

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40426; File No. SR-Amex-98-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Changes to the Combination of the American Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.

September 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 1998, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. Amex filed an amendment to the proposed rule change on September 8, 1998.³ 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 Substance of the Proposed Rule Change

Amex is proposing certain changes to its Constitution and Rules that will become effective at the time they become the Constitution and Rules of the American Stock Exchange LLC (referred to herein as "New Amex" or "Exchange"). New Amex is a limited liability company that will assume the functions and succeed to the exchange registration of the Amex upon closing of the transaction among the Amex, the National Association of Securities Dealers, Inc. ("NASD") and other parties specified in the Transaction Agreement, dated as of May 8, 1998. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements, including the proposed amendments to the Constitution and various rules attached here as Exhibits A and B, may be examined at the places specified in Item IV below. The self-regulatory organization 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

The purpose of the proposed rule change is to implement changes to the current Constitution and Rules of the Amex that will become effective at the time they become the Constitution and Rules of New Amex at the time of the closing of the transaction ("the Closing") among the Amex, the NASD and other parties specified in the Transaction Agreement, dated as of May 8, 1998, whereby the Amex will become a subsidiary of the NASD.⁴ By means of the proposed transaction, the NASD and the Amex desire to effect a combination to create a new more electronic, centralized floor based specialist auction market for equities and a more technologically competitive and efficient centralized market for standardized options.

On March 18, 1998, the NASD and the Amex jointly announced that the NASD Board of Governors and the Amex Board of Governors approved an agreement in principle to bring the Amex into the NASD family of companies, subject to finalization of a definitive agreement and approval by Amex members. On April 8, 1998, the Amex Board approved the terms of that definitive agreement, which was signed by the NASD and the Amex as of May 8, 1998. In connection with Amex member approval of the agreement, the Amex sent to all 864

Amex Regular Members and Options Principal Members (referred to collectively as "Members") an Information Memorandum, dated May 14, 1998, describing the transaction in detail. Attached as exhibits to the Information Memorandum were the Restated Certificate of Incorporation and the new By-Laws of Amex Corp. (as hereinafter defined), and the Constitution of New Amex. Members also were provided with Transaction Documents relating to the transaction. These included, among other items, the Transaction Agreement and exhibits thereto, including the Limited Liability Company Agreement of New Amex ("LLC Agreement") and the Technology Transfer and Development Agreement. At a Special Meeting of Members on June 25, 1998, the Members approved the transaction by a vote of 622 to 206. On August 6, 1998, the NASD Board of Governors authorized filing of a rule change with the Commission to amend NASD By-Laws to provide that the NASD Board will include the Chief Executive Officer of New Amex and one Floor Governor from the New Amex Board, as required by the Transaction Agreement. Final action with respect to the proposed amendments to the NASD By-Laws will not occur until a vote of the NASD membership is completed. The proposed amendments have been filed pursuant to Rule 19b-4 under the Act (SR-NASD-98-56), and were published for member vote on August 7, 1998, in NASD Notice to Members 98-64. The last day for member vote is September 14, 1998.

Following the Closing, New Amex will be a national securities exchange registered under Section 6 of the Exchange Act operating a separate floor-based specialist auction market with its own members and listed securities.⁵ At the Closing, New Amex will succeed to the exchange registration of Amex, and New Amex will promptly file necessary amendments to the Exchange's registration as a national securities exchange on Form 1-A, pursuant to Rule 6a-1 under the Act. Current Amex rules will become the rules of New Amex on the date of the Closing, amended only as described herein. Any amendments to such rules proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Michael Walinskas, Deputy Associate Director, Commission, from William Floyd-Jones, Jr., Assistant General Counsel, Amex, dated September 4, 1998 ("Amendment No. 1"). Amendment No. 1 adds a definition of "NASD Nominating Committee" to the Constitution. It also corrects a change to Amex Rule 345 by clarifying that any one member of the Amex Adjudicatory Committee ("AAC") may require a review of a Disciplinary Panel Decision by the full AAC. (Originally, the change to Amex Rule 345 erroneously provided that four members of the AAC were needed to call a disciplinary matter for review.)

⁴ In addition to the NASD and Amex, parties to the Transaction Agreement include NASD Market Holding Company, a wholly-owned subsidiary of the NASD; New Amex LLC, a Delaware Limited Liability Company; and the following subsidiaries of the Amex: American Stock Exchange Clearing Corporation; American Stock Exchange Realty Associates, Inc.; Amex Commodities Corporation; and PDR Services Corporation.

⁵ The Information Memorandum referred to above notes that "[t]he NASD, as the parent company of New Amex, will bear ultimate responsibility to ensure that New Amex meets its statutory obligations and that the necessary and appropriate resources are available to New Amex's compliance department to meet the evolving demands of operating a regulatory and compliance program in an advanced marketplace." (Information Memorandum at p. 40.) The NASD has undertaken to make its own rule filing with the Commission to this effect pursuant to Rule 19b-4.

after the Closing will be filed by New Amex pursuant to Rule 19b-4. New Amex will also succeed to any proposed rule change filed with the Commission by Amex before the Closing but not approved by the Commission by that time, and when ultimately approved such proposal will change the rules of New Amex.

For tax planning and other technical reasons, Amex will continue to exist as a corporate entity, and after the Closing its name will be changed to The Amex Corporation (hereinafter, "Amex Corp."). The right to trade on the Exchange will continue to be embodied in Memberships which are in fact interests in Amex Corp., although New Amex will have the authority and responsibility to approve transfers of such Memberships and changes in the "approved persons" of a Member or Member Organization, and there is proposed herein no change in the rules and policies applicable to that process.⁶

Generally, after the Closing, all the voting power in New Amex concerning the operation of the Exchange will be vested in the NASD. However, under the Transaction Agreement there are certain actions affecting the Members that require their consent, including the creation and issuance of new memberships, and material market structure changes for certain periods of time, and the principal function of Amex Corp. will be to implement the votes necessary to obtain these consents. Amex Corp. will have its own Board, which will be comprised of the Floor Governors on the New Amex Board. (The Board structure of New Amex is

discussed below.) After the Closing, Regular and Options Principal Members will have equal voting rights and will vote on matters together as a single class. Amex Corp. will have an otherwise nonvoting interest in New Amex with certain preferential liquidation rights, and the NASD will have a voting interest in New Amex. For tax consolidation reasons, the NASD will own its interest in New Amex and the Nasdaq Stock Market through NASD Market Holding Company, a wholly-owned subsidiary of the NASD.

The LLC Agreement will establish Amex Corp.'s and the NASD's rights and obligations as owners of New Amex and vest the New Amex Board with its management powers. The NASD may not amend the LLC Agreement except with the consent of Amex Corp., which may grant such consent with the approval of its Board, except for any amendment which would constitute a change otherwise requiring consent of Amex Corp. (as authorized by the Members) under the Transaction Documents.

The Information Memorandum and Transaction Documents also describe the New Equity Market Structure which will be introduced on the Exchange after the Closing, initially as a pilot program, and which will provide a system for the automatic execution of electronically delivered orders as well as a new electronic order book. The New Equity Market Structure is not the subject of this filing, but, instead, will be the subject of one or more additional filings pursuant to Rule 19b-4, which will be submitted to the Commission as soon as practicable. Until any such changes are approved by the Commission, the Exchange market structure for equities will remain unchanged and orders will be entered and executed as they are currently.

New Amex Constitution and Rules. New Amex's Constitution will include amendments to the current Amex Constitution, which in large part reflect changes provided for under the Transaction Agreement. Otherwise, New Amex's Constitution and Rules will be essentially the same as the current Amex Constitution and Rules. The following is a summary of amendments made to the current Amex Constitution and Rules. Non-substantive and stylistic changes are not discussed. The text of the New Amex Constitution is attached hereto as Exhibit A. Amendments to the text of various Amex rules are attached hereto as Exhibit B.

Article I—Title—Purposes—Definitions. Section .01 (Title) would replace "Corporation" with "Company" and "American Stock Exchange, Inc."

with "American Stock Exchange LLC" to reflect the new legal status of the Exchange as a Limited Liability Company.

Section .02 (Purposes) would delete references to the Exchange functioning as a "board of trade" under current Section .02(b)⁷ and would provide under new Section .02(c) that the Exchange conducts its activities under Delaware Limited Liability Law.

Section .03(c) defines "Regular Member" as a person holding a regular trading right issued by Amex Corp. The term "regular trading right" is defined as the right to transact business on the Floor of the Exchange generally.

Section .03(d), which replaces current Article IV, Sec. 1(b)(4) of the Exchange Constitution, similarly defines the term "options principal member" as a person holding an options principal trading right issued by Amex Corp. Such right means "the right to execute on the Floor of the Exchange transactions in options and other derivative products for the right holder's own account and to give proprietary orders in such securities to Regular Members for execution. The term "derivative product" remains substantially the same as the definition in current Article IV, Sec. 1(b)(4).

Paragraphs (s) and (r) define the terms "NASD" and "Nasdaq," respectively. Paragraph (u) defines the "Transaction Agreement," which is referenced earlier herein. Paragraph (v) defines "Predecessor Corporation" as the American Stock Exchange, Inc. prior to the date of the Transaction Agreement, and The Amex Corporation after that date. Paragraph (w) defines "Amex Committee" discussed below. Paragraph (x) defines the term "Class A Interest" as the limited liability company interest in the Exchange initially issued to Predecessor Corporation. Paragraph (y) defines "Class B Interest" as the limited liability company interest in the Exchange initially issued to NASD Market Holding Company, a wholly-owned subsidiary of the NASD. "Class A Interest" and "Class B Interest" are further referenced in Article II, discussed below. Paragraph (z) defines "The Amex Corporation" as the New York Not-for-Profit Corporation that holds the Class A Interest in the Exchange. Paragraph (aa) defines the term "NASD Nominating Committee" as the National Nominating Committee appointed pursuant to Article VII Section 9 of the NASD By-Laws.

Article II ("Government and Administration"). Article II of the New

⁶The Exchange scrutinizes and must approve not only those seeking to be active on the Exchange trading floor, but also those who seek only to own a Membership which will then be leased to another. Article I, Section 3(g) of the Exchange Constitution defines an "approved person" to include, *inter alia*, "a person who is the owner of a membership held or to be held subject to a special transfer agreement" [i.e., a lease]. In addition, the rules of the Exchange, in the section entitled "Admission of Members and Member Organizations", state that:

An individual or organization may purchase one or more regular or options principal memberships, and must file an application with Membership Services to become the owner of such membership(s) and either a member, member organization or approved person. Applicants desiring only to own a membership nonetheless shall be subject to the same requirements and procedures as are specified below for members or member organizations, as the case may be, except for the requirements to be registered as or associated with a broker-dealer and to pass the physical examination.

Finally, the Restated Certificate of Incorporation of Amex Corp., which will come into effect on the Closing Date, provides in Section 4(6) thereof that no right to trade on New Amex shall be transferred or leased apart from the Membership in respect of which it was made available, and that the exercise, transfer and lease of such trading right is subject to the Constitution of New Amex.

⁷"Board of trade" is a term utilized in the New York Not-for-Profit Corporation Law (see § 1410) and becomes unnecessary when the Exchange becomes a creature of Delaware law.

Amex Constitution ("Government and Administration") would combine the subject matter currently addressed by Articles II and III of the current Amex Constitution. As a result, the New Amex Constitution would reserve Article III.

Article II, Section 1 of the New Amex Constitution ("The Board of Governors "Classification") describes the New Amex Board and the selection of Board members. The New Amex Board would consist of 18 persons: four Floor Governors (at least one of whom must be an equity specialist and at least one of whom must be a Registered Options Trader ("ROT")),⁸ two Upstairs Industry Governors (i.e., members affiliated with broker-dealers that have substantial contact with public customers), eight Public Governors, the two most senior members of the New Amex staff and two representatives of the NASD staff.⁹ The NASD has undertaken to include as one of the two representatives of the NASD staff a person that meets the qualifications of Public Governor on the New Amex Board. The NASD will file this undertaking with the Commission pursuant to Rule 19b-4.

The eight Public Governors and two Upstairs Industry Governors would be nominated and elected by the NASD. The four Floor Governors would be nominated by Amex Corp. and elected by the NASD.¹⁰ The NASD, however, may reject a Floor Governor nominee only if (i) the nominee is subject to a statutory disqualification, (ii) the nominee is subject to a proceeding or investigation which could result in a statutory disqualification, or (iii) the nominee has been disciplined by a securities SRO with respect to a matter involving fraud or a serious violation of U.S. securities laws. In the event the NASD rejects a Floor Governor nominee, the Amex Corp. has the right to select a substitute nominee. The procedure for nominating and electing Floor Governors has been designed to ensure that Members have the greatest possible discretion, consistent with

sound regulatory policy, in selecting their representatives to the New Amex Board.

Governors would serve two year terms in office. The four Floor Governors would be divided into two classes of two each; the first class would include an equity specialist and the second class would include an ROT. The other elected governors also would be divided into two classes each consisting of one Upstairs Industry Governor and four Public Governors. The term of the first class would expire in 1999 and the term of the second class would expire in 2000. Elected governors would be eligible to serve no more than three consecutive two year terms, except that governors in the class of 1999 and any elected governor appointed to serve for one year or less by reason of a vacancy may be elected to serve three subsequent consecutive two year terms. Article II, Sec. .01(b) provides that all elected governors other than the four Floor Governors shall be nominated and elected by the holder of the Class B Interest (the NASD Market Holding Company). The term "elected governors" does not encompass governors who are Exchange officers or representatives of the NASD staff, who are appointed by the Exchange or the NASD, respectively.

Floor Governor nominees would be proposed either by the Amex Nominating Committee or by petition signed by 25 Members and would be selected by a plurality of the Regular and Options Principal Members voting together as a single class. The Amex Nominating Committee would consist of five persons: three floor Members and two persons having no affiliation with a registered broker or dealer ("Public Members"). Each of the three principal business activities on the floor, a registered specialist, a registered options trader, and a floor broker, would be represented on the Amex Nominating Committee. The composition of the Amex Nominating Committee and the criteria for Floor Governor nominees are intended to ensure representation of the principal floor business activities on the New Amex Board. While the existence and behavior of the Amex Nominating Committee is described in the New Amex Constitution, the Amex Nominating Committee is a committee of Amex Corp., under the By-Laws of Amex Corp.

The Amex Nominating Committee would be divided into two classes: the first (terminating in 1999) would consist of a Public Member and specialist, and the second (terminating in 2000) would consist of a Public Member, a floor broker and an ROT. Persons on the

Amex Nominating Committee could not serve consecutive terms. No one affiliated with a member of the Amex Nominating Committee would be eligible as a candidate for a ticket named by it. In addition to proposing Floor Governor nominees, the Amex Nominating Committee also would propose nominees for Trustees of the Gratuity Fund, the Amex Nominating Committee, and Amex Adjudicatory Council. Candidates for these positions can also be nominated through the independent petition process described above. Members of the Trustees of the Gratuity Fund, Amex Nominating Committee and the Amex Adjudicatory Council would be elected by a plurality of Members voting together as a single class.

Section 2 of Article II of the New Amex Constitution concerns vacancies on the Board and in offices elected by the Board and generally tracks Article III, Section 9 of the current Amex Constitution. Whereas the old provision required simply a recommendation of the nominating committee, the new provision recognizes that the recommendation must come from Amex Corp., in the case of Floor Governors, and from the NASD in the case of all other Governors. The recommendation from Amex Corp. will be made by the Amex Corp. Nominating Committee and the recommendation from the NASD will be made by the NASD Nominating Committee. As with current Amex procedures, persons appointed to fill such vacancies will serve until the next annual election.

Section 3 of Article II of the New Amex Constitution ("Powers, Duties and Procedures") describes the powers of the New Amex Board and generally tracks Article II, Section 2 of the current Amex Constitution. A principal distinction between the two provisions arises from the requirement in the New Amex Constitution that the Board may not take any action that requires the consent of Amex Corp., the Amex Committee, or both under the terms of the Transaction Agreement without first obtaining such consent.

Section 3 of Article II of the New Amex Constitution deletes language excepting the Nominating Committee from among the committees that may be dissolved by the New Amex Board. Such language is no longer necessary since, as noted above, the Amex Nominating Committee is a committee of Amex Corp., and hence could not in any event be dissolved by the New Amex Board.

