subject to Chapter IX of these Rules (Summary Suspension), any applicant who has been denied Options Participant status or association with a Participant or granted only conditional participation or association pursuant to this Section, and any Participant or person associated with a Participant who is not permitted pursuant to paragraph (a) or (b) of this Section to continue as a Participant or associated with a Participant or which continuance as a Participant or association is conditioned, may appeal the Board's decision to the Exchange Board of Governors.]

Sec. 4 through **Sec. 5** No change.

Sec. 6 Dissolution and Liquidation of Options Participants

Reserved. [Every Options Participant shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution and complete the appropriate forms, as required by the Exchange. Upon receipt of such notice, the Participant may be suspended in accordance with Chapter IX (Summary Suspension) of the Rules. (See Constitution Article XIII, "Insolvent Members", generally).]

Sec. 7 No change.

* * * * *

CHAPTER III. BUSINESS CONDUCT

Sec. 1 through Sec. 5 No change

Sec. 6 Other Restrictions on Participants

Reserved. [Whenever the Exchange shall find that an Options Participant has failed to perform on its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot safely conduct business with Customers, creditors or the Exchange, the Exchange may summarily suspend the Options Participant in accordance with Chapter IX (Summary Suspension) or may impose such conditions and restrictions upon the Options Participant as the Exchange considers reasonably necessary for the protection of the Exchange, BOX, and the Customers of such Options Participant. (See Constitution Article XIV, "Expulsion and Suspension", generally).]

Sec. 7 No change.

Sec. 8 Exemptions from Position Limits

(a) through (b) No change.

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

- i. In light of the procedural safeguards, the purpose of this exemption process, and the prohibition against the granting of retroactive exemptions, decisions granting or denying exemptions are not subject to review under [Chapter XXX of the Rules of the Exchange] BX Rules 9000 Series regarding Hearings and Review.

ii. through vi. No change.

(d) through (e) No change.

Sec. 13 Mandatory Systems Testing

(a) through (b) No change.

(c) An Options Participant that is subject to this Section 13 and that fails to conduct or participate in the tests, fails to file the required reports, or fails to maintain the required documentation, may be subject to [a summary suspension or other] action taken pursuant to [Chapter IX of these Rules and/or] a disciplinary action pursuant to BX Rules 9000 Series [the Chapter XXX of the Rules of the Exchange (Disciplining of Members- Denial of Membership)].

Sec. 14 No change.

Sec. 15 Significant Business Transactions

(a) through (f) No change.

(g) The provisions of this Section 15 do not preclude [summary action under Chapter IX, Summary Suspension, of these Rules, or]other Exchange or BOXR action pursuant to the BOX Rules.

(h) No change.

Sec. 16 No change.

* * * * *

Chapter V. Doing Business on BOX

Sec. 1 Access to and Conduct on the BOX Market

(a) No change.

(b) *BOX Conduct.* Participants and persons employed by or associated with any Participant, while using the facilities of BOX, shall not engage in conduct (i) inconsistent with the maintenance of a fair and orderly market; (ii) apt to impair public confidence in the operations of the Exchange; or (iii) inconsistent with the ordinary and efficient conduct of business. Activities that shall violate the provisions of this paragraph (b) include, but are not limited to, the following:

i. through ii. No change.

iii. failure of a Participant to supervise a person employed by or associated with such Participant adequately to ensure that person's compliance with this paragraph (b) [See Constitution Articles]IX, "Membership", and XVI, "Offices and Associates", generally];

iv. through viii. No change.

(c) through (d) No change.

Sec. 2 Fees and Charges

(a) *Participation Fees.* The Board in its discretion shall fix participation fees payable by Options Participants from time to time. Fees shall be payable in full on the first day of January, April, July and October on a non-refundable basis and shall be applied to the quarter beginning on that day. [(See Constitution Article X, "Dues and Fines", Section 1, "How Fixed").]

(b) though (d) No change.

(e) *Liability for Payment of Fees.* An Options Participant that does not pay any fees, assessments, charges, fines or other amounts due to BOX within thirty (30) days after they have become due and payable shall be reported to the Board or its delegate which may, after giving reasonable notice to the Options Participant of such arrearages, suspend the Options Participant until payment is made or terminate the Options Participant's participation on BOX. A person associated with an Options Participant who fails to pay any fine or other amounts due to BOX within thirty (30) days after such amount has become due and payable and after reasonable notice of such arrearages, may be suspended from association with an Options Participant until payment is made. [(See Constitution Article X, "Dues and Fines", Section 2, "Failure to Pay").]

Sec. 3 through Sec. 23 No change.

Sec. 24 Contracts of Suspended Participants

(a) When an Options Participant, other than a Clearing Participant, is suspended pursuant to former Chapter IX of these Rules (Summary Suspension), all open short positions of the suspended Options Participant in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all Participants carrying such positions for the account of the suspended Participant; provided that BOXR may cause the foregoing requirement to be temporarily waived

for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Participants of BOX. (See BSE Rules Chapter VI, "Failure to Fulfill Contracts", generally).

(b) No change.

(c) When a Clearing Participant is suspended pursuant to former Chapter IX (Summary Suspension) of these Rules, the positions of such Clearing Participant shall be closed out in accordance with the Rules of the Clearing Corporation.

* * * * *

Chapter VI. Market Makers

Sec. 1 through Sec. 3 No change.

Sec. 4 Appointment of Market Makers

(a) – (e) No change.

(f) Market Makers may withdraw from trading an options class that is within their appointment by providing BOX with written notice of such withdrawal. BOXR may require a certain minimum prior notice period for withdrawal, and may place such other conditions on withdrawal and re-appointment as it deems appropriate in the interests of maintaining fair and orderly markets. Market Makers who fail to give advance written notice of withdrawal to BOX may be subject to formal disciplinary action pursuant to BX Rules 9000 Series [Chapter XXX of the Rules of the Exchange (Disciplining of Members- Denial of Membership)].

Sec. 5 through Sec. 8 No change.

Sec. 9 Financial Requirements for Market Makers

(a) Pursuant to Chapter XXII, Section 2 of the BSE Rules [of the Exchange] (Capital and Equity Requirements), each Market Maker shall maintain (i) net liquidating equity in its Market Maker account of not less than \$200,000, and in conformity with such guidelines as the Board may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3-1. Each Market Maker which is a Clearing Participant shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation. This equity requirement, as well as all other provisions of the section (including capital maintenance requirements), applies to each Market Maker account, without regard to the number of Market Maker accounts per firm. The term "net liquidating equity" means the sum of positive cash balances and long securities positions less negative cash balances and short securities positions.

(b) No change.

* * * * *

Chapter VII. Exercises and Deliveries

Sec. 1 through **Sec. 2** No change.

Sec. 3 Delivery and Payment

(a) No change.

(b) As promptly as possible after the exercise of an options contract by a customer, the Options Participant shall require the customer to make full cash payment of the aggregate exercise price in the case of a call options contract, or to deposit the underlying security in the case of a put options contract, or to make the required margin deposit in respect thereof if the transaction is effected in a margin account, in accordance with the BSE Rules [of the Exchange], the provisions of Chapter XIII of these Rules, and the applicable regulations of the Federal Reserve Board.