Section 3 of Article II ("Appeal") deletes references to the Executive Committee. New Amex will not have an

⁸ The Transaction Agreement provides that on the tenth anniversary of the closing date, one additional Floor Governor would be added to the New Amex Board. The fifth Floor Governor is intended to provide Members with additional representation on the Board upon the expiration of certain contractual provisions in the Transaction Agreement.

⁹ As noted above, the NASD Board would include one Floor Governor from the New Amex Board and the Chief Executive Officer of New Amex. Such Floor Governor on the NASD Board would be selected by the New Amex Board, subject to approval by the NASD National Nominating Committee. These additions to the NASD Board would begin in January 1999.

¹⁰ The NASD, acting through its Board or a Board representative, will cast the vote of the holder of the Class B Interest for all elected governors, including the four Floor Governors.

Executive Committee, at least at the outset, since it is anticipated that all necessary functions can be handled by the full Board, the Amex Adjudicatory Council (discussed within) and other special or standing committees. Note that Section 3 of Article II ("Delegation of Powers") permits the New Amex Board to delegate such of its powers as it may determine consistent with the Constitution and applicable law to one or more committees composed either of governors or other persons.

The elimination of the Executive Committee from the governance structure of New Amex requires a modest amendment to Section 1010 of the *Amex Company Guide* to provide that review of delisting recommendations by the Committee on Securities may be handled by a review committee appointed by the Board rather than by the Executive Committee. (Subsequent deletions of references to the Executive Committee in the text of the New Amex Constitution generally will not be further noted in this discussion.) Conforming proposed changes to Section 1010 of the *Amex Company Guide* are included in Exhibit B to this filing.

Section 3 of Article II ("Delegation in Emergency") was deleted as superfluous in view of Article XII ("Authority to Take Action Under Emergency or Extraordinary Market").

Section 3 of Article II ("Selection of Chairman") would continue to provide that the Chief Executive Officer of the Exchange, who shall be Chairman of the Board, shall be elected by a majority of the entire Board. The section would be modified to provide for only one Vice Chairman and to require that this person be a Floor Governor. More than one Vice Chairman would be superfluous given the structure of New Amex as a subsidiary of the NASD. In addition, limiting the position of Vice Chairman to Floor Governors should enhance the representation of Members on the New Amex Board.

The New Amex Constitution eliminates current Article II, Section 2 ("Selection of General Counsel") in its entirety. This provision contemplated the appointment of a single outside general counsel and such a provision is archaic and needlessly restrictive in this era of legal specialization. It also appears inconsistent with the structure of New Amex as a subsidiary of the NASD.

Section 3 of Article II ("Members, Member Organizations and Approved Persons") would delete reference to a requirement that only Regular Members may be specialists in view of the creation of Class C Trading Rights

(discussed within). The prohibition on Options Principal Members and Limited Trading Permit Holders acting as specialists would be continued.

Section 4 of Article II ("Officers of the Exchange") corresponds to Article II, Section 3 of the current Amex Constitution and generally tracks its terms. Section 4(a) of Article II would be amended to eliminate the Chairman's status as an ex-officio member of all committees. This change clarifies that the Chairman is not a member of certain committees (e.g., the Amex Adjudicatory Council). Section 4(a) would be further amended to provide that the Chairman shall call a special meeting of the Board upon the written request of three rather than four governors (reflecting the reduced size of the Board). In addition, Section 4(a) has been further amended to eliminate the position of "Executive Vice Chairman" as unnecessary. This position has, in fact, never been occupied and no need was seen for it within the current governance structure. In addition, Section 4(a) would be amended to delete references to the Chairman's ability to call special meetings of regular members of the Exchange upon direction of the Board or upon the written request of 50 regular members. This amendment is appropriate because Amex members will no longer be corporate owners of Amex after the Closing. Instead, NASD Market Holding Company and Amex Corp. will be the corporate owners of New Amex. Any meetings of Members would be conducted under the By-Laws of Amex Corp. in the circumstances specified therein and would not be governed by the New Amex Constitution.

Various changes are proposed to Section 4(b) of Article II ("Vice Chairman") to reflect the fact that there would be only one Vice Chairman and to specify that the person occupying this position must be a Floor Governor.

Section 5 of Article II of the New Amex Constitution ("Committees") corresponds to Section 4 of Article II of the current Amex Constitution. As previously noted, the Executive Committee would be eliminated from the New Amex governance structure. There are no other substantive changes to Section 5.

Section 5 of Article II of the current Amex Constitution ("Indemnification") would be entirely eliminated from the Constitution of the New Amex. Indemnification by the Exchange of persons associated with it (e.g., Governors, officers and employees) is covered through the provisions in the LLC Agreement.

Section 6 of Article II creates the "Amex Adjudicatory Council," ("AAC") to act for the full Board in reviewing appeals from disciplinary proceedings. Modeled on NASD Regulation's National Adjudicatory Council, the AAC would consist of six persons, three of whom would be Floor Governors and three of whom would be Public Governors. AAC members would be nominated by the Amex Nominating Committee or by independent petition signed by at least 25 Members and would be elected by the Regular and Options Principal Members voting together as a single class. AAC members would be divided into two classes. The first class (terminating in 1999) would consist of two Floor Governors and one Public Governor. The second class (terminating in 2000) would consist of one Floor Governor and two Public Governors. Apart from the members of the first class whose terms would expire in 1999, AAC members would be elected to two year terms. Beginning with the class elected in 2000, no AAC member could serve more than two consecutive terms unless the member initially was appointed to fill a term of less than one year, in which case the member could serve up to two consecutive terms following the expiration of the initial term.

A quorum of the AAC would be four persons. In the event of a tie vote, the decision that was the subject of the review would be upheld. The Board would have a discretionary right to review decisions of the AAC as set forth in Article V of the New Amex Constitution (described within).

Article III (Reserved). As described above, Article III would be reserved in the New Amex Constitution.

Article IV ("Membership"). Article IV of the New Amex Constitution concerns membership and corresponds to Article IV of the current Amex Constitution. Section 1(a)(1) would be amended to reduce the number of Regular Memberships from 675 to 661 to reflect the fact that only 661 Regular Memberships currently are outstanding. (675 memberships had been authorized, but only 661 were issued.) Section 1(a)(1) would be further amended to provide that the number of Regular Memberships may be increased only if such action is consented to by Amex Corp., which as noted earlier would require a Membership vote. A conforming change would be made to Section 1(b)(1) of Article IV regarding Options Principal Memberships. Sections 1(a)(2) and 1(b)(2) of Article IV also would be amended to confirm that NASD Market Holding Company may hold Regular and Options Principal

Memberships. This change will facilitate the "Seat Market Program," which is described below. Note that under the Transaction Agreement, Memberships held by NASD Market Holding Company shall not be voted, either by NASD Market Holding Company or any lessee.

Section 1(a)(3) of Article IV ("Signing Constitution") would be amended to state that any regular member or lessee, by exercising any of the rights inherent in a regular trading right, shall be deemed to have pledged to abide by the New Amex Constitution. Section 1(b)(3) adds a similar provision applicable to options principal members or lessees. The purpose of these provisions is to clarify that existing Members will continue to be subject to the jurisdiction of New Amex.

Section 1(b)(4) of Article IV of the current Amex Constitution defines the trading privileges of Options Principal Members and would be transferred without substantive change to Article I, Section 3(d) of the New Amex Constitution (the definition of "Options Principal Member," "Options Principal Trading Right" and "Derivative Products").

Section 1(e) of Article IV ("Exchange Liability") would be amended to modernize the provision and to reflect the fact that the Exchange provides services as well as facilities to its members. The Commission recently reviewed and approved virtually identical language in connection with amendments to Chicago Board Options Exchange Rule 6.7.¹¹

Section 1(g) of Article IV ("Approval of Membership Matters") provides a procedure by which members may challenge determinations of the Exchange's administration made pursuant to Section 1 of Article IV. The appeal procedure would be clarified to eliminate the possibility of a review by an Exchange Disciplinary Panel which properly should consider only rule violations and not the Exchange staff determinations that are the subject of Section 1.

Section 1(h) of Article IV of the current Amex Constitution which concerns "fixed income security options trading permits" and "options trading permits" would be deleted in its entirety since both of these classes of trading permit have expired. Section 1(j) of Article IV of the current Amex Constitution ("Limited Trading Permits") would be renumbered as Section 1(h) in the New Amex

Constitution. The provisions regarding Limited Trading Permits ("LTPs") would be amended to reduce the maximum number of such permits from 36 to 10 to reflect the fact that there currently are only 10 outstanding.

Section 1(i) of Article IV ("Class C Trading Rights") is entirely new and provides for the creation of up to 25 trading rights that would allow holders to specialize in newly listed securities that they are responsible for bringing to the Exchange. Class C Trading Rights would have a limited life and would expire on the earlier of three years from the date of issuance or the fifth anniversary of the Closing. These permits are intended to attract firms that are not currently involved in specializing on the Exchange to bring substantial new listings to the Exchange. Accordingly, holders of Class C Trading Rights only would be eligible to be allocated securities that they brought to the Exchange, and they could not operate a joint book with a Regular Member. (A specialist holding a Limited Specialist Trading Right who then becomes a Regular Member shall be considered to have continued his registration as a specialist in the securities allocated to him without any need to submit to a further allocation process.) The New Amex Board would determine when and to whom to issue Class C Trading Rights, and the fees, dues and other charges that would be applicable. Class C Trading Rights would not be transferable except by reason of a business combination, reorganization or other transfer of all or substantially all of the assets from one member organization to another. Class C Trading Rights may be issued to qualified individuals or organizations who are instrumental in obtaining new listings of securities admitted to dealings on the Exchange that are judged by the Exchange to constitute demonstrable product. The Exchange will exercise its judgment in this matter based on both the quantity and quality of listings brought to the Exchange.

Section 1(j) of Article IV of the New Amex Constitution ("New Trading Rights") is entirely new and would prohibit the New Amex Board from issuing new forms of trading privileges, other than the 25 Class C Trading Rights authorized by Section 1(i), or grant materially new rights to the holders of existing privileges, without the consent of Amex Corp., which as noted above would require a vote of Members. This provision is intended to place limits on the ability of the New Amex Board to dilute the value of existing memberships through the unrestricted issuance of new trading rights.

There are no substantive changes to Sections 2, 3 and 4 of Article IV of the New Amex Constitution.

Section 5(a) of Article IV ("Reinstatement by Board") would be amended to eliminate reference to the Executive Committee.

There are no substantive changes to Sections 6 and 7 of Article IV.

Article V (Discipline of Members). Article V of the New Amex Constitution corresponds to Article V of the current Amex Constitution. The principal change to the Exchange's disciplinary process concerns the creation of the AAC to review appeals of right from Disciplinary Panel decisions and the consequent elimination of the Board and Executive Committee from this function. This change is intended to ensure that Members will be fairly represented in the disciplinary process. The Board, however, will be able to review AAC decisions on a discretionary basis. In the absence of such discretionary review by the Board, a decision by the AAC will be the final action of the Exchange.

Section 1(c) of Article V of the New Amex Constitution establishes the procedures for AAC review of Disciplinary Panel decisions and generally tracks the current procedures for Board review of Disciplinary Panel decisions. Respondents in contested disciplinary proceedings can take an appeal of right to the AAC, and any member of the AAC may require the review of a Disciplinary Panel decision by the full AAC. Proposed written decisions of the AAC in contested proceedings are provided to all members of the Board.

Section 1(d) of the New Amex Constitution is based upon procedures currently in place at the NASD with respect to discretionary NASD Board review of National Adjudicatory Council decisions.¹² Any four members of the New Amex Board may require Board review of an AAC decision. Ten governors would constitute a quorum at a meeting where a decision by the AAC is reviewed and a majority vote of the governors present at the meeting would be required to modify, reverse or remand the decision. If the Board does not call the matter for review, the decision would become the final action of the Exchange.

Section 2 of Article V ("Stipulation of Facts and Consent to Penalty") would be amended to provide that the AAC may review settlements of disciplinary proceedings that have been approved by a Disciplinary Panel. If the AAC rejects

¹¹ Exchange Act Release No. 37421 (July 11, 1996), 61 FR 37513 (July 18, 1996) (order approving SR-CBOE-96-02).

¹² NASD Manual—Code of Procedure Rule 9351 ("Discretionary Review by NASD Board").

the settlement, the matter would proceed before a Disciplinary Panel as if the settlement had never occurred. The AAC may reject a settlement or impose a lesser penalty upon a respondent; it cannot increase the penalty. AAC decisions to reject a settlement would not be subject to Board review but would proceed before a Disciplinary Panel as if the settlement had not occurred. AAC decisions with respect to settlements (other than rejections) would constitute the final action of the Exchange.

Section 3(f) of Article V concerns hearings following the summary suspension of a member or member organization for financial or operational reasons and has been amended to eliminate reference to the Executive Committee.

There are no material changes to Section 4 of Article V of the New Amex Constitution.

Section 5(b) of Article V would be modified to state that Disciplinary Panel decisions would be sent to the AAC rather than to the Board.

Article V only concerns the discipline of members and member organizations, and Exchange Rule 345 ("Determinations Involving Employees and Prospective Employees") sets forth the procedures applicable to disciplinary proceeding against persons associated with members and member organizations. Article V and Exchange Rule 345 largely parallel one another, and it accordingly is necessary to amend Rule 345 to provide for AAC review of disciplinary matters. The substitution of the AAC for the Board as the Exchange's appellate body also would require modest amendment to Rules 8 and 9 of the rules of procedure applicable to Exchange disciplinary proceedings, and Rule 590 ("Minor Rule Violation Fine Systems"). Conforming proposed changes to Rules 345 (disciplinary proceedings against employees of members and member organizations), Rule 590 (Minor Rule Violation Fine System) and Rules 8 and 9 of the rules of procedure applicable to Exchange disciplinary proceedings are included in Exhibit B to this filing.

Article VI. Article VI is intentionally omitted from the Constitution of New Amex. This Article in the current Amex Constitution had been rescinded effective May 1, 1976.

Article VII ("Fees and Dues"). Article VII of the New Amex Constitution ("Fees and Dues") corresponds to Article VII of the current Amex Constitution. Sections 1(a) and 1(b) would be amended to provide a flat rate initiation fee of \$2,500 for Regular and Options Principal Members. This fixed

initiation fee replaces the former graduated initiation fee schedule that has become obsolete with the increase in seat prices. (The old formula established a base initiation fee of \$1,000 that increased to a maximum of \$2,500 when seat prices rose above \$20,000.) Two additional obsolete provisions also would be deleted from Section 1(a) ("Transfer of Chairman's membership" and "Associate membership of Chairman"). These provisions dated from a time when the Chairman of the Board was chosen from among the Members of the Exchange.

There are no substantive changes to Sections 2 and 3 to Article VII of the New Amex Constitution.

Section 4 and Section 5 to Article VII of the New Amex Constitution would be amended to make explicit the implicit authority of the Board to set different charges for different services and securities. Such charges would be subject to filing with the Commission.

Article VIII ("Arbitration Procedure"). Article VIII of the New Amex Constitution corresponds to Article VIII of the current Amex Constitution. Changes would be made to Article VIII to effect a gradual phase-out of the Exchange's arbitration program and the transfer of this program to NASD Regulation. NASD Regulation currently administers in excess of 6,000 arbitrations whereas the Amex currently administers approximately 50 such proceedings. The Exchange, accordingly, believes that it would be rational to consolidate all arbitrations under the NASD umbrella with NASD Regulation.

There are no substantive changes to Section 1 of Article VIII ("Duty to Arbitrate").

Section 3 of Article VIII of the current Amex Constitution ("Rules of Arbitration") would be deleted in its entirety and replaced by new Section 3 ("Proceeding Instituted Prior to Combination"). The new Section 3 would provide that any arbitration filed prior to the Closing would be conducted by means of the arbitration facilities and procedures that existed as of the date the arbitration was instituted. Section 2 of Article VIII ("Arbitration Forum") has been amended to provide that actions filed subsequent to the Closing would be conducted pursuant to the NASD Code of Arbitration Procedure using the arbitration facilities of NASD Regulation, Inc. although the existing provision allowing use of the New York Stock Exchange arbitration procedures if all parties to the controversy are members there is preserved. Section 2(a) (which permitted the Board to decline to permit the use of the Exchange's

arbitration facilities in particular cases) and Section 2(c) (which permitted arbitration before the American Arbitration Association in certain circumstances) would be deleted in view of the complete assumption by NASD Regulation of the Exchange's arbitration program and the adoption of the NASD Code of Arbitration Procedure. Section 4 ("Arbitrator's Decision Final") also would be deleted due to the adoption of the NASD's Code of Arbitration Procedure and NASD Regulation's assumption of the arbitration program.

Section 5 of Article VIII ("Penalties") in the current Amex Constitution would be renumbered as Section 4. Section 4(b) would be amended to provide that New Amex may summarily suspend persons within its jurisdiction that fail to pay an arbitration award of an exchange or the NASD. Conforming proposed changes to the 600 series of current Amex rules relating to arbitrations are included in Exhibit B to this filing. Commentary would be added to the Rule 600 Series advising litigants that the Rule 600 series only would apply to arbitrations commenced prior to the Closing and would otherwise be of no force or effect. In addition, the Commentary would advise members and member organizations of the requirements of Article VIII, Section 2 of the Exchange Constitution (discussed above), and would state that any violation of the NASD Code of Arbitration Procedures by members and member organizations would be deemed a violation of Exchange rules and be subject to Exchange disciplinary procedures.

Article IX ("Gratuity Fund"). Provisions relating to the Gratuity Fund will remain substantially unchanged from current provisions in Article IX, except for procedures relating to appointment of Gratuity Fund trustees. Section 7 ("Income of Fund") adds new language providing for proportional credits to each participant in reduction of such participant's payments under Article IX in the event the Gratuity Fund receives any extraordinary payment from any source. Section 10 ("Classification and Selection of Trustees") would provide that Trustees of the Gratuity Fund shall be appointed by Amex Corp., based on the vote of the regular and OPM members of the Exchange. This will essentially maintain the current process by which trustees are nominated and elected in the same manner, and at the same time, as governors of the Exchange, pursuant to procedures in Article III. Section 11 would provide that in the event of a vacancy, the board of Amex Corp. shall

appoint a person qualified to serve as Trustee until the next meeting at which the Trustees to be appointed are selected. Currently, the Amex Board fills any vacancy, pending the next annual election. These procedures are consistent with procedures in the New By-Laws of Amex Corp. which provide for the election by members of Amex Corp. of Trustees of the Gratuity Fund, as well as the Amex Nominating Committee, Amex Adjudicatory Council, and nominees for Floor Governors to serve on the New Amex Board.

Article X ("Clearing Organizations"). Article X of the New Amex Constitution corresponds to Article X of the current Amex Constitution. There are no substantive changes to Article X.

Article XI ("Miscellaneous Provisions"). Article XI of the New Amex Constitution corresponds to Article XI of the current Amex Constitution. There are no substantive changes to Sections 1 through 4 of Article XI. Section 5 of Article XI would be amended to conform to the current Amex employee trading policy, which allows employees to trade standardized options issued by the Options Clearing Corporation unless such option is on an underlying security listed on the Amex. Section 6 would be added to state that the New Amex Constitution shall be governed by, and construed in accordance with, Delaware law without regard to Delaware conflict of laws principles.

Article XII ("Authority To Take Action Under Emergency or Extraordinary Market Conditions"). Article XII of the current Amex Constitution would be deleted in its entirety and replaced by a provision comparable to Article VII, Section 3 of the NASD's By-Laws. In addition, Article XII of the current Amex Constitution currently references emergency by-laws under Subdivision 17 of Section 12 of the New York State Defense Emergency Act and to the effectiveness of emergency by-laws of New York Corporations. These references would no longer be appropriate to New Amex, as a Delaware Limited Liability Company.

Article XIII ("Amendments to the Constitution"). Article XIII of the New Amex Constitution corresponds to Article XIII of the current Amex Constitution. Article XIII would be substantially revised to reflect the status of New Amex as a subsidiary of the NASD. Section 1 sets forth the basic principle that the New Amex Constitution may be amended by a majority of the Governors and the holder of the Class B Interest, NASD

Market Holding Company, without any further procedures at the SRO level except where the change would require the consent of Amex Corp. or the Amex Committee. Thus, the NASD, via its wholly-owned subsidiary, NASD Market Holding Company, must approve, and has the power to veto, any proposed amendments to the New Amex Constitution. Historically, the corporate owners of the Amex have been required to approve amendments to the Amex Constitution (*i.e.*, by-laws). It is appropriate that, in the new organization, the corporate owner of New Amex have the same ability.

Sections 3 and 4 of Article XIII of the New Amex Constitution set forth the procedures for obtaining the consent of the Amex Corp. in circumstances where a vote of the members is required. The consent of Amex Corp. would be granted if it is authorized by a majority of Regular and Options Principal Members voting together as a single class.

Section 2 ("Adoption by Board") preserves the process in the current Amex Constitution whereby members may petition the Board to adopt amendments to the Constitution. The amendment would be approved upon the vote of a majority of governors then in office and the holder of the Class B Interest.

Article XIV (Reserved). Article XIV of the New Amex Constitution has been reserved. In the current Amex Constitution this Article dealt with implementation of certain amendments previously adopted.

Amex Committee. The Transaction Documents also establish a seven-member Amex Committee ("Committee") which has diverse powers detailed in the Transaction Agreement and provides representation of various Exchange constituencies, including specialists, registered options traders and floor brokers with respect to, among other areas, the operation of the equity and options market and the development of new trading facilities. The representation of the interests of the various business segments on the Exchange floor supplements the Floor representation on the New Amex Board provided under Article II of the New Amex Constitution (discussed above), and is intended to enhance the involvement and representation of diverse member groups in the administration of Exchange affairs in a number of significant areas. The Committee is required to exercise its powers in the best interests of Amex Corp. and the Members, and consists of (1) three Public Members, one of whom will serve as chairman; (2) one person

who is not active on the floor of the Exchange but who is associated with a member organization of the Exchange; and (3) three "floor members" who are active on the floor of the Exchange, one whose principal business is as a specialist on the Equity Market or Options Market, one whose principal business is as a registered options trader and one whose principal business is as a floor broker.

The initial three floor members will be nominated by the Floor Governors on Amex Corp.'s current Board, and agreed to by Amex Corp. and the NASD before the Closing. The other initial Amex Committee members will be designated by the NASD and agreed to by Amex Corp. and the NASD before the Closing. The chairman will be selected by the Amex Committee from among the Amex Committee Public Members, and the initial chairman will be Paul Volcker, former Chairman of the Federal Reserve System and formerly a member of the Amex Board of Governors.

Amex Committee members will be divided into three classes with staggered three-year terms. No Amex Committee member may serve more than two consecutive three-year terms. Vacancies on the Amex Committee will be filled by a person of the same category as the vacating member. Replacements for floor members will be chosen by the Floor Governors on New Amex's Board. Replacement members for other Amex Committee members, including the chairman, will be chosen by a majority of the remaining members of the Amex Committee or, in some circumstances, by action of New Amex's Board (including the approval of at least two Floor Governors of New Amex). All replacements will be subject to the approval of the NASD's Chairman. All Amex Committee decisions will require a majority vote at a meeting at which at least five members are present. For a period of ten years from the Closing Date, New Amex will not make a material change to the equity or options market without the consent of the Amex Committee. From and after ten years from the Closing Date, an affirmative vote of two-thirds of the entire New Amex Board can override disapproval by the Amex Committee of a material change to the Equity Market structure, as described in Exhibit D to the Transaction Agreement, or to the options market.

The Amex Committee also has a role in a number of other significant aspects of the transaction, including the acquisition by the NASD of other options or securities exchanges, the timing of the modernization of the New Amex trading facility, and the

monitoring of amounts spent by the NASD for new technology for New Amex.

Limits on Floor Fee Increases. New Amex must give the floor members on the Amex Committee at least ten business days' prior notice before aggregate costs and fees to floor members and other floor participants on the Exchange can be increased by more than ten percent in any calendar year. A majority of those persons may vote to submit the matter to binding arbitration. Such arbitration will last no more than 30 days and will determine whether the increases were reasonable and fair in light of all relevant factors, including the costs other major securities exchanges charge their members, the costs historically imposed by the Exchange, and changes in the expenses and overall economic performance of the Exchange (other than debt service in connection with the \$110 million Development Program described below).

Limits on Issuance of New Seats and Trading Rights. Regular and Options Principal Trading Rights. Following the Closing, Regular and Options Principal Members (as well as holders of Limited Trading Permits) will have the same privileges as they currently have with respect to the conduct of business on the floor of the Exchange. There is no plan to change the existing process of buying, selling and leasing Regular or Options Principal Memberships or Limited Trading Permits.

If the New Amex Board believes that additional Regular or Options Principal Memberships should be issued, it must request Amex Corp. to do so. Upon receiving such a request, Amex Corp. must put the question to a vote of Members. Amex Corp. must grant such request only if authorized by the affirmative vote of a majority of the Regular Memberships and the Options Principal Memberships voted (as a single class) at a meeting called for the purpose of considering the request of New Amex. This requirement continues indefinitely.

Any new Regular or Options Principal Memberships authorized in this manner must be issued by way of a rights offering to all of the then-current Members. Each Member (or in the case of a leased Membership, the lessor) will receive a right or rights which, in combination with a specified number of other rights, may be surrendered for a newly issued membership. The rights will be transferable by their holders. Subject to membership qualification requirements, Amex Corp. will issue one new Regular or Options Principal Membership without charge (but subject to any initiation or other applicable

fees) to each holder who has assembled the required number of rights. Any new Regular or Options Principal Membership issued in this manner will have the same rights and privileges as the Regular or Options Principal Memberships outstanding immediately before the issue.

Limited Trading Permits; New Trading Rights. Existing Limited Trading Permits will remain in force after the Closing in accordance with the terms of the New Amex Constitution.

Except for the Class C Trading Rights (described above), New Amex may not issue any new rights to trade on the floor of the Exchange or grant materially new rights to holders of existing trading privileges without the consent of Amex Corp. Amex Corp. must give its consent if and only if authorized by the affirmative vote of a majority of the Regular Memberships and Options Principal Memberships voted (as a single class) at a meeting called for considering the request of New Amex.

Seat Market Program. Commitment. The Transaction Agreement provides that a Seat Market Program for Regular and Options Principal Memberships will begin immediately after the Closing. This program is intended to moderate possible downside volatility in seat prices following the Closing. The NASD has committed to fund this program, but no "trust" or other segregated fund will be created. Immediately after the Closing, the NASD will commit \$30 million for this program. On January 1, 1999, the NASD will increase its commitment by \$10 million. The NASD may fund this \$10 million increase itself or, to the extent the 1998 earnings of Amex Corp. and New Amex allow, from the assets of New Amex.

In addition, the NASD will:

- * Increase its commitment by any after-tax net proceeds received from leasing Regular or Options Principal Memberships purchased under the program,
- * Increase or decrease its commitment, as the case may be, by the after-tax profit or loss realized from reselling such memberships,
- * Decrease its commitment by the payments or expenditures pursuant to the program (other than payments or expenditures for purchasing Memberships under the program), and
- * Increase its commitment by imputed interest at an annual interest rate of five percent:

—On the amount of the commitment, for the first five years after the Closing; and

—On the difference between the amount of the commitment and the

aggregate purchase price of all Memberships purchased under the program during the period they are held by the NASD, after the fifth anniversary of the Closing.

The liquidation, dissolution or winding up of New Amex will not affect the NASD's funding commitment under the Seat Market Program.

Seat Committee. The Transaction Agreement provides for a six-member seat committee (the "Seat Committee") which will control the program. The Seat Committee will be composed of three Regular or Options Principal Members (at least one of whom is active on the floor of the Exchange and at least one of whom is not active on the floor of the Exchange), two Public Members and the NASD's Chairman (or his designee). The Regular or Options Principal Members on the Seat Committee will not be from large multi-service broker-dealer firms.

The Floor Governors of New Amex will choose the Regular or Options Principal Members to serve on the Seat Committee, and will fill vacancies in those three positions, in each case subject to the approval of the NASD's Chairman. The other members of the Seat Committee will be chosen, and vacancies filled, by the NASD's Chairman.

Purchases, Sales and Leasing. During the Seat Market Program, the NASD must purchase Regular and Options Principal Memberships, as and if directed by the Seat Committee. Memberships held or leased by the NASD may not be voted. The NASD may sell or lease Memberships purchased under the program, and net proceeds will be returned to the program.

Other Applications of Funds. On or soon after the fifth anniversary of the Closing, the Seat Committee may recommend that the NASD apply up to \$30 million of such funds in one or more of the following ways:

- * Distributions to Members,
- * Reductions in Exchange fees, or
- * Investments in technology for the Exchange (which will not count toward the \$110 million Development Program, described below).

The Seat Committee also may recommend that no fund amounts be spent on any of these choices. Every two years after the fifth anniversary of the Closing, the Seat Committee can recommend that the balance of the commitment be applied to one or more of the above choices.

Each of these Seat Committee recommendations will require the consent of Amex Corp. Upon receiving

a Seat Committee recommendation, Amex Corp. must put the matter to a vote of Members. It must give its consent if, and only if, authorized by the affirmative vote of a majority of the Regular and Options Principal Members voted (as a single class) at a meeting called for the purpose of considering the Seat Committee's recommendation. If it receives Amex Corp.'s consent, the NASD must comply with the Seat Committee's recommendation. If the Seat Committee's recommendation is not approved, the Seat Committee must make a new recommendation.

If the Seat Committee's recommendation is other than that funds be distributed to Members, and two or more Floor Governors of New Amex disagree with that recommendation, they may require Amex Corp. to call for a vote of Members. In this case, the Regular and Options Principal Members, voting as a single class, will decide between (i) approving the Seat Committee's recommendation and (ii) approving a distribution to Members with an allocation between Regular and Options Principal Members as proposed by the three Regular or Options Principal Members on the Seat Committee. If two-thirds of the Regular and Options Principal Members voted (as a single class) at a meeting called for the purpose of considering the matter approve the distribution, the Seat Committee will direct the NASD to make such distribution. In the case of any vote on the distribution of funds to Members, the Regular and Options Principal Members will vote as separate classes on whether to approve the proposed allocation of the distribution between Regular and Options Principal Members. If either class of Members fails to approve the proposed allocation, the Seat Committee will appoint an arbitrator to decide an equitable allocation between the two classes.¹³

¹³In *Selma Philipson v. American Stock Exchange, et al.*, 98 Civ 4219 (DC), United States District Court, Southern District of New York, filed as a class action, plaintiff challenged the transaction between the Amex and the NASD on several grounds. The NASD and the Amex have negotiated an agreement in principle for the settlement of this litigation which provides that the Seat Committee shall consider, 18 months and 36 months after the Closing, whether half of the NASD's initial \$30 million commitment to the Member Equity Program should be distributed to owners of membership interests, used to reduce Exchange fees, or invested in technology for the Exchange, rather than continuing to be held for the purchase of seats. After five years, any remaining portion of the initial \$30 million commitment must be used for one of these three purposes. In addition, the agreement provides that the NASD shall contribute to a separate fund 15% of any amount by which New Amex's annual after-tax income in each of the first

2. Basis

Amex believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(3) in particular in that the proposed provisions of the New Amex Constitution assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The proposed amendments seek to promote fair representation of the various Exchange floor constituencies by providing meaningful, ongoing participation and input by such constituencies in the governance and operation of the Exchange equity and options markets, while, at the same time, providing appropriate input and oversight by the NASD as the parent corporation and the entity with ultimate responsibility for New Amex.