(c) No change.

* * * * *

Chapter VIII. Records, Reports and Audits

Sec. 1 through **Sec. 2** No change.

Sec. 3 Financial Reports and Audits

Each Options Participant shall submit to BOXR answers to financial questionnaires, reports of income and expenses and additional financial information in the type, form, manner and time prescribed by the Exchange or BOXR under Chapter XXII of the BSE Rules [of the Exchange].

Sec. 4 No change.

Sec. 5 Regulatory Cooperation

(a) No change.

(b) No Options Participant, partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange or BOXR shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange or BOXR requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange or BOXR pursuant to paragraph (a) of this Section, including but not limited to Participants and affiliates of the Intermarket Surveillance Group. The requirements of this paragraph (b) shall apply regardless whether the Exchange or BOXR has itself initiated a form investigation or disciplinary proceeding. (See BX Rules 9000 Series [BSE Rules Chapter XXX, "Disciplining of Members - Denial of Membership"], generally).

(c) Whenever information is requested by the Exchange or BOXR pursuant to this Section, the Options Participant or person associated with a Participant from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Participant or person would have in the case of any other request for information initiated by the Exchange or BOXR pursuant to the Exchange's or BOXR's investigative powers. (See BX 9000 Series [BSE Rules Chapter XXX, "Disciplining of Members - Denial of Membership"], generally).

Sec. 6 through **Sec. 7** No change.

* * * * *

Chapter IX. Summary Suspensions

Reserved. [Sec. 1 Imposition of Suspension

(a) An Options Participant or person associated with an Options Participant that has been expelled or suspended from any SRO or barred or suspended from being associated with a Participant of any SRO, or an Options Participant that is in such financial or operating difficulty that BOXR determines that the Options Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Options Participants, or BOX, may be summarily suspended. (See Constitution Article XIV, "Expulsion and Suspension", generally).

(b) BOXR may limit or prohibit any person with respect to access to services offered by BOX if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is an Options Participant, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Options Participants or the Exchange. (See Constitution Article XIV, "Expulsion and Suspension", generally).

(c) In the event a determination is made to take summary action pursuant to this Section, notice thereof will be sent to the SEC. (See Constitution Article XIV, "Expulsion and Suspension", Section 8, "Announcement of Expulsion or Suspension and its Effect").

(d) Any person aggrieved by any summary action taken under this Section shall be promptly afforded an opportunity for a hearing by BOXR in accordance with the provisions of Chapter XXX of the Rules of the Exchange (Disciplining of Members- Denial of Membership).

(e) A summary suspension or other action taken pursuant to this Chapter IX shall not be deemed to be disciplinary action under Chapter XXX of the Rules of the Exchange (Disciplining of Members- Denial of Membership). The provisions of such Chapter XXX shall be applicable regardless of any action taken pursuant to this Chapter IX.

Sec. 2 Investigation Following Suspension

(a) Every Options Participant or person associated with a Participant against which action has been taken in accordance with the Summary Suspension procedures of these Rules shall immediately afford every facility required by BOXR for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in BOX options contracts maintained by the Options Participant and each of his or its Customers.

(b) Paragraph (a) includes, without limitation, the furnishing of such books and records of the Options Participant or person associated with an Options Participant and the giving of such sworn testimony as may be requested by BOXR.

(See Constitution Article XIV, "Expulsion and Suspension", generally).

Sec. 3 Reinstatement(a) *General.*

- i. An Options Participant, person associated with an Options Participant or other person suspended or limited or prohibited with respect to access to services offered by BOX under the Summary Suspension procedures of these Rules may apply for reinstatement within the time period set forth below.
- ii. Notice of an application for reinstatement shall be given to the Secretary by the Participant and shall be posted by BOXR at least five (5) business days prior to the consideration by BOXR of said application.
- iii. BOXR may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Participants, and BOX.

(b) *Suspension Due to Operating Difficulty.*

- i. An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to BOX services, must file any application for reinstatement within six (6) months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.
- ii. If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of Chapter XXX of the Rules of the Exchange (Disciplining of Members – Denial of Membership).

(See Constitution Article XIV, "Expulsion and Suspension", generally).

(c) *Suspension Due to Financial Difficulty.*

- i. An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to BOX services, must file any application for reinstatement within thirty (30) days of such action.
- ii. Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by BOXR.
- iii. The Participant status of an Options Participant summarily suspended by reason of financial difficulty may not be disposed of by BOXR until that Participant has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of Chapter XXX of the Rules of the Exchange (Disciplining of Members - Denial of Membership).

Sec. 4 Failure to Obtain Reinstatement

If an Options Participant suspended under the provisions of this Chapter IX fails or is unable to apply for reinstatement in accordance with Section 3 of this Chapter IX or fails to obtain reinstatement as therein provided, his or its Participant status shall be disposed of by BOXR in accordance with Chapter XXX of the Rules of the Exchange (Disciplining of Members - Denial of Membership). (See Constitution Article XIII, "Insolvent Members", Section 5, "Failure to Apply for Reinstatement").

Sec. 5 Termination of Rights by Suspension

An Options Participant suspended under the provisions of this Chapter IX shall be deprived during the term of his or its suspension of all rights and privileges of Participation. (See Constitution Articles XIII, "Insolvent Members" and XIV, "Expulsion and Suspension", generally).]

* * * * *

Chapter X. Minor Rule Violations

Sec. 1 General

The following BOX rule and policy violations may be determined by the Exchange [BOXR] to be minor in nature. If so, the Exchange [BOXR] may, with respect to any such violation, proceed under Chapter XXXIV (Minor Rule Violations) and Chapter XVIII, Section 4 (Imposition of Fines for Minor Violation(s) of Rules and Floor Decorum Policies) of the Grandfathered Rules [of the Exchange] See also BX Rule 9216 and impose the fine set forth below. the Exchange [BOXR] is not required to proceed under said Sections as to any rule violation and may, whenever such action is deemed appropriate, such as in the instance of intentional conduct or a pattern of violative conduct, commence a disciplinary proceeding under BX Rules 9000 Series [Chapter XXX of the Rules of the Exchange] as to any such violation. A subsequent violation is calculated on the basis of a rolling 24-month period ("Period").

Sec. 2 No change.

Sec. 3 Acceptance, Waiver and Consent Procedures BX Rules 9216 is the applicable procedure regarding Acceptance, Waiver and Consent. See also BX Rule 9000 Series, generally regarding disciplinary procedures.

[Failure to comply with any of these Rules or the Rules of the Exchange may result in a violation. Upon the determination of a violation by BOXR, the Options Participant will be notified of specific disciplinary charges pursuant to Ch. XXX, Sec. 1 of the Rules of the Exchange. If the Options Participant does not dispute the violation, the Options Participant may execute a letter, prepared by BOXR. The letter shall contain the Options Participant's: (1) acceptance of the finding of a violation(s), (2) consent to the imposition of sanctions, and (3) agreement to waive the right to a hearing of appeal to challenge the validity of the letter.