Amex believes the composition of the New Amex Board ensures representation by both "upstairs" member organizations and the Exchange Floor. The New Amex Constitution (proposed Article II, Sec. .01(a)) provides for two "Upstairs Industry Governors" and four Floor Governors, with at least one of the Floor Governors required to be an equity specialist and at least one a registered options trader. Procedures for nominating Floor Governors ensures that the diverse interests of Floor members, as well as the public, are reflected in the nomination process. Proposed Article II, Sec. .01(c) provides that the Amex Nominating Committee consist of three active Floor Members, including a specialist, a registered options trader and a Floor broker, and two public representatives. The nominees of the Nominating Committee, or alternatively,

ten years after the Closing exceeds a specified base amount. A committee consisting of three members of the Exchange and the Chairman of the NASD will determine whether this fund shall be distributed to owners of membership interests, invested in technology for the Exchange, or used to fund pension or retirement benefits for owners of membership interests. The proposed settlement is subject to execution of a formal settlement stipulation, which will then be subject to court approval following notice to all members of the plaintiff class.

It is the view of Amex that, once court approval is received, the terms of the settlement will be able to be implemented without the necessity of further amendment of the Transaction Agreement or any further approval from the Commission. Telephone Call between James Duffy, Executive Vice President and General Counsel, Amex, and Michael Walinskas, Deputy Associate Director, Commission, September 10, 1998.

a nominee or nominees proposed by a petition signed by at least twenty five regular and/or options principal members, are chosen by a vote of regular and OPM members voting together as a single class. The NASD (the holder of the Class B interest) may reject any such proposed nominee only for the specific regulatory reasons enumerated in proposed Article II, Sec. .01(b), namely, if such person is subject to a statutory disqualification or is subject to a proceeding or investigation which could result in a statutory disqualification, or if such person has been disciplined by a securities self-regulatory organization with respect to a matter involving fraud or a serious U.S. securities law violation.

Amex believes the Board composition, together with the use of the Amex Nominating Committee, assure that members are represented fairly in the selection of the Board and thereby in the administration of Exchange affairs. Proposed Article II, Section 1 also provides that the New Amex Board shall include eight Public Governors, all of whom are nominated by the NASD Nominating Committee. In addition, the NASD has undertaken to include as one of the two representatives of the NASD on the New Amex Board a person that meets the qualifications of Public Governor on the New Amex Board. Thus, of the 18 New Amex Board members, nine will meet such Public Governor qualifications. Amex believes such proportion of public governors (who are not themselves and are not affiliated with, a securities broker or dealer) provides substantial and meaningful input by the public in Exchange governance.

The AAC, provided for in proposed Article II, Sec. .06 establishes a mechanism for meaningful participation by Exchange members, as well as the public, in Exchange disciplinary processes, and promotes the equitable conduct of the Exchange's regulatory responsibilities.¹⁴ The AAC, which

¹⁴In its 1997 Concept Release relating to regulation of exchanges, the Commission interpreted the fair representation requirements under Section 6(b)(3) as follows:

* * * fair representation of an exchange's members also serves to ensure that an exchange is administered in a way that is equitable to all market members and participants. Because a registered exchange is not solely a commercial enterprise, but also has significant regulatory powers with respect to its members, competition between exchanges may not be sufficient to ensure that an exchange carries out its regulatory responsibilities in an equitable manner. The fair application of an exchange's authority to bring and adjudicate disciplinary procedures may be particularly important in this respect, because these actions can have significant and far-reaching ramifications for broker-dealers. Accordingly, under the Exchange

includes three Public Governors and three Floor Governors, has authority to act for the Board subject to the Board's discretionary right of review in the areas specified in Article II, Sec. .06(a), including with respect to any appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding. Article V, Sec. .01(c) provides for AAC review of Exchange Disciplinary Panel determinations, subject to discretionary right of review by the Board under Article V, Sec. .01(d). The AAC decision becomes final if not reviewed by the Board. Such decision may then be appealed only to the Commission.

As described above, the Amex Committee also has been established to provide for significant input by floor members, the public and member organizations not on the floor with respect to the administration of Exchange affairs, including the New Equity Market Structure.

Amex believes the proposed rule change is consistent with Section 6(b)(8) of the Act which requires that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The transaction between the Amex and the NASD promotes intermarket competition by providing significant additional financial resources to the Exchange to develop a New Equity Market Structure, including facilities for the automatic execution for electronically delivered orders and a new electronic order book. This initiative will enhance the primary auction market by improving efficiency and lowering costs, which will improve the competitiveness of the New Amex primary auction market and make it a more viable technologically-advanced alternative to other exchange auction markets, including the New York Stock Exchange, for listings and equity order flow. In addition, the NASD/Amex transaction will provide additional resources to permit the Exchange's options market to develop systems and facilities required to compete more effectively with other U.S. and foreign options markets.

Amex believes the proposed rule change is also consistent with Section 6(b)(5) of the Act in that the proposed amendments are designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the exchange.

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

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

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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 inspection and copying in the Commission's Public Reference Room, located at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to File No. SR-Amex-98-32 and should be submitted by October 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

EXHIBIT A—AMERICAN STOCK EXCHANGE, INC.

Proposed Rule Change

(Text in brackets indicates material to be deleted; italicized text indicates material to be added.)

A. Constitution

Article I. Title—Purposes—Definitions

Sec. 01. Title

The title of this [Corporation] *Company* shall be ["American Stock Exchange, Inc."] "*American Stock Exchange LLC*", hereinafter referred to as the "Exchange."

Article I. Title—Purposes—Definitions

Sec. 02. Purposes

The purpose of the Exchange shall be:

Securities [market place] *Market Place*

(a) to provide a securities market place where high standards of honor and integrity shall prevail and to promote and maintain just and equitable principles of trade and business;

[Board of Trade

(b) to conduct and carry on the functions of a "board of trade" within the meaning of that term in the New York Not-for-Profit Corporation Law;

An exchange] *An Exchange*

[(c)] (b) to conduct and carry on the functions of an "exchange" within the meaning of that term in the Securities Exchange Act of 1934; and

[New York Not-for-Profit Corporation] *Delaware Limited Liability Company* Law

[(d)] (c) to conduct and carry on any and all activities incidental to the foregoing which may lawfully be conducted and carried on by a [corporation] *company* of its type formed under the [New York Not-for-Profit Corporation] *Delaware Limited Liability Company* Law.

¹⁵ 17 CFR 200.30-3(a)(12).

Act structure, it may be essential to give exchange participants equitable and enforceable input into disciplinary and other key processes to prevent them from being conducted in an inequitable, discriminatory, or otherwise inappropriate fashion.

Exchange Act Release No. 38672 (May 23, 1997), at 66, 62 FR 30485 (June 4, 1998) ("Concept Release").

Article I. Title—Purposes—Definitions**Sec. 03. Definitions**

The following terms as used in this Constitution and in the rules adopted pursuant thereto shall, unless the context otherwise indicates, be construed as follows:

Rules of the Exchange

(a) The term “rules of the Exchange” shall include the Constitution and all rules and commentaries adopted pursuant thereto.

Member

(b) The term “member”, when not preceded by the word “regular”, “options principal”, “allied”, or “associate”, shall include regular, options principal, allied and associate members.

[Allied member] *Regular Member; Regular Trading Right*

[(c)] (c) The term “regular member” means a person holding a regular trading right issued by The Amex Corporation.

The term “regular trading right” means the right to transact business on the Floor of the Exchange generally.

Options Principal Member; Options Principal Trading Right; Derivative Products

(d) The term “options principal member” means a person holding an options principal trading right issued by The Amex Corporation.

The term “options principal trading right” means the right to execute on the Floor of the Exchange transactions in options and other derivative products for the right holder’s own account, and to give orders in options and other derivative products for his own account to regular members for execution. The holder of an options principal trading right may not execute agency transactions on the Floor either for customers or for regular, associate or allied members or other options principal members, may not be registered as a specialist, may not execute on the Exchange any orders, whether as agent or principal, in stocks, warrants, bonds or other securities (except principal transactions in options and other derivative products), and may not accept any orders from his member organization for execution.

The term “derivative products” includes, in addition to standardized options, other securities which are issued by The Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities. Notwithstanding the foregoing, the term “derivative products” shall not include warrants of any type or closed-end management investment companies.

Allied Member

(e) No change. (Repositioned from former Art. I, Sec. .03(c)).

Member Organization

(f) No change.

Approved Person

(g) No change.

Publicly [held security; voting stock; non-voting stock] *Held Security; Voting Stock; Non-Voting Stock*

(h) No change.

Security or [securities] *Securities*

(i) No change.

Member Contracts

(j) No change.

Exchange Contracts

(k) The term “Exchange Contracts” shall include all “Member Contracts”:

- (1) made on the Exchange; or
- (2) not made on the Exchange, unless made subject to the rules of another [Exchange] exchange or Nasdaq, or unless the parties thereto have expressly agreed that the same shall not be Exchange Contracts.

Date of [death] *Death*

(l) No change.

Entire Board

(m) No change.

He, Him, or His

(n) No change.

Special Transfer

(o) No change.

Lessor

(p) No change.

Lessee

(q) No change.

Nominee

(r) No change.

NASD

(s) The term “NASD” means the National Association of Securities Dealers, Inc.

Nasdaq

(t) The term “Nasdaq” means The Nasdaq Stock Market, Inc.

Transaction Agreement

(u) The term “Transaction Agreement” means the agreement dated as of May 8, 1998, between the American Stock Exchange, Inc. and certain other parties, including the NASD, pursuant to which substantially all of the assets of the American Stock Exchange, Inc. were transferred to the Exchange, as it may be amended from time to time.

Predecessor Corporation

(v) The term “Predecessor Corporation” means the American Stock Exchange, Inc. prior to the date of the Transaction Agreement, and The Amex Corporation after that date.

Amex Committee

(w) The term “Amex Committee” means the committee by that name established pursuant to the Transaction Agreement.

Class A Interest

(x) The term “Class A Interest” refers to the limited liability company interest in the

Exchange initially issued to the Predecessor Corporation.

Class B Interest

(y) The term “Class B Interest” refers to the limited liability company interest in the Exchange initially issued to NASD Market Holding Company, a wholly-owned subsidiary of the NASD.

Amex Corporation

(z) The term “The Amex Corporation” means the New York Not-for-Profit Corporation that holds the Class A Interest in the Exchange.

NASD Nominating Committee

(aa) The term “NASD Nominating Committee” means the National Nominating Committee appointed pursuant to Article VII Section 9 of the NASD By-Laws.

Article II. Government and Administration
Sec. 01. The Board of Governors—
Classification

Classification

(a) The Board of Governors shall be composed of:

(1) [Twelve] Six regular, options principal, associate or allied members of the Exchange [having the following qualifications: (i) each] (i) two of whom shall be [a principal executive officer of a] affiliated with regular[, options principal] or associate member [corporation, or a principal partner of a regular, options principal or associate member firm, or a regular or options principal member of the Exchange who is not associated with any member organization; (ii) at least four of the twelve governors shall be principal executive officers of regular or associate member corporations or general partners of regular or associate member firms, which firms or corporations] organizations that engage in a business [involving] having substantial direct contact with public securities customers [; (iii) at least two of the four governors provided for in clause (ii) shall reside and have their principal place of business more than 100 miles from the City of New York; (iv) at least five, but not more than five, of the twelve governors shall] (“Upstairs Industry Governors”), and (ii) four of whom shall be persons who spend a substantial part of their time on the Floor of the Exchange [; and (v) at least two of the five governors provided for in clause (iv)] (“Floor Governors”). At least one of the Floor Governors shall be principally engaged in business as a registered [as specialists;] equity specialist, and at least one shall be principally engaged in business as a registered options trader;

(2) [Twelve] Eight representatives of the public (i) none of whom is, or is affiliated with, a broker or dealer in securities and (ii) [not less than three] all of whom are [principal executive officers of corporations whose securities are admitted to dealings on the Exchange] nominated by the NASD

Nominating Committee ("Public Governors"); and

(3) The [Chief Executive Officer] *two most senior officers* of the Exchange, [who shall be the Chairman of the Board, and the Executive Vice-Chairman, if there be one, or if there is no Executive Vice-Chairman, the President, if there be one.] *and*

[(b) The twelve regular, options principal, associate or allied member governors and the twelve public governors]

(4) *Two representatives of the staff of the NASD.*

(b) *All elected governors other than the four Floor Governors shall be nominated[,] and elected by [vote of the regular members of the Exchange, in accordance with the provisions of Article III. The Chief Executive Officer of the Exchange] the holder of the Class B Interest. The four Floor Governors shall be nominated by the holder of the Class A Interest and elected by the [Board by the affirmative vote of the majority of the entire Board] holder of the Class B Interest. A nominee for Floor Governor may be rejected by the holder of the Class B Interest only if such person (i) is subject to a statutory disqualification within the meaning of Section 3(a)(39) of the Securities Exchange Act of 1934, (ii) is subject to a proceeding or investigation which could result in such a statutory disqualification, or (iii) has been disciplined by a securities self-regulatory organization with respect to a matter involving fraud or a serious violation of the U.S. securities laws. The holder of the Class A Interest shall have the right to submit a substitute nominee in the event of any such rejection. All governors shall be of equal standing and shall be entitled to one vote each at all meetings of the Board.*

(c) The [governors elected by the] *nomination of the Floor Governors by the holder of the Class A Interest shall be accomplished in the following manner. The nominees shall be chosen by vote of the regular and options principal members voting together as a single class on candidates selected and proposed either by the Amex Nominating Committee or by petition signed by at least twenty-five regular and/or options principal members. The Amex Nominating Committee shall consist of five persons, three of whom shall be members active on the Floor of the Exchange ("Floor Members"), and two of whom shall be representatives of the public having no affiliation with a broker or dealer in securities ("Public Members"). Of the three Floor Members, one shall be principally engaged in business as a registered equity specialist, one shall be principally engaged in business as a registered options trader, and one shall be principally engaged in business as a Floor broker on the Floor of the Exchange.*

(d) *The two governors who are representatives of the staff of the NASD shall be appointed by the NASD and shall serve on the Board until their successors are appointed. The two most senior officers of the Exchange shall serve on the Board for as long as they hold such offices.*

(e) *The Floor Governors shall be divided into [three classes, each class consisting of eight governors;] two classes. The first class shall include at least one governor who is an equity specialist. The second class shall include at least one governor who is a registered options trader.*

[(1)](f) *The members of the Amex Nominating Committee shall be divided into two classes. The first class shall consist of one Public Member and the Floor Member who is a registered specialist, and the [(i) four regular, options principal, associate or allied members of the Exchange who meet the qualifications described in subsection (a)(1)(i) of this Section, at least two of whom meet the qualifications described in subsection (a)(1)(ii), at least one of which two meets the additional qualifications described in subsection (a)(1)(iii), and one, but not more than one, of whom meets the qualifications described in subsection (a)(1)(iv), and (ii) four representatives of the public who meet the qualifications described in subsection (a)(2)(i) of this Section, at least one of whom meets the additional qualifications described in subsection (a)(2)(ii);*

[(2) The] *second class shall consist of [(i) four regular,] one Public Member, the Floor Member who is a registered options [principal, associate or allied members of the Exchange who meet the qualifications described in subsection (a)(1)(i) of this Section, at least one of whom meets the qualifications described in subsection (a)(1)(ii), and two, but not more than two, of whom meet the qualifications described in subsection (a)(1)(iv), and (ii) four representatives of the public who meet the qualifications described in subsection (a)(2)(i) of this Section, at least one of whom meets the additional qualifications described in subsection (a)(2)(ii); and] trader, and the Floor Member who is a Floor broker.*

[(3) The third class](g) *The Upstairs Industry Governors and the Public Governors shall be divided into two classes, each of which shall consist of [(i) four regular, options principal, associate or allied members of the Exchange who meet the qualifications described in subsection (a)(1)(i) of this Section, at least one of whom meets the qualifications described in subsections (a)(1)(ii) and (iii) and two, but not more than two, of whom meet the qualifications described in subsection (a)(1)(iv), and (ii) four representatives of the public who meet the qualifications described in subsection (a)(2)(i) of this Section, at least one of whom meets the additional qualifications described in subsection (a)(2)(ii).] one Upstairs Industry Governor and four Public Governors.*

[(d)](h) *The initial terms of the [governors of the first, second and third] Floor Governors, members of the Amex Nominating Committee, Upstairs Industry Governors, and Public Governors in the first and second classes shall terminate in [1982, 1983] 1999 and [1984,] 2000 respectively, upon the election of their successors [in accordance with the provisions of Article III. Subsequent*

to the initial terms of office, the governors of]. Thereafter, the persons in each class shall be elected for [three] two-year terms and shall hold office until their successors [have been elected in accordance with the provisions of Article III.] are elected.

[(e) No person](i) *No Floor, Upstairs Industry or Public Governor who has served [all or part of two] three consecutive elected terms as a governor shall be eligible for election [by the regular members] as a governor, except after an interval of two years[,] provided, however, that [(i) the Nominating Committee may in its discretion nominate for election to a third] Governors in the first class whose term in office expires in 1999, and any other governor appointed to the Board for one year or less by reason of a vacancy, may subsequently be elected to serve three consecutive [term an incumbent governor who is serving the final year of his or her second elected term if the]two-year terms.*

(j) *No person shall serve for all or part of two consecutive terms as a member of the Amex Nominating Committee [determines that such governor has made an extraordinary contribution to the Exchange and that the interest of the Exchange will best be served by permitting such person to stand for reelection; and (ii) an incumbent governor]. No member of the Amex Nominating Committee, and no person having a business affiliation with a member of the Amex Nominating Committee, shall be eligible [for election to a third consecutive term if nominated by independent nomination as provided in Section 7(f) of Article III. Notwithstanding the foregoing provisions, at no time may more than four governors be serving a third consecutive term, and of those four governors, no more than three may be representatives of the public who meet the qualifications described in subsection (a)(2), no more than one may be] as a candidate for office on the ticket named by it. Any vacancy in the Amex Nominating Committee shall be filled by the remaining members thereof, who shall elect a person qualified to fill the vacancy.*

(k) *Each governor that is not a regular[,] or options principal[, associate or allied member who meets the qualifications described in subsection (a)(1)(iv), and no more than one may be a regular, options principal, associate or allied member who meets the qualifications described in subsection (a)(1)(ii).*

[(f) Each non-regular member governor] *member of the Exchange shall be deemed to have agreed to uphold the Constitution by acceptance of the office of governor. [Non-] Each governor that is not a regular [member governors and public governors] or options principal member of the Exchange shall have the right to go on the Floor of the Exchange but shall not have the right to transact business in securities thereon, and shall have no rights or obligations with respect to*

contributions to, or benefits from, the Gratuity Fund.

Article II. Government and Administration

Sec. 02. Vacancies

(a) A vacancy shall occur in the office of any governor if the Board of Governors shall determine, by the affirmative vote of a majority of the entire Board, that such office holder no longer satisfies the requirements pursuant to which he was elected or is no longer eligible within the classification to which he was elected to the Board.

Absence of Governor

(b) If a governor shall have been absent from three consecutive regular meetings of the Board of Governors, without having been excused by the Chairman, the Board may, by the affirmative vote of a majority of the entire Board, remove such governor and declare the office theretofore held by him to be vacant.

Expulsion, Suspension or Insolvency

(c) The expulsion, suspension or insolvency of a person holding office or of his member organization shall create a vacancy in the office held by such person.

Removal

(d) In the event of the refusal, failure, neglect or inability of an officer approved or elected by the Board, or any governor, to discharge the duties of his office, or for any cause, of the sufficiency of which the Board of Governors shall be the sole judge, the Board shall have the power, by the affirmative vote of a majority of the entire Board, to remove such officer or governor and declare the position held by him to be vacant.

Vacancies in Board

(e) All vacancies occurring in the offices of governors shall be filled by the Board by the appointment of persons recommended by the holder of the Class B Interest in the Exchange with respect to all governors other than Floor Governors, and by the holder of the Class A Interest in the Exchange with respect to Floor Governors, to serve until the next annual election.

Vacancies Among Officers Elected by the Board

(f) In case any vacancy shall occur in any office to which the holder is elected by the Board, such vacancy shall be filled by election by the Board of a person eligible to serve in such office.

Article II. Government and Administration

Sec. [02] 03. Powers, Duties and Procedures

Powers and [duties] Duties

The Board of Governors shall be vested with all powers necessary for the government of the Exchange, the regulation of the business conduct of members and member organizations of the Exchange and of approved persons in connection with their conduct of the business of member organizations, provided, however, that the Board of Governors shall not take any action that requires the consent of The Amex Corporation, the Amex Committee, or both under the terms of the Transaction

Agreement without first obtaining such consent.

Rules

In the exercise of its powers, the Board may adopt, modify or rescind such rules, require such appearances and the filing of such reports, issue such orders and directions, and make such decisions as it may deem appropriate, which rules, requirements, orders, directions and decisions shall be binding upon members, member organizations and approved persons concerned.

Procedure

The Board shall determine the manner and form by which its proceedings shall be conducted; shall make such appointments and perform such other duties as are required herein; shall remove any officer or dissolve any committee, [except the Nominating Committee,] when in its opinion the public interest or the welfare of the Exchange so requires; and shall have original and supervisory jurisdiction over any and all subjects and matters referred to committees or officers, and may direct and control their actions or proceedings at any stage thereof.

Finances

The Board shall have control of the property and finances of the Exchange. No purchase of real property shall be made by the Exchange, nor shall it sell, mortgage or lease real property, unless authorized by the affirmative vote of a majority of the entire Board. By the affirmative vote of a majority of the entire Board, it shall fix the amount of fees and compensation, if any, to be paid to governors, to members of committees, to Arbitrators, to Trustees of the Gratuity Fund and to members and other persons called to give information before the Board or any committee.

Delegation of [powers] Powers

The Board of Governors by the affirmative vote of a majority of the entire Board, may delegate such of its powers as it may from time to time determine, subject to the provisions of the Constitution and applicable law, to such committee or committees [composed of Governors,] as the Board may from time to time authorize. The Board may assign such authority and duties to the Chairman and to other officers and employees of the Exchange in addition to those specified in the Constitution, as the Board may from time to time determine, subject to applicable law.

The Board of Governors may also appoint such other committees, composed either of governors or other persons, with such powers other than those vested in the Board under the Constitution or applicable law, and for such terms as it may from time to time determine. Subject to the approval of the Board, and after seeking the advice of all segments of the membership, the Chairman shall from time to time appoint a number of regular, options principal, associate and allied members of the Exchange, and individuals who are employed by or associated with a member organization in a senior capacity, who shall be designated as Exchange Officials, to serve on such committees. In selecting such Exchange

Officials, the Chairman shall give due consideration to the various phases of Exchange activities and member organization operations.

Appeal

An appeal to the Board from a decision of any committee [other than the Executive Committee,] or from a decision of any officer or employee acting under authority granted by the Board may be taken by a member, member organization or approved person affected by such decision, by filing with the Secretary of the Exchange a written demand therefor within five business days after the decision has been rendered. A member of any such committee taking part in the hearing of a matter may, within two days after a decision has been made thereon, appeal therefrom to the Board by filing a written demand therefor with the Secretary of the Exchange. Any member or ex-officio member or additional member of any such committee from whose decision an appeal to the Board is taken pursuant hereto may participate in the hearing of such appeal, but shall not participate in the deliberation or determination of the Board thereon. The decision of the Board with respect to any such appeal shall be final and conclusive, except that the Board under its general power of delegation may authorize [the Executive Committee] a committee to consider any specific appeal or any class or type of appeals and in such case the decision of the [Executive Committee] committee with respect thereto shall be final and conclusive. [Delegation in emergency

Whenever it shall appear to the Board that an emergency exists, other than as provided for in Article XII, it may by resolution adopted by the affirmative vote of a majority of the entire Board delegate all of its powers which may lawfully be delegated, for such period as it may determine, to a Special Committee, to be composed of three or more governors, at least half of whom shall be regular, options principal, associate or allied members of the Exchange. The Board by such resolution may designate one or more governors who are regular, options principal, associate or allied members of the Exchange as alternates for the members of such committee who are regular, options principal, associate or allied members of the Exchange and one or more other governors as alternates for the members of such committee who are not regular, options principal, associate or allied members of the Exchange. Governors so designated may replace any absent member or members for whom they are alternates at any meeting of such committee.]

Meetings

No change.

Written Consent to Action Without Meeting

No change.

Quorum

No change.

Contracts of Employment

No change.

Selection of Chairman

The Board shall, by the affirmative vote of a majority of the entire Board, elect the Chief Executive Officer of the Exchange, who shall be the Chairman of the Board, to serve for such period of time as the Board may determine, and the Board shall, by like vote, fix his compensation.

At its annual meeting the Board shall elect from among its members who are regular[,] or options principal[, associate or allied] members of the Exchange[, one or more] a Vice-[Chairmen] *Chairman* of the Board to serve until the next annual meeting of the Board and until his successor has been elected and takes office.

[Selection of general counsel]

Subject to the approval of the Board by the affirmative vote of a majority of the governors then in office, the Chairman shall appoint independent general counsel for the Exchange, who shall consult with and advise the Board and the officers of the Exchange with respect to legal matters pertaining to the Exchange, and the Chairman, subject to like approval of the Board, may terminate such appointment. The Board shall fix the compensation of such counsel.

Trial of members, member organizations and approved persons] Trial of Members, Member Organizations and Approved Persons

No change.

Transactions in Exchange [securities] Securities

No change.

Penalties

No change.

Contracts

No change.

Admission of [securities] Securities

The Board shall establish standards and requirements with respect to the listing or admission to unlisted trading on the Exchange of securities, contracts in securities "when, as and if issued" or "when distributed" and rights, warrants and similar privileges appertaining to securities, and with respect to the continued listing or admission to unlisted trading thereof or the suspension of trading therein or removal of the same from listing or unlisted trading. The Board may grant to the Chairman, or such officer or officers of the Exchange as he may designate, the authority to approve any such securities, contracts in securities, rights, warrants or privileges, for original listing or admission to unlisted trading upon the Exchange and to admit the same to dealings on an "issued", "when issued" or "when distributed" basis; to list or admit to dealings on an "issued", "when issued" or "when distributed" basis securities of an issuer having securities already listed or admitted to unlisted trading on the Exchange, including certificates of deposit, rights to subscribe, and other securities issued in exchange for or growing out of such securities; to suspend dealings in such securities at any time, and without notice, when such action is deemed appropriate and to remove the same from listing or from unlisted trading; to make such certifications

or file such notices with respect to the listing and registration of any such securities or the suspension of dealings or removal thereof from listing or unlisted trading as may be required by the Securities Exchange Act of 1934 and rules and regulations issued thereunder; and to take such other action as may be necessary or appropriate in connection with the listing, suspension of trading or removal from listing or unlisted trading of any such securities. Any company directly affected by a decision of the Chairman or such duly authorized officer of the Exchange with respect to the listing of its securities or the removal thereof from listing or unlisted trading, may appeal such decision to the Board. A committee designated by the Board shall conduct a hearing with respect to any such appeal and shall make recommendations to the Board with respect thereto. The decision of the Board with respect to any such appeal shall be final and conclusive, except that the Board under its general power of delegation may authorize [the Executive Committee] a *committee* to consider any or all such appeals and in such case the decision of the [Executive Committee] *committee* with respect thereto shall be final and conclusive.

Corners

No change.

Invitation to [non-governors] *Non-Governors*

No change.

Members, [member organizations and approved persons] *Member Organizations and Approved Persons*

The Board shall have general supervision over members and member organizations, and shall have general supervision over approved persons in connection with their conduct of the business of member organizations. The Board may examine into and regulate the conduct and financial condition of members, member organizations and approved persons. It shall have supervision over and may adopt such rules as it may deem necessary or proper with respect to the formation of member organizations, the continuance thereof, the finances and capital requirements thereof, the types, terms, conditions and issuance of securities by member organizations and trading in such securities, the interest of members and other persons in member organizations, the partners, officers, directors, trustees, stockholders and employees of members and member organizations, the offices of members and member organizations, the business connections of members and member organizations, and their association with or domination by or over any organizations or persons engaged in the securities business. The Board, to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange and may grant to the Chairman, or to such officer or officers of the Exchange as he may designate, the authority to approve or disapprove any application for ticker or quotation service to any non-member. The Board may grant to the

Chairman, or such officer or officers of the Exchange as he may designate, the authority to approve or disapprove of any connection or means of communication with the Floor and to require at any time the discontinuance of any such connection or means of communication if such connection or means of communication has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, the Exchange Constitution or its Rules, or just and equitable principles of trade. The Board shall establish standards and requirements for the registration of [regular members as] specialists or odd-lot dealers in securities dealt in on the Exchange, and may grant to a committee or committees, the authority to (i) approve the registration of [regular members as] specialists or odd-lot dealers, (ii) revoke or suspend any such registration at any time, (iii) allocate to a registered specialist or odd-lot dealer any security dealt in on the Exchange, and (iv) revoke any such allocation, temporarily or permanently, at any time.

The Board may by rule provide for facilities and establish the conditions under which members may transmit orders electronically from the Floor of the Exchange to other markets and receive orders transmitted electronically to the Floor of the Exchange from other markets for the purchase or sale of securities traded on the Exchange.

Personal [interest] *Interest*

No change.

Interpretation

No change.

Subsidiaries

No change.

Group [hospitalization plan] *Hospitalization Plan*

No change.

*Article II. Government and Administration**Sec. [03] 04. Officers of the Exchange*

Chairman

(a) The Chairman of the Board shall be the Chief Executive Officer of the Exchange and shall have the care of all the interests of the Exchange. He shall be responsible to the Board for the management and administration of the affairs of the Exchange. He shall be the official representative of the Exchange and its spokesman in all public matters. He shall, during his incumbency, be a member and the presiding officer of the Board of Governors. [and ex-officio a member of the Executive Committee and a member of all committees authorized by the Board of Governors.] He shall preside at meetings of the members of the Exchange, or may designate the Vice-Chairman to preside at any such meetings.

The Chairman shall have no affiliation with any member organization nor any other business interest during his incumbency. By his acceptance of the office of Chairman he shall be deemed to have agreed to uphold the Constitution of the Exchange.

The Chairman may call special meetings of the [regular members of the Exchange and of

the] Board of Governors. He shall call special meetings of the [regular members of the Exchange upon the direction of the Board or upon the written request of 50 regular members, and special meetings of the] Board upon the written request of [four] *three* governors.

The Chairman shall have power to examine, or to authorize any officers, employees or representatives of the Exchange to examine, the books, papers and records of any member, his employees, his member organization, or any partner, director, employee or approved person of his member organization, and the Chairman shall have power to order the production of such books, papers and records for examination either by him or by any officers, employees or representatives of the Exchange designated by him. The Chairman shall also have power to require any member to appear and testify before him or before any officers, employees or representatives of the Exchange designated by him, or to require any member to cause any of his employees, or any of the partners, directors, employees or approved persons of his member organization, to appear and testify before the Chairman or before any officers, employees or representatives of the Exchange designated by him, as to any matter or transaction pertaining to the business of such member, his employees, his member organization or of any partner, director, employee or approved person of his member organization, or to require any approved person to cause any of his or its employees to appear and testify before the Chairman or before any officers, employees or representatives of the Exchange designated by him as to any matter or transaction pertaining to the business of such approved person or of any employee or such approved person.

Following each annual election the Chairman shall make such appointments, in the manner provided for herein, as may be required by the Constitution and shall fill any vacancy which occurs in any office to which he has made an appointment. Pending approval by the Board such appointments may be made ad interim.

Subject to the approval of the Board by the affirmative vote of a majority of the entire Board, the Chairman shall appoint and may remove the members of [the Executive Committee and any other committees] *any committee* of the Board. Subject to the approval of the Board by the affirmative vote of a majority of the governors present at any meeting of the Board, the Chairman shall appoint and may remove the members of other committees which may from time to time be authorized by the Board to consider matters pertaining to the administration of the Exchange and to the rules and policies of the Exchange concerning members, member organizations and approved persons. The Chairman shall fill all vacancies in [the Executive Committee and in said other] *said* committees and may make any such appointment ad interim until the next regular meeting of the Board.

Subject to the approval of the Board, the Chairman may appoint special committees to advise or consult with him or other officers of the Exchange, or to consider matters

pertaining to the administration of the Exchange, and such committees appointed by the Chairman shall have such powers as may be delegated to them by the Board.