(a) Execution of the Letter. The letter shall describe: (1) the Act or practice engaged or omitted, (2) Rule, regulation or statutory provision violated, (3) Sanction(s) to be imposed, and (4) Effective date of sanction(s) imposed.

(b) Waiver. If the Options Participant executes the letter of Acceptance, Waiver and Consent ("AWC"), the Option Participant waives the right to future claims based on the subject of the act or practice engaged in or omitted, as specified in the letter.

(c) Submission of the Letter. If the Options Participant executes a letter of AWC, it shall be submitted to the General Counsel of the Exchange. The General Counsel may accept, reject or refer the letter to the Board of Governors for acceptance or rejection.

(d) Rejection of the Letter. If the Options Participant rejects the letter of AWC, the Exchange may pursue formal disciplinary proceedings according to the procedures set forth in Chapter XXX of the Rules of the Exchange.

(e) Decision. If the letter is accepted by the General Counsel of the Exchange or the Board of Governors, it shall be deemed final in regards to the complaint, answer, and decision in the matter.

If the letter is rejected by the General Counsel or the Board of Governors, (1) the Exchange may take any other appropriate disciplinary actions with respect to the alleged violation(s), including formal disciplinary action pursuant to Chapter XXX of the Rules of the

Exchange, (2) the member shall not be prejudiced by the execution of the letter of AWC, and (3) the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or other proceeding.]

* * * * *

Chapter XI. Doing Business with the Public

Sec. 1 through Sec. 2 No change.

Sec. 3 Registration of Representatives

(a) No OFP shall be approved to transact business with the public until those persons associated with it who are designated representatives have been approved by and registered with the Exchange. ([See Constitution Article XVI, "Officers and Associates", Section 7, "Alternates for Members Absent", and] BSE Rules Chapter I-B, "Business Hours", Section 3 through Section 6).

(b) through (d) No change.

Sec. 4 No change.

Sec. 5 Continuing Education for Registered Persons

(a) through (b) No change.

Supplementary Material to Section 5

.01 through .02 No change.

.03 A registration that is deemed inactive for a period of two (2) calendar years pursuant to paragraph (a)(ii) of this Section 5 for failure of a registered person to complete the Regulatory Element, shall be terminated. A person whose registration is so terminated may become registered only by reapplying for registration and satisfying applicable registration and qualification requirements of the Exchange's and BOX Rules. ([See Constitution Article XIII, "Insolvent Members", Section 3, "Procedure for Reinstatement").]

Sec. 6 No change.

Sec. 7 Discipline, Suspension, Expulsion of Registered Persons

The Exchange or BOXR may discipline, suspend or terminate the registration of any registered person for violation of the Rules of the Exchange or the Rules of the Clearing Corporation. ([See Constitution Article XIV, "Expulsion and Suspension", Sections 2 - 5, generally).]

Article IX Membership

Section:

-
- [3. Qualification for membership Ch. II, Sec.3(b)]
-
6. Investigation and acceptance by Exchange Ch. II, Sec. 1(c)
-

[**Article X Dues and Fines**

Section:

-
1. How fixed Ch. V, Sec.2(a)
-
2. Failure to pay Ch. V, Sec.2(d)
-
-]

Article XIII Insolvent Members

Ch. II, Sec. 6;
Ch.IX, Secs.3(c), 5

Section:

-
1. Notice to the Exchange
-
2. Notification by the Exchange
-
- [3. Procedure for reinstatement Ch. IX, Sec. 3
-
4. Lien on membership
-
5. Failure to apply for reinstatement Ch. IX, Sec. 4

6. Statement required

7. Reckless or unbusinesslike conduct

Article XIV Expulsion and Suspension

Ch. V, Sec.1(b)(vii);

Ch. IX, Secs.1(a), 1(b),
2, 3(a), 3(b), 5

Section:

1. Necessary votes for expulsion and suspension

2. Expulsion for fraudulent acts

Ch. XI, Sec. 7

3. Penalty for misstatements

Ch. XI, Sec. 7

4. Suspension or expulsion for violation of

Ch. XI, constitution or rules Sec. 7

5. Suspension for acts detrimental

Ch. XI, Sec. 7

6. Exchange inquiries

Ch. II, Sec. 4(a),
Ch. VIII,
Sec. 1(a)

7. Penalties

8. Announcement of expulsion or suspension and its effect

Ch. IX, Sec. 1(c)

Article XVI Offices and Associates

Ch. V, Sec. 1(b)(iii)

Section:

1. Addresses of members

2. Approval of firms and corporations

3. Membership in only one firm or corporation

4. Joining with suspended or insolvent persons prohibited

5. Members responsible for acts of partners and officers

6. Notices to estates of deceased members

7. Alternates for members absent Ch. XI, Sec. 3(a)]

Rules of the Board of Governors [of the] or BSE Rules

CHAPTER I No change

[CHAPTER I-A Access to Records

Section:

1. Restrictions on Access --Copies]

CHAPTER I-B through **CHAPTER XXIV-B** No change

**CHAPTER XXX Disciplining of Members[--Denial of
Membership]**

[Ch. II,
Sec. 3;] Ch.
VIII, Secs.
5(b), (c)

See BX Rules 9000 Series (Code of Procedure)

CHAPTER XXXII Arbitration

See BX Rules 10000 Series (Code of Arbitration Procedure)

[Section:

1. Arbitration Code

2. Simplified Arbitration

3. Hearing Requirements --Waiver of Hearing

4. Time Limitation Upon Submission

5. Dismissal of Proceedings

6. Settlements

7. Tolling of Time Limitation(s) for the Institution of

Legal Proceedings

8. Designation of Number of Arbitrators

9. Notice of Selection of Arbitrators

10. Peremptory Challenge

11. Disclosures Required of Arbitrators

12. Disqualification or Other Disability of Arbitrators

13. Initiation of Proceedings

14. Designation of Time and Place of Hearings

15. Representation by Counsel

16. Attendance at Hearings

17. Failure to Appear

18. Adjournments

19. Acknowledgement of Pleadings

20. General Provisions Governing Pre-Hearing Proceedings

21. Evidence

22. Interpretation of Code

23. Determinations of Arbitrators

24. Record of Proceedings

25. Oaths of the Arbitrators and Witnesses

26. Amendments

27. Reopening of Hearings

28. Awards

29. Agreement to Arbitrate

30. Schedule of Fees

31. Uniform Arbitration Code

32. Member Controversies

33. Requirements When Using Pre-Dispute Arbitration Agreements with Customers

34. Director of Arbitration

35. Failure to Honor Award]

* * * * *

EXHIBIT 5b

New text is underlined; deleted text is in brackets.

By-Laws of NASDAQ OMX BX, Inc.**Article I Definitions**

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) - (c) No change

(d) Reserved. ["BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act, as defined in Chapter I, Section 1(a)(6) of the Rules of the Boston Options Exchange Facility ("BOX Rules").]