Subject to approval by the affirmative vote of a majority of the entire Board, the Chairman may appoint [an Executive Vice-Chairman,] a President, one or more Vice-Presidents and such other officers of the Exchange (except the Vice-Chairman [or Vice-Chairmen] of the Board who [are] *is* appointed from the [Exchange members] *Floor Governors* on the Board), as he may from time to time determine are required for the efficient management and operation of the Exchange, and subject to like approval of the Board he shall appoint the Treasurer and the Secretary and shall fix the duties, responsibilities, terms and conditions of employment of such officers and, subject to the approval of the Board, he may terminate their employment at any time.

The Chairman shall have power to appoint, dismiss and fix the salaries and wages of all other employees of the Exchange, including such expert or professional advisers as he may deem advisable. He shall determine the number and duties of all employees. He may require that officers, appointees or employees of the Exchange give good and sufficient bonds for the faithful performance of their duties.

All salaried officers and employees of the Exchange shall be under the direction of and responsible to the Chairman.

The Chairman, or such other officer as he may designate, shall prepare and present to the Board periodic reports concerning the finances, income and expenses of the Exchange, and prior to the beginning of each fiscal year of the Exchange shall present to the Board an estimate of the income of the Exchange and recommendations as to appropriations for expenses for such fiscal year. The Chairman may at any time recommend additional appropriations or the increase or decrease of any appropriations made by the Board and shall make reports and recommendations to the Board as to the financial policy of the Exchange.

In the case of the absence or inability to act of the Chairman, such other person as the Board of Governors may designate shall assume all the functions and discharge all the duties of the Chairman, other than those which shall devolve upon the Vice-Chairman [or Vice-Chairmen] as provided in subsection 3(b) of this Article II. In the absence of such designation by the Board, [the Executive Vice-Chairman, if there be one, or if there is no Executive Vice-Chairman, or in his absence or inability to act,] the President, if there be one, or if there is no President, or in his absence or inability to act, the senior ranking Vice-President available shall assume all such functions and discharge all such duties of the Chairman. In case a vacancy shall occur in the office of Chairman, the Board, by the affirmative vote of a majority of the governors then in office, shall fill such vacancy.

The Chairman may vote the shares of stock or other securities of any corporation, association or other entity which may at any time be owned by the Exchange, may execute any shareholders' or other consents in

respect thereof and may in his discretion delegate such powers by executing Proxies or otherwise, on behalf of the Exchange. The Board of Governors from time to time may confer like powers upon any other person or persons.

Vice-Chairman

(b) [Each] *The* Vice-Chairman of the Board of Governors [(other than the Executive Vice-Chairman)] shall be a regular[,] or options principal[, associate or allied] member of the Exchange. [If there shall be two Vice-Chairmen, then one shall be a governor who meets the qualifications described in subsection (a)(1)(ii) of Section 1 of this Article II, and the other shall be a governor who meets the qualifications described in subsection (a)(1)(iv).] In the case of the absence or inability to act of the Chairman, or in case of a vacancy in the office of Chairman, the Vice-Chairman of the Board shall exercise the powers and discharge the duties of the Chairman in calling and presiding at meetings of the Board of Governors. [and of members of the Exchange. If there shall be two] *The* Vice-Chairman[, then unless the Board shall otherwise designate, the foregoing duty shall devolve first upon the one meeting the qualifications described in subsection (a)(1)(ii) of Section 1 of this Article, and in the case of his absence or inability to act, then upon the other. The Vice-Chairman or Vice-Chairmen] shall have such other functions and responsibilities as the Board of Governors may from time to time assign to him.

In the absence or inability to act of both the Chairman and the Vice-Chairman[(or each of the Vice-Chairmen)], the members of the Board of Governors who are regular, options principal, associate or allied members of the Exchange, and in such order of priority as the Board may designate, or, in the absence of such designation, the senior available member in service on the Board of Governors who is a regular, options principal, associate or allied member of the Exchange, shall exercise the powers and discharge the duties of the Chairman in calling and presiding at meetings of the Board of Governors. [and of members of the Exchange.]

In case a vacancy shall occur in the office of Vice-Chairman, the Board shall fill such vacancy by the election to such office of a governor who is a [regular, options principal, associate or allied member of the Exchange and, if there is more than one Vice-Chairman, who meets the further qualification specified above which is applicable to the vacant position] *Floor Governor*.

Treasurer

No change.

Secretary

No change.

Article II. Government and Administration Sec. [04] 05. Committees

[Executive Committee] Examination, Investigation, etc.

[(a) Subject to the approval of the Board, by the affirmative vote of a majority of the entire Board, the Chairman shall appoint an Executive Committee to be composed of seven governors as follows: (i) the Chairman

of the Board, (ii) four regular, options principal, associate or allied member governors of whom two shall be principally engaged in office functions and two shall be members who spend a substantial part of their time on the Floor of the Exchange; provided, however, that among the four shall be included any member governor who is a Vice-Chairman of the Board, and (iii) two public governors. The members of this Committee other than the Chairman and the Vice-Chairman or Vice-Chairmen, shall serve at the pleasure of the Board. The Chairman of the Board shall serve as chairman of the Executive Committee.

The Executive Committee shall consult with and assist the Chairman and the other officers and employees of the Exchange in the administration and interpretation of the provisions of the Constitution, the rules of the Exchange and the policies promulgated by the Board. Subject to the provisions of the Constitution and applicable law, between meetings of the Board of Governors the Executive Committee shall have the authority to exercise all of the powers of the Board except to the extent that the Board may from time to time by resolution specifically reserve any such power or powers, but the Executive Committee shall have no power to change rules or policies adopted by the Board or to make new rules or policies.

The Chairman may designate an officer or employee of the Exchange to act as secretary to the Executive Committee, and the person so designated shall keep records of the proceedings of the Committee and perform such other functions or duties as the Committee may from time to time determine.

The Executive Committee, or any sub-committee thereof, shall have such other duties and may be delegated such other powers as the Board may from time to time determine.

Examination, investigation, etc.

(b)(a) Any committee authorized by the Board or by the Constitution shall have power to examine, or to authorize any officers, employees or representatives of the Exchange to examine the books, papers and records of any member, his employees, his member organization, or any partner, director, employee or approved person of his member organization, and any such committee shall have power to order the production of such books, papers and records for examination either by such committee or by any officers, employees or representatives of the Exchange designated by such committee. Any such committee shall also have power to require any member to appear and testify before such committee or before any officers, employees or representatives of the Exchange designated by such committee, as to any matter or transaction pertaining to the business of such member, his employees, his member organization or of any partner, director, employee or approved person of his member organization, or to require any

approved person to cause any of his or its employees to appear and testify before such committee or before any officers, employees or representatives of the Exchange designated by such committee, as to any matter or transaction pertaining to the business of such approved person or of any employee of such approved person.

Additional [committee members] *Committee Members*

(c)(b) The chairman of any committee authorized by the Board, other than a committee to which the Board has delegated powers vested in it pursuant to the Constitution or applicable law, shall, with the approval of the Chairman, be empowered to appoint any member associated with any member organization to serve on said committee for such time as the chairman of such committee, with the approval of the Chairman, may decide. Such appointees shall serve as additional members of the committee to which they may be appointed and shall be entitled to vote.

[Indemnification shall be accorded by the Exchange, and related expenses may be advanced, in respect of members of any committee authorized by the Constitution or by the Board of Governors, Floor Officials, Arbitrators, Trustees of the Gratuity Fund, Trustees of any Special Trust Fund, employees of the Exchange and directors, officers and employees of any corporation a majority of the stock of which is held by the Exchange to the same extent as provided by law in respect of governors and officers. The foregoing right of indemnification shall not affect any rights to indemnification to which persons other than governors and officers of the Exchange may be entitled by contract or otherwise under law.]

Committee [rules] *Rules*

(d) The Executive Committee and any(c) Any committee authorized by the Board shall have power, subject to the provisions of the Constitution and applicable law, to make and require the observance of rules, regulations, requirements, rulings and orders pertaining to matters within its jurisdiction. In the absence of a designation by the Board, any committee authorized by the Board shall have power to appoint a member of such committee as its chairman.

Committee [procedure] *Procedure*

(e)(d) Except as herein otherwise prescribed, [the Executive Committee and] each committee authorized by the Board shall determine the manner and form in which its proceedings shall be conducted and shall make such regulations for its government as it shall deem proper and may act at a meeting, or without a meeting, and by a majority of its members or by such other vote of its members as such committee by a majority of its existing members may by rule determine, subject always to the control and supervision of the Board of Governors. No member of a committee shall participate in the deliberations of such committee, or in the determination by such committee, with respect to a matter in which he is personally interested. Any one or more members of any committee may participate in a meeting of such committee by means of a conference

telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Current Section 5 (Indemnification) is deleted in its entirety

Article II. Government and Administration [Sec. 05. Indemnification]Section 06. Amex Adjudicatory Council

Appointment and Authority

(a) There shall be established an Amex Adjudicatory Council (the "Council") which, subject to the Board's discretionary right of review, shall have authority to act for the Board with respect to any appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; any review of a written stipulation of facts and consent to penalty; the exercise of any exemptive authority; and such other proceedings or actions authorized by the rules of the Exchange.

Number of Members and Qualifications

(b) The Council shall consist of six individuals, all of whom shall be nominated by the Amex Nominating Committee and elected by the regular and options principal members voting together as a single class. Three of the six Council members shall be Floor Governors ("Floor Council Members"). The other three Council members shall be Public Governors ("Public Council Members").

As soon as practicable following the initial election of members, the Council shall elect a Chair and a Vice-Chair from among its members. The Chair and Vice-Chair shall have such powers and duties as may be determined from time to time by the Council.

Term of Office

(c) Except as otherwise provided in this subsection, each Council member shall hold office for a term of two years or until a successor is elected, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

The Council members shall be divided into two classes. The first class shall consist of two Floor Council Members and one Public Council Member. The second class shall consist of one Floor Council Member and two Public Council Members. The initial terms of the Council members in the first and second classes shall terminate in 1999 and 2000, respectively, upon the election of their successors. Subsequent to the initial terms of office, each class shall be elected for two-year terms and shall hold office until their successors have been elected.

Beginning in 2000, no Council member may serve more than two consecutive terms, except that if a Council member is appointed to fill a term of less than one year, such member may serve up to two consecutive terms following the expiration of such member's initial term.

Resignation

(d) A member of the Council may resign at any time upon written notice to the Board. 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.

Removal

(e) Any or all of the members of the Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by a majority vote of the Board.

Disqualification

(f) Notwithstanding subsection (c), the term of office of a Council member shall terminate immediately upon a determination by the Board, by a majority vote of the entire Board, that the Council member no longer fits the classification (Floor or Public Council Member) for which the member was elected.

Filling of Vacancies

(g) If a position on the Council becomes vacant, whether because of death, disability, disqualification, removal or resignation, the board of directors of The Amex Corporation shall appoint a person within the same classification (Floor or Public Council Member) to fill the vacancy until the next annual election of Council members.

In the event that a member of the Council is precluded from participating in the Council's consideration of a particular matter due to a conflict of interest, the board of directors of The Amex Corporation shall appoint a person within the same classification for the position as provided in subsection (b) of this Section to serve as a substitute for such Council member with respect to the particular matter. In the event that a person fitting the relevant classification is not available to serve as a substitute, the Board of Directors may appoint a person who would be qualified to serve as a governor within such classification.

Quorum and Voting

(h) At all meetings of the Council, a quorum for the transaction of business shall consist of a majority of the Council, including at least two Public Council Members. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present. In the event of a tie vote, the decision that was the subject of the Council's review shall stand.

Meetings

(i) The members of the Council may participate in a meeting through the use of a conference telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at that meeting for all purposes.

Article III. Reserved [Elections Nominations]

Current Article III is deleted in its entirety.

Article IV. Membership

Sec. 01. Admission to Membership

Number of [regular memberships] *Regular Memberships*

(a) (1) Regular membership—[The regular memberships shall consist of 675] *There shall be 661 regular memberships* [Any change] in the Exchange. The number of regular memberships shall be [made by an amendment of the Constitution] *increased only if the Board of Governors requests The Amex Corporation to issue additional regular memberships. Any such issuance of additional regular memberships shall require the approval of a majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that new regular memberships be issued.*

Requirements

(2) Every applicant for regular membership must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business. An application for regular membership shall be in writing and shall be in such form, and contain such information, as the Exchange may from time to time prescribe. No person may be admitted to regular membership unless his application is approved by the Exchange in accordance with the provisions of Section 1(g) of this Article IV. *Nothing in the Constitution shall be construed to prohibit NASD Market Holding Company from holding a regular membership.*

Signing Constitution

(3) No person whose application for regular membership has been approved by the Exchange shall be admitted to the privileges thereof until he shall have signed the Constitution of the Exchange. By such signature he pledges himself to abide by the Constitution as the same has been or shall be from time to time amended and by all rules and regulations adopted pursuant to the Constitution and all regulations, orders, directives or decisions adopted or made in accordance therewith. *In addition, any regular member or lessee of a regular membership, by exercising any of the rights inherent in a regular trading right, shall be deemed to have pledged himself, as though he had signed the Constitution, to abide by the Constitution as the same has been or shall be from time to time amended and by all rules and regulations adopted pursuant to the Constitution and all regulations, orders, directives or decisions adopted or made in accordance therewith.*

[Number of options principal memberships] *Number of Options Principal Memberships*

(b)(1) Options principal membership—There shall be 203 options principal memberships in the Exchange. [Any change in the] *The number of options principal memberships shall be [made by an amendment of the Constitution] increased only if the Board of Governors requests The Amex Corporation to issue additional options principal memberships. Any such issuance of additional options principal memberships shall require the approval of a*

majority of the regular and options principal members voting together as a single class at a meeting called for the purpose of considering the request that additional options principal memberships be issued.

Requirements

(2) An applicant for options principal membership must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business. An application for options principal membership shall be in writing and shall be in such form, and contain such information, as the Exchange may from time to time prescribe. Such applicant must agree that his primary occupation will be the transaction of business in options as principal on the Floor of the Exchange. No person may be admitted to options principal membership unless his application is approved by the Exchange in accordance with the provisions of Section 1(g) of this Article IV. *Nothing in this Constitution shall be construed to prohibit NASD Market Holding Company from holding an options principal membership.*

Signing Constitution

(3) No person whose application for options principal membership has been approved by the Exchange shall be admitted to the privileges thereof until he shall have signed the Constitution of the Exchange. By such signature he pledges himself to abide by the Constitution as the same has been or shall be from time to time amended and by all rules and regulations adopted pursuant to the Constitution and all regulations, orders, directives or decisions adopted or made in accordance therewith. *In addition, any [Trading Privileges*

(4) An options principal member or lessee of an options principal membership, by exercising any of the rights inherent in an options principal trading right, shall be deemed to have pledged himself, as though he had signed the Constitution, to abide by the Constitution as the same has been or shall be from time to time amended and by all rules and regulations adopted pursuant to the Constitution and all regulations, orders, directives or decisions adopted or made in accordance therewith. [may execute on the Floor of the Exchange transactions in options and other derivative products initiated by him for his own account and may give orders in options and other derivative products for his own account to regular members for execution. Such member may not execute agency transactions on the Floor either for customers or for regular, associate or allied members or other options principal members, may not be registered as a specialist, may not execute on the Exchange any orders, whether as agent or principal, in stocks, warrants, bonds or other securities (except principal transactions in options and other derivative products) and may not accept any orders from his member organization for execution.

Derivative products shall include, in addition to standardized options, other securities which are issued by the Options Clearing Corporation or another limited purpose entity or trust and which are based solely on the performance of an index or portfolio of other publicly traded securities.

Notwithstanding the foregoing, derivative products shall not include warrants of any type or closed-end mutual funds.]

Rights

[(5)](4) No change.

Directory

[(6)](5) No change.

Allied [membership] *Membership*

(c) Allied membership—Any person not a regular, options principal or associate member of the Exchange, shall upon approval by the Exchange become an allied member of the Exchange by pledging himself to abide by the Constitution as it has been or shall be from time to time amended, and by all rules adopted pursuant to the Constitution, and by becoming either:

[(i)](1) a general partner in a regular, options principal or associate member firm or an employee who controls such member firm;

[(ii)](2) an employee of a regular, options principal or associate member corporation who is either: (1) a person who controls such corporation, or (2) a principal executive officer of such member corporation;

[(iii)](3) a trustee of a regular or options principal member organization which is a pension plan or an employee who controls such organization; or

[(iv)](4) an employee of any other entity permitted by the Exchange to become a member organization who controls such organization.

No further change.

Associate [membership] *Membership*

(d) Associate membership—The number of associate members shall be such as may be determined by the Board of Governors from time to time. Any person not less than the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business either as a partner of a firm or as a director or executive officer of a corporation may make application for associate membership.

An application for associate membership shall be in writing and shall be in such form, and contain such information, as the Exchange may from time to time prescribe. No person may be admitted to associate membership unless his application is approved by the Exchange, in accordance with the provisions of Section 1(g) of this Article IV. Any person admitted to associate membership *in the American Stock Exchange, Inc.* prior to September 4, 1962, as an individual or as a partner of a firm shall remain an associate member only so long as he is actively engaged in the business of buying and selling securities as broker or dealer. Any person admitted to associate membership *in the Exchange or in the American Stock Exchange, Inc.* after September 4, 1962, as a partner of a firm shall remain an associate member only so long as he remains a partner of such firm or of another firm continuing the business of the first firm or a director or executive officer of a corporation continuing the business of the first firm. Any person admitted to associate membership *in the Exchange or in the American Stock Exchange, Inc.*, whether before or after September 4, 1962, as a

director or executive officer of a corporation shall remain an associate member only so long as he remains a director or executive officer of such corporation or of another corporation continuing the business of the first corporation.

No further change.

Visiting Floor

No change.

Exchange [not liable to members or member organizations] *Liability*

[(e) The Exchange shall not be liable for any damages sustained by a member or a member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business, except](e)

Except insofar as the Board may specifically provide by rule with respect to Exchange facilities which implement the electronic transmission of orders for the purchase or sale of securities traded on the Exchange to the Floor of the Exchange or between the Floor of the Exchange and other markets, neither the Exchange nor any of its affiliates nor any of its or their respective officers, governors, committee members, employees or agents shall be liable to a member of the Exchange, a member organization, or a person associated with a member or a member organization for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agent acting within the scope of their authority.[.]

[Initiation fee] Initiation Fee

(f) No change.

Approval of [membership matters] *Membership Matters*

(g) Whenever pursuant to any of the provisions of this Section 1, the approval, consent, permission, authorization or waiver of the Exchange is required, such approval, consent, permission, authorization or waiver may be granted by the Chairman or by any officer or employee of the Exchange to whom the Chairman has delegated such authority; except that no person who has been expelled from the Exchange or has been declared ineligible for reinstatement pursuant to Section 5(c) of this Article, may be readmitted as a regular, options principal, allied or associate member unless approved by the Board of Governors. If the Chairman or any such officer or employee shall refuse to grant such approval, consent, permission, authorization or waiver, the person or persons affected thereby shall have the right to a hearing on the matter [either (i)] before a committee authorized by the Board[, or (ii) before a panel selected in accordance with the provisions of Section 1(b) of Article V, as the Chairman, or such officer designated by him for the purpose, shall determine]. Such

committee [or panel, as the case may be,] shall have the authority to affirm or reverse the decision of the Chairman or of such duly authorized officer or employee, or to modify such decision or impose such conditions as it shall deem appropriate, and the decision of the committee [or panel] shall be final and conclusive.[, unless within twenty days after such decision is rendered the person or persons affected thereby shall file a written notice with the Secretary of the Exchange appealing such decision to the Board. The Board may consider any such appeal or, in its discretion, under its general powers of delegation, may authorize the Executive Committee to consider the same. The determination of the Board or of the Executive Committee, as the case may be, with respect to any such appeal shall be final and conclusive.]

[Options Trading Permits]

[(i)] Deleted.

Limited Trading Permits

[(j)](h) (1) There shall be [36] a *maximum of ten* limited trading permits [which may be issued to qualified individuals or member organizations with approved nominees (such individuals or the nominees of such organizations being for the purposes of this subsection (j) referred to as limited trading permit holders), as provided in a plan approved by the regular members of the Exchange providing for the offering of such limited trading permits (referred to for the purposes of this subsection (j) as the "Plan")]. Limited trading permits shall expire on May 14 in each year unless renewed by the holder thereof for such fee as may be established from time to time by the Board, which fee shall be not less than \$2,000 nor more than \$5,000 per annum.

Requirements for Issuance

(2) A limited trading permit holder must: [(a)](i) be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business; [(b)](ii) agree that his primary occupation will be the transaction of business on the Floor of the Exchange in his capacity as a permit holder; and [(c)](iii) meet such other qualifications as may be specified in the [Plan or established by the] *plan approved by the regular members of the Exchange providing for the offering of such limited trading permits*. Applications must be approved by the Exchange in accordance with the provisions of Section 1(g) of this Article IV.

No person whose application for a permit has been approved by the Exchange shall be admitted to the privileges thereof until he shall have signed the Constitution of the Exchange. By such signature he shall pledge himself to abide by the Constitution as the same has been or shall be from time to time amended and by all rules, regulations, requirements, orders, directions or decisions adopted or made in accordance therewith.

Rights and Obligations

(3) A limited trading permit holder may execute on the Floor of the Exchange transactions in options and other derivative products initiated by him for his own account and may give orders in options and

other derivative products for his own account to regular members for execution provided, however, that a limited trading permit holder may not trade in individual stock options listed on the Exchange.

A limited trading permit holder may not execute agency transactions on the Floor either for customers or for regular, associate, allied or options principal members or other permit holders, may not be registered as a specialist, may not execute on the Exchange any orders, whether as agent or principal, in stocks, warrants, bonds or other securities (except principal transactions in options and other derivative products as described above) and may not accept any orders from his member organization for execution.

Derivative products shall have the meaning described in [the second paragraph of subsection (b)(4) of this Section.] *Section 3(d) of Article I.*

A limited trading permit holder shall not be entitled to vote in any election or on any amendment to the Constitution or on any other matter, to participate in the Gratuities Fund provided for in Article IX of the Constitution, to share in any distribution of the assets or funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the affairs of the Exchange, or to serve as a Governor of the Exchange. Except as provided above, a limited trading permit holder shall be considered a member of the Exchange for all purposes, and shall be subject to such obligations and duties (including the payment of dues, initiation fees and other fees and charges of the Exchange) as may be imposed on members by the Constitution as the same has been or shall be from time to time amended and by all rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith. (To implement this provision, all provisions of the Constitution and the rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith which by their terms are applicable to regular and options principal members shall be deemed to also apply to and include limited trading permit holders unless the application thereof shall be inconsistent with the specific provisions of this subsection [(j)](h) or unless the context shall otherwise require.)

A limited trading permit may be transferred in the same manner and subject to the same terms and conditions as those applicable to the transfer of an options principal membership. Without limiting the foregoing, a limited trading permit may be leased pursuant to a special transfer agreement as provided in Section 4(b) of this Article IV. The transferee of a limited trading permit shall be subject to payment of an initiation fee equal to that payable by transferees of an options principal membership.

An individual limited trading permit holder who is associated with a broker-dealer shall qualify such broker-dealer as a member organization of the Exchange. If the limited trading permit pursuant to which a member organization is thus qualified shall expire as provided in paragraph (1) of this subsection [(j)](h) such organization shall cease to be a

member organization of the Exchange, unless a person who is a regular, associate or options principal member becomes associated therewith. Upon the expiration of a limited trading permit as provided in paragraph (1) of this subsection [(j)](h), all rights and privileges granted pursuant hereto shall terminate.

Class C Trading Rights

(i) (1) *For a period of five years beginning on the closing date of the Transaction Agreement, Class C Trading Rights may be issued to qualified individuals or organizations who are instrumental in obtaining new listings of securities admitted to dealings on the Exchange that are judged by the Exchange to constitute demonstrable product. The holder of a Class C Trading Right may be registered as a specialist in any such newly listed security, but may not be registered as a specialist in any other securities on the Exchange and may not operate a joint book with a regular member. The Board of Governors shall determine when and to whom to issue Class C Trading Rights and shall further determine the fees, dues, and other charges applicable to Class C Trading Right holders. Each Class C Trading Right shall expire three years after the date of its issuance, or at the end of the five year period referred to above, whichever first occurs, and no more than 25 Class C Trading Rights shall be outstanding at any time.*

A Class C Trading Right shall not entitle the holder (i) to vote in any election, (ii) to participate in the Gratuities Fund provided for in Article IX of the Constitution, (iii) to share in any distribution of the assets or funds of the Exchange in the event of any voluntary or involuntary final liquidation, dissolution, or winding up of the affairs of the Exchange, or (iv) to serve as a Governor of the Exchange. Except as provided above, a Class C Trading Right holder shall be considered a member of the Exchange for all purposes, and shall be subject to such obligations and duties as may be imposed on members by the Constitution as the same has been or shall be from time to time amended and by all rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith. (To implement this provision, all provisions of the Constitution and the rules, regulations, requirements, orders, directions and decisions adopted or made in accordance therewith which by their terms are applicable to regular and options principal members shall be deemed to also apply to and include Class C Trading Right holders unless the application thereof shall be inconsistent with the specific provisions of this subsection (i) or unless the context shall otherwise require.)

A Class C Trading Right may not be sold, leased or otherwise transferred, provided, however, that subject to the approval of such transfer by the Exchange, a Class C Trading Right may be sold or otherwise transferred in connection with a business combination, reorganization or other transfer of all or substantially all of the assets of one member organization to another. A specialist holding a Class C Trading Right who then becomes a regular member shall be deemed to have

continued his registration as specialist in the securities allocated to him without any need for reallocation thereof.

(2) *A Class C Trading Right holder must be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business. No person whose application for a Class C Trading Permit has been approved by the Exchange shall be admitted to the privileges thereof until he shall have signed the Constitution of the Exchange. By such signature he shall pledge himself to abide by the Constitution as the same has been or shall be from time to time amended and by all rules, regulations, requirements, orders, directions or decisions adopted or made in accordance therewith.*

New Trading Rights

(j) *The Board of Governors shall not authorize the issuance of any new forms of trading privileges not provided for in this Constitution, or grant materially new rights to the holders of existing privileges, without first obtaining the consent of The Amex Corporation in accordance with the terms of its amended and restated certificate of incorporation.*

Article IV. Membership

Sec. 02. Members, Member Organizations and Membership Owners

Approval of [organizations] Organizations

(a) No change.

Approval of [members and persons associated with member organizations] Members and Persons Associated with Member Organizations

(b) No change.

Member [limited to one member organization] Limited to One Member Organization

(c) No change.

Conditions of [approval of member organizations] Approval of Member Organizations

(d) No change.

(e) No change.

Withdrawal of [approval of member organizations] Approval of Member Organizations

(f) No change.

Approval [revocable] Revocable

(g) No change.

Withdrawal of [approval of certain stockholders] Approval of Certain Stockholders

(h) No change.

Non-[voting common stock] Voting Common Stock

(i) No change.

Approved [persons] Persons

(j) No change.

Location

(k) No change.

Registered [address] Address

(l) No change.

Offices	Contracts [pending transfer] <i>Pending Transfer</i>	<i>Article IV. Membership</i>
(m) No change.	(d) No change.	<i>Sec. 05. Reinstatement</i>
Employees and [officers] <i>Officers</i>	Closing [contracts] <i>Contracts</i>	Reinstatement by Board
(n) No change.	No change.	(a) Every application for reinstatement by a member, member organization or owner of a membership suspended pursuant to Section 3 of Article V shall be referred to [the Executive Committee, or such other] <i>such</i> committee as may be appointed by the Board of Governors for such purpose. A hearing shall be held by the committee with respect to such application and a record shall be kept. No application for reinstatement shall be considered with respect to a member, member organization or owner of a membership as to whom dues, fines, assessments or charges of the Exchange, or contributions to the Gratuities Fund (as provided in Article IX) are due and unpaid. If the committee shall determine to reinstate a member, member organization or owner of a membership suspended under the provisions of Section 3 of Article V, it may impose such conditions as it shall deem appropriate. If the committee shall determine not to reinstate such suspended member, member organization or owner of a membership, its determination shall be supported by a statement setting forth the specific grounds on which the application for reinstatement is denied.
Written [notification of proposed acts] <i>Notification of Proposed Acts</i>	Transfer by Board	Reinstatement by Chairman
(o) No change.	No change.	(b) Notwithstanding the foregoing provisions of this Section 5, whenever it shall appear to the Chairman:
Assignment of [membership or interest in member organization] <i>Membership or Interest in Member Organization</i>	Distribution of [proceeds] <i>Proceeds</i>	(1) that a member or member organization has been suspended pursuant to subsection (a) or (b) of Section 3 of Article V, and that the conditions resulting in such suspension no longer exist or the suspension of such member or member organization by another registered national securities exchange or national securities association has been terminated by such other exchange or securities association; and
(p) No change.	(e) No change.	(2) that prompt reinstatement is advisable to avoid substantial loss to the public, to the Exchange or to the member or member organizations; and
Submission of [information] <i>Information</i> as to [proposed changes] <i>Proposed Changes</i>	Exchange [charges] <i>Charges</i>	(3) that it is not practicable to convene a meeting of the Board of Governors immediately to act in the matter;
(q) No change.	No change.	the Chairman may announce to the Exchange the reinstatement of such member or member organization. Any reinstatement pursuant to this subsection (b) shall be effective immediately, but shall be submitted to the Board of Governors as soon as reasonably practicable and unless approved by the Board such reinstatement shall forthwith terminate.
Retirement from [member organization] <i>Member Organization</i>	Claims of [regular or options principal members or member organizations] <i>Regular or Options Principal Members or Member Organizations</i>	Denial for [irregularities] <i>Irregularities</i>
(r) No change.	No change.	(c) Whenever an Exchange Disciplinary Panel shall determine that a member, member organization or owner of a membership suspended under the provisions of Section 3 of Article V, has been guilty of irregularities or unbusinesslike dealings, it may declare such member, member organization or owner of a membership ineligible for reinstatement. Any such determination shall be made only after the suspended member, member organization or owner of a membership has been given notice
Number of [partners] <i>Partners</i>	Floor [contracts] <i>Contracts</i>	
(s) No change.	[(A)](1) Claims arising in the ordinary course of business from Exchange Contracts for the purchase, sale, borrowing or loaning of securities entered into on the Floor of the Exchange.	
Suspended [members] <i>Members</i> , etc.	Other [ordinary business contracts] <i>Ordinary Business Contracts</i>	
(t) No change.	[(B)](2) Claims arising from Exchange Contracts entered into in the ordinary course of business other than those included in the preceding paragraph.	
Continuing [relationship of member or member organization with suspended member or person expelled] <i>Relationship of Member or Member Organization with Suspended Member or Person Expelled</i> from Exchange	Other [business contracts] <i>Business Contracts</i>	
(u) No change.	[(C)](3) Claims arising from Exchange Contracts other than those included in the two preceding paragraphs, except those made for nonbusiness purposes.	
Required [vote] <i>Vote</i> of Exchange in [certain cases] <i>Certain Cases</i>	Contracts [under rules of another exchange] <i>Under Rules of Another Exchange</i>	
(v) No change.	[(D)](4) Claims arising from members' contracts made subject to the rules of another exchange.	
<i>Article IV. Membership</i>	Pro [rata distribution] <i>Rata Distribution</i>	
<i>Sec. 03. Member Representation</i>	No change.	
Governor and Exchange Official Representatives	Unmatured [contracts] <i>Contracts</i>	
(a) No change.	No change.	
Temporary [representatives] <i>Representatives</i>	Contingent [claims] <i>Claims</i>	
(b) No change.	No change.	
Representation [while engaged in military or naval service or in public program for defense] <i>While Engaged in Military or Naval Service or in Public Program for Defense</i> of U.S.	Collateral	
(c) No change.	No change.	
Representation [while engaged in military or naval training service] <i>While Engaged in Military or Naval Training Service</i>	Determination of [claims] <i>Claims</i>	
(d) No change.	No change.	
Withdrawal of [authorization] <i>Authorization</i>	Surplus [after claims] <i>After Claims</i>	
(e) No change.	No change.	
Contracts by [representatives] <i>Representatives</i>	Filing [claims] <i>Claims</i>	
(f) No change.	(f) No change.	
<i>Article IV. Membership</i>	Intra-[partnership or intra-corporation claims] <i>Partnership or Intra-Corporation Claims</i>	
<i>Sec. 04. Transfer of Membership</i>	(g) No change.	
Charges [pending] <i>Pending</i>	Disposal of [membership] <i>Membership</i> by Board	
(a) No change.	(h) No change.	
Special [transfer] <i>Transfer</i> and [designation] <i>Designation</i> of [nominee] <i>Nominee</i>	Rights of [creditors] <i>Creditors</i>	
(b) No change.	(i) No change.	
Election of [transferee] <i>Transferee</i>	Rights of [creditor's estate] <i>Creditor's Estate</i>	
(c) No change.	(j) No change.	

and an opportunity to be heard by the Disciplinary Panel in accordance with the procedures specified in Section 1(b) of Article V and such determination shall be subject to review in accordance with the provisions of paragraph [(5)](7) of said Section.