(e) Reserved. ["BOX Options Participant" or "BOX Participant" means a firm or organization that is registered with the Exchange for the purposes of participating in options trading on BOX, as defined in Chapter I, Section 1(a)(40) of the BOX Rules.]

(f) Reserved. ["BOXR" means Boston Options Exchange Regulation LLC, a wholly owned subsidiary of the Corporation, as defined in Chapter I, Section 1(a)(9) of the BOX Rules.]

(g) Reserved. ["BOXR Board" means the Board of Directors of BOXR, as defined in Chapter I, Section 1(a)(5) of the BOX Rules.]

(h) Reserved. ["BOXR Nominating Committee" means the Nominating Committee of BOXR, as provided for in Section 14(e) of the Boston Options Exchange Regulation LLC By-Laws.]

* * * * *

Article IV Board of Directors**Section 4.1 - 4.2** No change**Section 4.3 Qualifications**

[(a)]Directors need not be stockholders of the Corporation or associated persons of Exchange Members. The number of Non-Industry Directors, including at least three Public Directors and at least one Director representative of issuers and investors, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors. At least twenty percent of the Directors shall be Member Representative Directors. [One Industry Director shall represent BOX Participants.] A Director shall not be subject to a statutory disqualification.

[(b) Immediately after the initial adoption of these By-Laws, the stockholders shall hold a special meeting (or sign a consent in lieu thereof) for the purpose of electing the Board, which shall include individuals satisfying the classifications required by Section 4.3(a) but which shall not have been nominated or voted upon in accordance with Section 4.4. The initial Member Representative Directors shall be officers, directors or employees of Exchange Members. The initial Board shall consist of at least three Public Directors, one or two Staff Directors, at least two Member Representative Directors, an Industry Director representing BOX Participants, at least one Non-Industry Director representative of issuers and investors, and such additional Industry and Non-Industry Directors as the stockholders shall deem appropriate, consistent with the requirements of Sections 4.2 and 4.3(a). As soon as practicable thereafter, the Corporation shall hold its annual meeting for the purpose of electing Directors in accordance with Section 4.4.]

* * * * *

Section 4.14 Committees Not Composed Solely of Directors

(a) No change

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board in accordance with Section 4.4 of these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on the Exchange Listing and Hearing Review Council, the Exchange Review Council, or other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Exchange Listing and Hearing Review Council or the Exchange Review Council. [In nominating an Industry Director who is representative of BOX Participants, the Nominating Committee shall nominate the person nominated by the BOXR Nominating Committee unless such person is not eligible for service under Section 4.3 of these By-Laws.]

* * * * *

Rules of NASDAQ OMX BX

0115. Applicability

(a) No change

(b) The [Options] 9000 Series and the 10000 Series of these Rules [(including)]and the Grandfathered Rules[)] shall apply to all former BOX Options Participants and

associated persons for activities that occurred during the time that BOX was a facility of the Exchange. [The Equity Rules shall apply to Options Participants only if they are also members of the Exchange.]The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules.

(c) - (d) No change..

0120. Definitions

When used in the Equity Rules, unless the context otherwise requires:

(a) –(n) No change

(o) "Rules" or "Rules of the Exchange"

The term "Rules" or "Rules of the Exchange" means the Equity Rules [and the Options Rules] hereafter amended or supplemented, and also includes the Grandfathered Rules.

(p) No change

(q) ["Options Rules"]Reserved.

[The term "Options Rules" means the BOX Rules and also includes the Grandfathered Rules, the Certificate of Incorporation and the By-Laws of the Exchange, the Limited Liability Company Agreement and By-Laws of BOXR, and the Operating Agreement of BOX LLC.]

(r) "Grandfathered Rules"

The "Grandfathered Rules" means the Rules of Board of Governors of the Boston Stock Exchange as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. and as such rules may be subsequently amended, including the Grandfathered BOX Trading Rules, to the extent that such rules are applicable to BOX and to former BOX Options Participants and associated persons for activities that occurred during the time that BOX was a facility of the Exchange. The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules.

(s) ["Options Participant"]Reserved.

[The term "Options Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the Options Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker".]

(t) ["**BOXR**"]Reserved.

["BOXR" means Boston Options Exchange Regulation, LLC.]

(u) ["**BOX LLC**"] Reserved.

["BOX LLC" means Boston Options Exchange Group LLC.]

(v) ["**BOX**"]

["BOX" means the Boston Options Exchange operated by BOX LLC as a facility of, and subject to regulation by, the Exchange.]Reserved.

(w) ["**BOX Rules**"]Reserved.

["BOX Rules" means the rules denominated as the Rules of Boston Options Exchange Group LLC.]

(x) – (z) No Change

* * * * *

0160. Delegation, Authority and Access

(a) [The Exchange delegates to its subsidiary BOXR the authority to act on behalf of the Exchange as set forth in a Plan of Allocation and Delegation approved by the Commission pursuant to its authority under the Act.]The Exchange delegates to its subsidiary BX Equities LLC the authority to act on behalf of the Exchange as set forth in a Delegation Agreement approved by the Commission pursuant to its authority under the Act.

(b)[Notwithstanding any delegation of authority to BOXR pursuant to this Rule, the staff, books, records and premises of BOXR are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, directors, employees and agents of BOXR are the officers, directors, employees and agents of the Exchange for purposes of the Act.] Notwithstanding any delegation of authority to BX Equities LLC pursuant to this Rule, the staff, books, records and premises of BX Equities LLC are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, employees and agents of BX Equities LLC are the officers, employees and agents of the Exchange for purposes of the Act.

EXHIBIT 5c

deleted text is in brackets.

[

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
BOSTON OPTIONS EXCHANGE REGULATION, LLC**

This Amended and Restated Limited Liability Company Agreement (together with the exhibit and schedules attached hereto, this "Agreement") of Boston Options Exchange Regulation, LLC (the "Company") is entered into by Boston Stock Exchange, Incorporated (the "Member"). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

WHEREAS, the Member has previously formed the Company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended from time to time (the "LLC Act"), by filing a Certificate of Formation of the Company with the office of the Secretary of State of the State of Delaware on March 25, 2002;

WHEREAS, the Company was formed for the purpose of overseeing the activities of the Boston Options Exchange facility and has done so since its formation; and

WHEREAS, the Member desires to continue the Company as a limited liability company under the LLC Act and to amend and restate the limited liability company agreement of the Company as currently in effect in its entirety.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby amend and restate the current limited liability company agreement of the Company in its entirety as follow:

Section 1. Name.

The name of the limited liability company is Boston Options Exchange Regulation, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 100 Franklin Street, Boston, MA 02110 or such other location as may hereafter be determined by the Board of Directors.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801.

Section 5. Member.

The mailing address of the Member is set forth on Schedule B attached hereto. The Member has heretofore been admitted to the Company as a member of the Company and shall hereby continue as a member of the Company upon its execution of a counterpart signature page to this Agreement.

Section 6. Certificates.

Ken Leibler, as an "authorized person" within the meaning of the LLC Act, has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware (such filing being hereby approved and ratified in all respects). Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an "authorized person" ceased, and the Member, each Director and each Officer thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the LLC Act. The Member, any Director or any Officer, as an authorized person within the meaning of the LLC Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the LLC Act to be filed with the Secretary of State of the State of Delaware. The Member, any Director or any Officer shall execute, deliver and file, or cause the execution, delivery and filing of, any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until the cancellation of the Certificate of Formation as provided in the LLC Act. Upon the cancellation of the Certificate of Formation in accordance with the LLC Act, this Agreement and the Company shall terminate.

Section 7. Purposes.

The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the LLC Act and engaging in any and all activities necessary or incidental to the foregoing. Without limiting the generality of the foregoing, the nature of the business or purposes to be

conducted and promoted shall include (i) supporting the operation, regulation, and surveillance of the Boston Options Exchange facility, (ii) preventing fraudulent and manipulative acts and practices, promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removing impediments to and perfecting the mechanisms of a free and open market and a national market system, and, in general, protecting investors and the public interest, (iii) supporting the various elements of the national market system pursuant to Section 11A of the Exchange Act and the rules thereunder, (iv) to assist the Member in fulfilling its self-regulatory responsibilities as set forth in the Exchange Act, and (v) supporting such other initiatives as the Board may deem appropriate.

Section 8. Powers.

The Company, and the Board of Directors and the Officers of the Company on behalf of the Company, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the LLC Act.

Section 9. Management.

(a) Board of Directors. The business and affairs of the Company shall be managed by or under the direction of a Board of Directors. Each Director is hereby designated as a "manager" within the meaning of the LLC Act. The Board of Directors may determine at any time the number of Directors to constitute the Board in accordance with the By-laws. The authorized number of Directors may be increased or decreased by the Board of Directors at any time subject to the limitations set forth in the By-laws, but no decrease in the number of Directors shall shorten the term of any incumbent Director. The current number of Directors is eight. All Directors shall be elected in the manner described in the By-Laws and shall meet any qualifications for Directors set forth in the By-Laws. Each Director elected, designated or appointed shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Each Director shall execute and deliver an instrument accepting such appointment and agreeing to be bound by all the terms and conditions of this Agreement and the By-Laws. A Director need not be a member of the Company. The Directors as of the date of adoption of this Agreement are listed on Schedule C hereto.

(b) Powers. The Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Board of Directors has the authority to bind the Company. To the fullest extent permitted by applicable law, the By-Laws, and this Agreement, the Board may delegate any of its powers to a committee appointed pursuant to Section 9(g) or to any officer, employee or agent of the Company.

(c) By-Laws. The Company, the Member and the Board of Directors hereby adopt the By-Laws of the Company in the form attached hereto as Exhibit A, as the same

may be amended from time to time in accordance with the terms therein and in this Agreement (the "By-Laws"). The Board, each Officer and the Member shall be subject to the express provisions of this Agreement and of the By-Laws. In case of any conflict between the provisions of this Agreement and any provisions of the By-Laws, the provisions of this Agreement shall control.

(d) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Chair of the Board, the Chief Executive Officer, or the Chief Legal Officer on not less than one day's notice to each Director by telephone, facsimile, mail; telegram or any other means of communication, and special meetings shall be called by the Chair of the Board, the Chief Executive Officer, the Chief Legal Officer or Secretary in like manner and with like notice upon the written request of at least one-third of the Directors.

(e) Quorum; LLC Acts of the Board. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at a meeting of the Board or any committee thereof may be taken without a meeting and without prior notice if written consents (including consents transmitted by electronic transmission), setting forth the action so taken, are executed by at least the number of members of the Board or committee, as the case may be, who would have been required to approve such action at a meeting of the Board at which a quorum was present.

(f) Electronic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or other communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting. If all the participants are participating by telephone conference or other communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(g) Committees.

(i) The Board may designate one or more committees, each committee to consist of one or more of the Directors or other Persons. The By-Laws may establish the initial committees, which may be altered, eliminated or restructured by an amendment to the By-Laws. The Board may designate one or more Directors or other Persons as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

- (ii) Except as otherwise provided by the By-Laws, members of a committee shall hold office for such period as may be fixed by a resolution adopted by the Board. Any member of a committee may be removed from such committee only by the Board. Vacancies in the membership of any committee shall be filled by the Board.
- (iii) Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.
- (iv) Unless otherwise required by the By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.
- (v) To the extent provided in the resolution of the Board, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. In the absence or disqualification of a member of a committee composed solely of Directors, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.
- (h) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board and may be paid a fixed sum for attendance at each meeting of the Board, a stated salary as Director or other remuneration. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.
- (i) Removal and Resignation of Directors. Unless otherwise restricted by law, any Director may be removed or expelled for cause by the Member, and may be removed by the Board of Directors in the manner provided by the By-Laws. Any Director may resign at any time either upon notice of resignation to the Chair of the Board, the Chief Executive Officer, the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof shall not be necessary to make such resignation effective. Any vacancy caused by any such removal, expulsion or resignation may be filled in the manner provided in the By-Laws. In the event of a vacancy, the Board may continue to act in accordance with this Agreement and the By-Laws so long as the remaining Directors can comprise a quorum.

(j) Directors as Agents. To the extent of their powers set forth in this Agreement, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the LLC Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

(k) The Company has taken a number of actions prior to the adoption of this Agreement. The Member hereby authorizes, approves and confirms all actions taken by the Company, and the Board, any Director or any Officer on behalf of the Company, prior to the execution of this Agreement in furtherance of the purposes of the Company.

Section 10. Officers.

(a) Except as provided herein, the Board may, from time to time as it deems advisable, select natural persons who are employees or agents of the Company and designate them as officers of the Company (the "Officers") and assign titles (including, without limitation, Chief Executive Officer, Chief Legal Officer, Chief Compliance Officer, Vice President, Secretary and Treasurer) to any such person. The initial Officers shall be appointed by the Member. The additional or successor Officers shall be chosen by the Board. Any number of offices may be held by the same person. The Board may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer may be removed at any time, with or without cause, by the Board. Any vacancy occurring in any office of the Company shall be filled by the Board. The Officers of the Company as of the date of adoption of this Agreement are listed on Schedule D hereto.

(b) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company.

(c) Duties of Board and Officers. Except to the extent otherwise modified herein, each Director and Officer shall have a fiduciary duty of loyalty and care similar to that of directors and officers of business corporations organized under the General Corporation Law of the State of Delaware.

Section 11. Limited Liability.

Except as otherwise expressly provided by the LLC Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor any

Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company.

Section 12. Capital Contributions.

The Member has contributed to the Company the amounts set forth in the books and records of the Company.

Section 13. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time upon the consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise the books and records of the Company. The provisions of this Agreement, including this Section 13, are intended to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement), and the Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 14. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, (i) the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the LLC Act or any other applicable law, and (ii) the Company shall not make a distribution to the Member using Regulatory Funds.

Section 16. Books and Records.

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Board. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company, and the Board on behalf of the Company, shall not have the right to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the LLC Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor shall be an independent public accounting firm selected by the Board.

Section 17. Reports.

The Board shall, after the end of each fiscal year, use reasonable efforts to cause the Company's independent accountants, if any, to prepare and transmit to the Member as promptly as possible any such tax information as may be reasonably necessary to enable the Member to prepare its federal, state and local income tax returns relating to such fiscal year.

Section 18. Other Business.

Unless otherwise restricted by law, the Member, and any Officer, Director, employee or agent of the Company and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 19. Exculpation and Indemnification.

(a) Neither the Member nor any Officer, Director, employee, agent or committee member of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "Covered Persons") shall be liable to the Company or any other Person who is bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's willful misconduct with respect to such acts or omissions.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 19.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements

presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person who is bound by this Agreement for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person.

(f) The foregoing provisions of this Section 19 shall survive any termination of this Agreement.

Section 20. Assignments.

The Member may transfer or assign in whole or in part its limited liability company interest in the Company only if such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. The transferee of a limited liability company interest in the Company shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 20, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

Section 21. Dissolution.

(a) The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following: (i) the consent of the Member and a majority of the whole Board, (ii) the termination of the legal existence of the Member or the occurrence of any other event that terminates the continued membership of the Member in the Company unless the Company is continued without dissolution in a manner permitted by the LLC Act or (iii) the entry of a decree of judicial dissolution under Section 18-802 of the LLC Act.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution.

(c) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an

orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the LLC Act.

(d) The Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the LLC Act.

Section 22. Benefits of Agreement; No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons and, to the extent provided in Section 14 of the By-Laws of the Company, Options Participants as defined therein) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than the Covered Persons and, to the extent provided in Section 14 of the By-Laws of the Company, Options Participants as defined therein).

Section 23. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 24. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 25. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member and is enforceable against the Member, in accordance with its terms.

Section 26. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 27. Amendments.

This Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.

Section 28. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (i) in the case of the Company, to the Company at its address in Section 2, (ii) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (iii) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party,

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Amended and Restated Limited Liability Company Agreement as of the _____ day of _____, 2008.

MEMBER:

BOSTON STOCK EXCHANGE
INCORPORATED

By:

Name:

Title:

SCHEDULE A

Definitions

(A) Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

"Affiliate" has the meaning ascribed to that term in Rule 12b-2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of this Agreement.

"Agreement" means this Amended and Restated Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated, supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if (A) such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties; or (B) (i) 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (ii) within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the LLC Act.

"Board" or "Board of Directors" means the Board of Directors of the Company.

"By-Laws" has the meaning set forth in Section 9.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on March 25, 2002, as amended or amended and restated from time to time.

"Company" means Boston Options Exchange Regulation, LLC, a Delaware limited liability company.

"Covered Persons" has the meaning set forth in Section 19.

"Directors" means the Persons elected/appointed to the Board of Directors from time to time in accordance with this Agreement and the By-Laws, in their capacity as managers of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"LLC Act" has the meaning set forth in the preamble to this Agreement.

"Member" means Boston Stock Exchange Incorporated, as the sole member of the Company.

"Officer" means an officer of the Company described in Section 10.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust,

unincorporated organization or other organization, whether or not a legal entity, and any governmental authority.

"Regulatory Funds" means fees, fines, or penalties derived from the regulatory operations of the Company. "Regulatory Funds" shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.

(B) Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

Boston Options Exchange Regulation LLC

Boston Options Exchange Regulation LLC By-Laws

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term

- (a) "Act" shall mean the Securities Exchange Act of 1934, as amended;
- (b) "Associated person" means a person who is a partner, officer, director, or employee of a Participant, or any person directly or indirectly controlling, controlled by or under common control with a Participant.
- (c) "Board" means the Board of Directors of Boston Options Exchange Regulation, LLC;
- (d) "BOX" means the Boston Options Exchange Facility;
- (e) "BOXR" means the Boston Options Exchange Regulation, LLC;
- (f) "BOX Rules" means the Rules of the Boston Options Exchange Facility;
- (g) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;
- (h) "BSE" means the Boston Stock Exchange, Incorporated;
- (i) "BSE Rules" means the Certificate of Incorporation, the By-Laws and the Rules of the Board of Directors of BSE;
- (j) "Commission" means the Securities and Exchange Commission;
- (k) "day" means calendar day;
- (l) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;
- (m) "Delegation Plan" means the Plan of Delegation of Functions and Authority by BSE to BOXR as approved by the Commission and amended from time to time;
- (n) "Director" means a member of the Board;
- (o) "LLC Agreement" means the Boston Options Exchange Group LLC Operating Agreement as approved by the Commission and amended from time to time;

(p) "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker".;

(q) "Public Director" means a director who has no material business relationship with a broker, dealer, the BSE, BOX or BOXR, or any affiliate of BSE, BOX or BOXR.

(r) "Regulatory Services Agreement" means the Regulatory Services Agreement entered into between BSE and Boston Options Exchange Group LLC; and

(s) "BOXR LLC Agreement" means the Limited Liability Company Agreement of BOXR, as approved by the Commission and amended from time to time.

SEC. 1 Location

BOXR shall maintain a registered office in the State of Delaware as required by law. BOXR may also have offices and/or trading facilities at other places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as the business of BOXR may require.

SEC. 2 General Powers

The property, business and affairs of BOXR shall be managed by or under the direction of the Board. The Board may exercise all such powers of BOXR and have the authority to perform all such lawful acts as are permitted by law, the LLC Agreement, the Regulatory Services Agreement, the BOXR LLC Agreement, these By-Laws, or the Delegation Plan to assist the BSE in fulfilling its self regulatory responsibilities as set forth in Section 6(b) of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the LLC Agreement, the Regulatory Services Agreement, the BOXR LLC Agreement, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 14 of the By-Laws, or to the BOXR staff in a manner not inconsistent with the Delegation Plan.

SEC. 3 Number of Directors

The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

SEC. 4 Qualifications

Directors need not be Participants of BOX, or members of BSE. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include at least one member of the BSE Board of Directors. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on

the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors. As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

SEC. 5 Appointment and Term of Directors

Directors of BOXR shall be appointed, as necessary, each year by the BSE Board, at its next annual meeting after the BOXR Nominating Committee presents its candidates for the two BOX representatives on the BOXR Board each October. Directors shall be appointed for no more than four consecutive two-year terms, with the exception of the initial Board of Directors, 50% of whom will be appointed by the BSE Board to one year terms, and 50% of whom will be appointed by the BSE Board to two year terms, with the percentages of each apportioned as evenly as practicable between Public Directors and non-Public Directors in accordance with Section 4, above.

SEC. 6 Resignation

Any Director may resign at any time either upon written notice of resignation to the Chairman of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

SEC. 7 Removal

Unless otherwise restricted by the LLC Agreement, , the BOXR LLC Agreement, these By-Laws, the BSE Rules or the BOX Rules, any or all of the Directors may be removed from office at any time, with cause, only if a determination is reasonably and promptly made by the BSE Board by a majority vote, that, based upon the facts known to the BSE Board at the time such determination is made that the Director sought to be removed (i) acted in bad faith; or (ii) did not act in a manner in the best interests of BOXR; or (iii) engaged in conduct which was unlawful; or (iv) deliberately breached his or her duty to BOXR.

SEC. 8 Disqualification

The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board as set forth in Section 4 of these By-Laws. If the term of office of a Director terminates under this section, and the remaining term of office of such Director at the time of termination is not more than six months, during the term of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

SEC. 9 Filling of Vacancies

If a Director position becomes vacant for any reason, the BSE Board or Executive Committee shall appoint a person to satisfy the classification (e.g. Public or BOX Option Participant) for the directorship, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

SEC. 10 Quorum and Voting

At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of the presence of a majority of the number of Directors fixed by Section 3. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

SEC. 11 Regulation

(a) The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of BOXR not inconsistent with the law, BSE and BOX Rules, the LLC Agreement, the BOXR LLC Agreement, or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of accounts or reports made to BOXR by any of its officers, by an independent professional (e.g. attorney, certified public accountant, business consultant) or in relying in good faith upon other records of BOXR.

(b) The Exchange shall use all confidential information gained during the performance of its self-regulatory obligations, including information relating to activities of Exchange members and BOX Participants, solely for regulatory purposes and will use all reasonable measures to prevent disclosure of such information to any third party, other than to its employees, agents and subcontractors on a need-to-know basis. The Exchange will take reasonable steps to advise its employees, agents and subcontractors of the confidential nature of the information.

SEC. 12 Meetings

(a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. The annual meeting of the Board shall be held immediately following the BSE Board's first regularly scheduled meeting following October 1 of each year or any adjournment thereof, at the place where the BSE Board's regularly scheduled meeting following October 1 of each year was held or at such other time and place as a majority of the Directors determine. If a quorum is then present, no notice of the meeting shall be necessary. If the annual meeting is not so held, it shall be called and held in the manner provided herein for special meetings of the Board.

(b) Regular meetings of the Board, other than the annual meeting, may be held without notice at such time and place, within or without the State of Delaware, as determined from time to time by the Board.

(c) Special meetings of the Board may be called by the Chairman of the Board, by the President, or by at least one-third of the Directors then in office. Adequate notice shall be provided to all Board members of the time and place of any Special Meetings.

(d) A Director or member of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation shall constitute presence in person at such meeting for all purposes.

SEC. 13 Notice of Meetings; Waiver of Notice

(a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if (i) mailed to the address last made known in writing to BOXR by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on

which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing whether before or after the holding of such meeting, or if such Director is present at such meeting.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present.

SEC. 14 Committees

(a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Each committee shall include one or more Public Directors; provided that there are Public Directors who are both willing to accept appointment to such committee and are not otherwise an interested director with respect to the responsibilities of such committee. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to BOXR by the BSE under the Delegation Plan. Such delegation shall be in accordance with applicable law, the LLC Agreement, the BOXR LLC Agreement, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of BOXR to the extent permitted by law and not inconsistent with the Delegation Plan.

(c) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. At least one Director of the BSE Board who is also a Director of the BOXR Board shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

(e) Nominating Committee. The Nominating Committee shall nominate Participant representatives to the BOXR Board and the BSE Board of Directors and members for each vacant position on the Nominating Committee.

(i) Composition of Nominating Committee. There shall be elected by ballot six persons to serve on the BOXR Nominating Committee which shall consist of a total of seven persons, five of whom shall represent broker-dealer Participant organizations of BOX (at least one of which shall be a BOX Market Maker), and two of whom shall be public representatives who shall have no material business relationship with a broker, dealer, the BSE, BOX or BOXR, or any affiliate of BSE, BOX or BOXR (one of whom will be a "Public Director" of the BOXR Board, and appointed to the Nominating Committee by the BOXR Board, as set forth in Paragraph (a) of this Section 14).

(ii) Nomination, Appointment, and Election of Nominating Committee Members. All members of the Committee shall serve a term of two years. The terms of Nominating Committee members shall be staggered, so that each year elections will be held for three open positions on the Nominating Committee, as well as to fill any vacancies on the Committee. No member of the Committee shall be eligible to serve two consecutive terms, and any vacancy on the Committee may be filled until the next annual election by a majority vote of the remaining members. The Committee shall elect its own Chairman, and shall be broadly representative of the Participants of BOX.

(A) Meeting of Nominating Committee. The Nominating Committee shall hold at least one meeting, prior to or in the month of June, at which time the committee shall elect its own Chairman. The Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee to fill each open position during the next term of the Nominating Committee. Such Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such open positions on the Nominating Committee. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the open positions on the Nominating Committee to be elected at the annual election. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to the Nominating Committee at the annual election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOX at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. The nominees receiving the highest number of votes for the open positions on the Nominating Committee shall be declared elected thereto. Tie votes shall be decided by the BOXR Board at its first meeting following the election.

(F) The terms of office will begin on January 1 of each year.

(iii) Nomination, Appointment, and Election of Representatives to the BSE Board of Governors and the BOXR Board

(A) Meeting of Nominating Committee. The Nominating Committee Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee for each open position for BOX participant representatives for the BOXR Board and the one nominee for the BSE Board of Directors that are to be filled at the annual election. The nominees for BOX Participant representatives must be officers or directors of a firm approved as a BOX Option Participant, as set forth in Section 4 of the By-Laws, above. The Nominating Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such offices. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Directors. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to any office at the annual election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOX at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. In each case, the two nominees receiving the highest number of votes for the BOXR Board shall be declared elected thereto, and the one nominee receiving the highest number of votes for the BSE Board of

Directors shall be recommended by the Nominating Committee for election thereto. Tie votes shall be decided by the respective Board at its first meeting following the election.

(F) At the conclusion of the election, the successful candidates thereof for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Directors shall be presented to the stockholders of BOXR and BSE, respectively, for election.

(G) The terms of office will begin on January 1 of each year.

(f) Hearing Committee. Promptly after the annual meeting of BOXR, the Chairman of the Board of BOXR, shall appoint a Hearing Committee composed of such number of Participants and non-Participants as the Chairman of BOXR shall deem necessary, none of whom shall be members of the BOXR Board of Directors or the BSE Board of Directors. This Committee or any panel thereof shall have at least one Options Participant member and shall have exclusive jurisdiction to conduct hearings on disciplinary proceedings brought by BOXR against any Participant, or any person employed by or associated with any Participant for any alleged violation of the Securities Exchange Act of 1934, the Rules and Regulations thereunder, the By-Laws or Rules of the Board Directors of the BSE, the Rules of Boston Options Exchange, LLC, the BOXR LLC Agreement or the By-Laws of BOXR, or the interpretations and stated policies of either the BSE Board of Directors or the Board of Directors of BOXR.

(i) If a Participant, or person employed by or associated with a Participant is adjudged guilty in any disciplinary proceeding, the Committee or any panel thereof shall be empowered to impose one or more of the following disciplinary sanctions: fine, censure, suspension, expulsion, limitation or termination as to activities, functions, operations or association with a BSE member or Participant, or any other appropriate sanction with respect to each charge as to which guilt is determined. Any Participant or person adjudged guilty in any disciplinary proceeding by the Committee or any panel thereof shall have the right to appeal such decision to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Directors, which shall have the discretion whether to hear such appeal. If the BSE Board of Directors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Directors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission. Notwithstanding the foregoing, a decision by the Committee or a panel with respect to a Participant that is an affiliate of The NASDAQ OMX Group, Inc. within the meaning of Chapter XXXIX, Section 2 of the BSE Rules (or any comparable successor rule) may not be appealed to or reviewed by the BOXR Board or the BSE Board of Directors, but rather shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may be appealed to the Commission.

(ii) The foregoing jurisdiction, function and powers shall be exercised by the Committee in accordance with the provision of the Rules of the Board of [Governors]Directors of the BSE, as set forth in Chapter XXX [therein] of such rules or any comparable successor to such rule. With respect to the reference to "members", "member organizations", "membership" or similar terms in the BSE Rules, the applicability of the relevant sections inures to BOX "Participants".

(iii) Appellate Review of the Committee's Decision by the BOXR Board. The decision of the Committee or any panel thereof shall be subject to appellate review by the BOXR Board, either on the BOXR Board's own motion within thirty days after issuance (or within thirty days of when the BOXR Board receives written notice from the Committee of such

decision of the Committee), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. The following procedures shall apply to reviews by the BOXR Board:

Procedure Following Petition for Appellate Review by the BOXR Board.

(A) Additional Submissions and Appointment of the Appellate Review Panel. Petitions for appellate review of Hearing Committee decisions shall be referred to the BOXR Board which shall be furnished with all material considered by the Committee or panel thereof. Parties may submit a written statement to the BOXR Board and may request an opportunity to make an oral presentation before the BOXR Board; the BOXR Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BOXR Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BOXR Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) Decision of the BOXR Appellate Review Panel. Appellate Review by the BOXR Board pursuant to paragraph (f)(iii) shall be made upon the material furnished it by the Committee or panel thereof as well as by the parties, and shall be made after such further proceedings as the BOXR Board shall order. The BOXR Board may confirm, reverse or modify in whole or in part the decision of the Committee or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BOXR Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BOXR Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(iv) Appellate Review of the BOXR Board's Decision by the BSE Board. The decision of the BOXR Board or any panel thereof, shall be subject to appellate review by the BSE Board, either on the BSE Board's own motion within thirty days after issuance (or within thirty days of when the BSE Board receives written notice from the BOXR Board of such decision of the BOXR Board), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. If the BSE Board does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. The following procedures shall apply to reviews by the BSE Board:

Procedure Following Petition for Appellate Review by the BSE Board.

(A) Additional Submissions and Appointment of the BSE Board Appellate Review Panel. Petitions for appellate review of BOXR Board decisions shall be referred to the BSE Board which shall be furnished with all material considered by the BOXR Board or panel thereof. Parties may submit a written statement to the BSE Board and may request an opportunity to make an oral presentation before the BSE Board; the BSE Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BSE Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BSE Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) Decision of the BSE Board Appellate Review Panel. Appellate Review by the BSE Board pursuant to paragraph (f)(iv) shall be made upon the material furnished it by the BOXR Board or panel thereof as well as by the parties, and shall be made after such further proceedings as the BSE Board shall order. The BSE Board may confirm, reverse or modify in whole or in part the decision of the BOXR Board or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BSE Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BSE Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

SEC. 15 Action Without Meeting

Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken with or without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or the committee.

SEC. 16 Expenses

Funds to meet the regular expense of each committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

SEC. 17 Officers

(a) The Board shall elect the officers of BOXR, which may include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including a Chief Regulatory Officer. All officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of such offices, except the offices and duties of President and any other office or duties. None of the officers, except the President, need be Directors of BOXR.

(b) The Chairman of the Board of the BSE or the President of BOXR may be the Chief Executive Officer of BOXR, as the Board of Directors may from time to time determine. Subject to the control of the Board, the Chief Executive Officer, or such other officer or officers as may be designated by the Board, shall have general executive charge, management and control of the properties, business and operations of BOXR with all such powers as may be reasonably incident to such responsibilities; may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company; and shall have such other powers and duties as designated in accordance with these By-Laws and as from time to time be assigned by the Board.

SEC. 18 Absence of the President

In the case of the absence or inability to act of the President of BOXR, or in the case of a vacancy in such office, the Board may appoint its Chairman or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

SEC. 19 Agents and Employees

In addition to the officers, BOXR may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board from time to time determine. Agents and employees of BOXR shall be under the supervision and control of the officers of BOXR, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

SEC. 20 Delegation of Duties of Officers

The Board may delegate the duties and powers of any officer of BOXR to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

SEC. 21 Resignation and Removal of Officers

(a) Any officer may resign at any time upon written notice of resignation to the Board or the President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of BOXR may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with BOXR.

SEC. 22 Bond

BOXR may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

SEC. 23 Compensation of Board and Committee Members

The Board may provide for reasonable compensation of the Chairman of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of BOXR.

SEC. 24 Indemnification and Exculpation

Exculpation and indemnification of BSE, the Officers, Directors, employees, agents and committee members of the Company and any employees, representatives, agents and Affiliates of BSE (collectively, the "Covered Persons") is governed by Section 19 of the BOXR LLC Agreement.

SEC. 25 Indemnification Insurance

BOXR shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member, employee or agent of BOXR, or who is or was serving as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not BOXR would have the power to indemnify such person against such liability hereunder.

SEC. 26 Fiscal Year

The fiscal year of BOXR shall begin on the first day of October in each year, or such other month as the BSE Board may determine by resolution.

SEC. 27 Waiver of Notice

(a) Whenever notice is required to be given by law, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or members of a committee of a Directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SEC. 28 Execution of Instruments, Contracts, etc.

(a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of BOXR by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of BOXR, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of BOXR by any principal officer or subordinate officer of BOXR, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of BOXR. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

SEC. 29 Form of Records

Any records maintained by BOXR in the regular course of business, including its books of account and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

SEC. 30 Alteration of By-Laws by Directors

To the extent permitted by law, these By-Laws, BSE Rules, BOX Rules, the LLC Agreement, the BOXR LLC Agreement, or the Regulatory Services Agreement, these By-Laws may be altered, amended, repealed, or new By-Laws adopted by approval of a majority of the BSE Board at any regular or special meeting of the BSE Board.

SEC. 31 Emergency By-Laws

The Board may adopt emergency By-Laws subject to repeal or change by action of the BSE Board that shall, notwithstanding any different provision of law, the LLC Agreement, the BOXR LLC Agreement, the Regulatory Services Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which BOXR conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make

any provision that may be practicable and necessary under the circumstances of the emergency.
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