Article IV. Membership

Sec. 06. Temporary Member Firms and Corporations

Death of [sole regular or options principal member associated with regular or options principal member organization] *Sole Regular or Options Principal Member Associated with Regular or Options Principal Member Organization*

(a) No change.

Application [requirements] *Requirements*

(b) No change.

Provisions of [articles of partnership;] *Articles of Partnership*; Use and [proceeds of membership] *Proceeds of Membership*

(1) No change.

Continuance in [business;] *Business*; Use and [proceeds of membership] *Proceeds of Membership*

(2) No change.

Agreement to be [filed;] *Filed*; Subject to [rules] *Rules*

(3) No change.

Capital

(4) No change.

Application [requirements] *Requirements*

(c) No change.

Continuance in [business] *Business*

(1) No change.

Use and [proceeds of membership] *Proceeds of Membership*

(2) No change.

Agreement to [be filed;] *Be Filed*; Subject to [rules] *Rules*

(3) No change.

Capital

(4) No change.

Rights and [privileges] *Privileges*

(d) No change.

Exceptions

No change.

Status [effective] *Effective*

(e) No change.

Termination of [status] *Status*

(f) No change.

Proceeds of [membership subject to claims] *Membership Subject to Claims*

(g) No change.

Article IV. Membership

Sec. 07. Disposal of [Regular] *Regular* Memberships by the Board Transfer to Chairman as [trustee] *Trustee*

(a) No change.

Owner [ceases to be member on transfer of membership to trustee] *Ceases to be Member on Transfer of Membership to Trustee*

(b) No change.

Purposes for [which membership is transferred to trustee] *Which Membership is Transferred to Trustee*

(c) No change.

Prices at [which trustee memberships shall be offered] *Which Trustee Memberships Shall be Offered No change.*

Transfer to [applicant] *Applicant for [membership] Membership*

No change.

Membership [may be reacquired by suspended member upon payment of amount due] *May be Reacquired by Suspended Member Upon Payment of Amount Due No change.*

Distribution of [proceeds] *Proceeds of [sale] Sale*

No change.

If [applicant fails in election, disposal of membership] *Applicant Fails in Election, Disposal of Membership* is to be [recommended] *Recommended*

No change.

Transfer to Exchange of [membership not sold or redeemed] *Membership Not Sold or Redeemed*

No change.

Memberships [transferred] *Transferred to Exchange to be [retired] Retired*

(d) No change.

Trustee [not liable] *Not Liable*

(e) No change.

Notice to be [given] *Given of [offering price] Offering Price*

(f) No change.

Article V. Discipline of Members

Sec. 01. [Procedure] *Procedures*

Assistance of [counsel permitted] *Counsel Permitted*

(a) No change.

Hearing before Disciplinary Panel

(b) Except as provided in Section 2 of this Article, Exchange disciplinary proceedings shall be conducted in the following manner:

(1) *Disciplinary Panel.* In any disciplinary proceeding involving charges against a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization, a hearing shall be held with respect to such charges before an Exchange Disciplinary Panel. Such Disciplinary Panel shall consist of not less than three nor more than five persons: a hearing officer who shall be chairman of the Panel with the remainder of the Disciplinary Panel being members of the hearing board.

(2) *Hearing Board.* The Chairman of the Board, subject to the approval of the Board, shall from time to time designate such number of Exchange Officials and shall appoint such number of additional persons to serve on the hearing board as he shall deem

necessary for the purpose of conducting Exchange disciplinary proceedings. The qualifications of persons to be appointed to the hearing board shall be determined in accordance with such rules as may be adopted by the Board of Governors, except that members of the Board of Governors shall not be eligible for appointment to the hearing board or as hearing officers. Exchange Officials and other persons appointed to the hearing board as herein provided shall serve at the pleasure of the Board of Governors or until [the next annual election of the Exchange and] their successors are appointed and take office.

(3) *Hearing Officer.* The Chairman of the Board, subject to the approval of the Board, shall designate one or more hearing officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters.

(4) *Composition of Disciplinary Panel.* In any hearing at which a charge or charges against a member, member organization, or approved person are considered pursuant to this Article, the members of the hearing board serving on the Disciplinary Panel shall, except as hereinafter provided, be members of the Exchange.

In any hearing at which a charge or charges against a registered or non-registered employee or prospective employee of a member or member organization are considered pursuant to this Article or pursuant to rules adopted by the Board of Governors, the members of the hearing board serving on the Disciplinary Panel shall include at least one registered employee or nonregistered employee of a member or member organization; in the discretion of the chairman of the Disciplinary Panel the remainder thereof may be members of the Exchange.

In any hearing at which a charge or charges against both a registered or non-registered employee or prospective employee of a member or member organization and against a member, member organization or approved person are considered pursuant to this Article or pursuant to rules adopted by the Board of Governors, the members of the hearing board serving on the Disciplinary Panel shall include one registered employee or non-registered employee of a member or member organization and the remainder thereof shall be members of the Exchange.

Subject to the foregoing provisions of this paragraph, the selection of the hearing officer to serve as the chairman of each Disciplinary Panel and the members of the hearing board to serve thereon shall be made in accordance with such rules as may be adopted by the Board of Governors. For all purposes of this Article, the decision of a majority of the members of a Disciplinary Panel shall be the decision of such Disciplinary Panel and shall be final and conclusive, except to the extent that such decision may be revised on review as provided in [paragraph (7) of this] Section [1(b)] *1(c).*

(5) The Board of Governors, in accordance with the provisions of Section 2 of Article II, shall adopt such rules and prescribe such procedures not inconsistent with the provisions of this Article as it may deem necessary or appropriate for the conduct of

Exchange disciplinary proceedings and investigations, and may from time to time amend, alter or repeal any such rules or procedures.

(6) An accusation, charging a member, member organization or approved person before an Exchange Disciplinary Panel with having committed an offense, shall be in writing; it shall specify the charge or charges against such member, member organization or approved person with reasonable detail, and shall be signed by the person or persons making the charge or charges. A copy of such charge or charges, shall be served upon the accused member, member organization or approved person either personally, or by leaving the same during business hours at the office address of such member, member organization or approved person or by mailing it to such member, member organization or approved person at his or its office address or place of residence. The accused shall have twenty days from the date of such service to answer such charge or charges, or such further time as the Exchange in its discretion may deem proper. An answer shall be in writing, signed by or on behalf of the accused member, member organization or approved person and shall be filed with the Secretary of the Exchange. If so expressly required in the charge or charges, the answer shall specifically indicate which statements, or portions thereof, contained in the charge or charges are denied and which are admitted, and any such statements or portions thereof in the charge or charges which are not specifically denied shall be deemed to be admitted. The answer shall also contain in reasonable detail any affirmative defense which the accused wishes to submit and shall include any documents which the accused wishes to submit in support of the answer. Upon the answer being filed, or if the accused shall refuse or neglect to make answer as hereinbefore required, the Disciplinary Panel shall, at a hearing called for that purpose, proceed to consider the charge or charges. The Exchange shall cause copies of the charge or charges, and of the answer, if any, and of any documents submitted in support thereof by the accused, to be mailed or otherwise delivered to each member of the Disciplinary Panel at least five days before such hearing. Notice of such hearing shall be sent to the accused; the accused member, or any person associated with the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes at such hearing, or the accused approved person, shall be entitled to be present personally thereat, and shall be permitted to examine and cross-examine all of the witnesses produced before the Disciplinary Panel, and also to present such testimony, defense or explanation as may be deemed responsive to the charge or charges. Any witnesses produced by the accused shall be subject to cross examination. After hearing all the witnesses produced before the Disciplinary Panel and after hearing the accused the Disciplinary Panel shall determine whether or not the accused member, the accused member organization or the accused approved person is guilty of the

offense or offenses charged. If it determines that the accused is guilty, the Disciplinary Panel may fix and impose the penalty. Any such determination shall be supported by a written statement setting forth (i) any act or practice in which such member, member organization or approved person is found to have engaged or which such member, member organization or approved person is found to have omitted, (ii) the specific provision of the Securities Exchange Act of 1934, as amended, the rules and regulations thereunder, the Constitution or the rules, procedures or policies of the Exchange, which any such act, practice or omission to act is deemed to violate, and (iii) the penalty imposed and the reasons therefore. Such written statement shall be served upon the accused in the manner hereinbefore provided, and a copy thereof shall be sent to each member of the [Board of Governors] *Amex Adjudicatory Council*. The determination of the Disciplinary Panel and any penalty imposed shall become final and conclusive twenty days after notification thereof to the accused, provided, however, that if a request for review of such determination or penalty, or both, is filed, as hereinafter provided, the penalty shall be stayed pending the result of such review.

Review by Amex Adjudicatory Council

(c)[7] Any member, member organization or approved person determined to be guilty of a charge or charges before an Exchange Disciplinary Panel pursuant to this Article may require [a review of] *that* such determination [or of any] *the* penalty imposed by the Disciplinary Panel, or [of] both the determination and the penalty]. Upon the request of any four members of the Board of Governors, any determination by a Disciplinary Panel pursuant to this Article or any penalty imposed by such Disciplinary Panel, or both, shall be subject to review as hereinafter provided] *be reviewed by the Amex Adjudicatory Council*. A request for such review of [such] *an Exchange Disciplinary Panel* determination or penalty shall be made in writing and filed with the Secretary of the Exchange within twenty days after notification of the determination and penalty, if any, is served upon the accused member, member organization or approved person.

[The review of a disciplinary proceeding by the Board shall be conducted at a regular or special meeting called for the purpose and notice of the object thereof shall be sent to the members of the Board. Fifteen governors shall be required to constitute a quorum for any meeting of the Board at which the Board shall review a disciplinary proceeding as herein provided, and any action shall pursuant to the vote of a majority of the governors present at such meeting shall be the action of the Board] *An Exchange Disciplinary Panel determination or penalty shall also be subject to review by the Amex Adjudicatory Council upon a call for review by any member of the Council within thirty days after service of the Panel's determination.*

In connection with any such review[, the Board may affirm any] *of an Exchange Disciplinary Panel*

determination [by the Disciplinary Panel or sustain any penalty imposed, or both, may] *or penalty, the Amex Adjudicatory Council may, as it deems appropriate, (i) affirm, modify or reverse [any such] the determination[, or may] made by the Disciplinary Panel; and (ii) sustain, decrease or eliminate any [such penalty] penalty imposed by the Disciplinary Panel, or impose any lesser penalty permitted under the provisions of this Article [, as it deems appropriate; or if the Board shall determine].*

If the Amex Adjudicatory Council determines that the Disciplinary Panel has not adequately considered all of the matters which should have been considered in connection with the charge or charges, or has improperly applied or interpreted the Constitution, rules, requirements and policies of the Exchange, or has imposed a penalty or penalties which the [Board] Council determines to be inadequate in light of all the circumstances, the [Board] Council may remand the matter to the Disciplinary Panel for further consideration consistent with such determination. Upon such remand, the Disciplinary Panel shall conduct a further hearing in accordance with the provisions of [this] subsection (b) and may as a result thereof modify, reverse or reaffirm its previous determination or impose any penalty permitted under this Article regardless of whether such penalty shall be greater than the penalty imposed as a result of the original hearing. Any determination or penalty imposed by the Disciplinary Panel as a result of a remand from the Amex Adjudicatory Council shall be subject to further review upon request as hereinabove provided.

[If, upon review, the matter is not remanded to the Disciplinary Panel, the determination and penalty, if any,] *The Amex Adjudicatory Council shall transmit its proposed written decision to each member of the Board [shall be final and conclusive] of Governors. The Board may call the proceeding for review pursuant to Section 2(d) of this Article. If the Board does not call the proceeding for review, the proposed written decision of the Amex Adjudicatory Council shall become final. Unless the Amex Adjudicatory Council remands the proceeding, the decision shall constitute the final action of the Exchange.*

Discretionary Review by the Board of Governors

(d) *Upon the request of any four its members, the Board of Governors may review a proposed written decision of the Amex Adjudicatory Council. Such a request for review shall be made not later than the next meeting of the Board of Governors that is at least 15 days after that date on which the proposed written decision of the Amex Adjudicatory Council is transmitted to the Board. By a unanimous vote of the Board of Governors, the Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Board then in office,*

the Board may, during the 15 day period, vote to extend the period to more than 15 days. The review by the Board of Governors shall occur not later than the next regularly scheduled meeting of the Board following the request for review. Ten governors shall be required to constitute a quorum for any meeting of the Board at which the Board shall review a disciplinary proceeding as herein provided, and any action taken pursuant to the vote of a majority of the governors present at such meeting shall be deemed to be the action of the Board.

After review, the Board of Governors may affirm, modify, or reverse the proposed written decision of the Amex Adjudicatory Council. Alternatively, the Board of Governors may remand the proceeding with instructions. The decision of the Board of Governors shall constitute the final action of the Exchange, unless the Board remands the proceedings.

Disciplinary Fine Systems

[(c)](e) The Board shall adopt such rules as it deems necessary or appropriate to implement disciplinary fine systems for the resolution of minor rule violations and shall delegate appropriate authority to officers and employees of the Exchange to properly administer such fine systems.

Discussing [charges prohibited] *Charges Prohibited*

[(d)](f) No person, firm or corporation under charges before a Disciplinary Panel shall discuss [with any member] the subject of such [Panel or] charges with any member of the [Board, nor shall any] Panel, the Amex Adjudicatory Council, or the Board of Governors. No member of the [Panel or any member of the Board] Board of Governors, the Amex Adjudicatory Council, or a Disciplinary Panel shall discuss charges made in a disciplinary proceeding with any [such] person, firm or corporation being charged, or with any one representing [him or it directly or indirectly, the subject of such charges. [such person, firm or corporation.

Announcement of [results] *Results*

[(e)](g) The Board of Governors shall adopt rules governing the announcement of the results of any disciplinary proceeding conducted pursuant to the provisions of this Article, provided, however, that no such announcement shall be permitted until there shall have been a final determination by the Exchange with regard to such disciplinary matter and the penalty, if any, to be imposed.

Article V. Discipline of Members

Sec. 02. Delegation of Disciplinary [Power] Powers

Stipulation of [facts] *Facts* and [consent] Consent to [penalty] *Penalty*

In lieu of the procedures set forth in paragraph 6 of Section 1(b) of this Article, a Disciplinary Panel, selected in accordance with the provisions of Section 1(b) of this Article, at a hearing called for that purpose may determine whether any member, member organization or approved person is guilty of having committed an offense or offenses on the basis of a written stipulation of facts and consent to a specified penalty

entered into between such member, member organization or approved person and any officer of the Exchange, and may fix and impose the penalty agreed to in such stipulation and consent or any lesser penalty. A written notice of the result shall be served upon the member, member organization or approved person in the manner provided in subsection (b) of Section 1 of this Article, and a copy thereof shall be sent to each member of the [Board of Governors] Amex Adjudicatory Council. The determination of the Disciplinary Panel and any penalty imposed shall become final and conclusive ten days after notification thereof to the accused, provided, however, that if a request for review by the [Board of Governors] Amex Adjudicatory Council of such determination or penalty, or both, is filed as hereinafter provided, the penalty shall be stayed pending the result of such review. If the Disciplinary Panel rejects the stipulation and consent to a specified penalty, the matter shall proceed as if the stipulation and consent had not been entered into, and such stipulation and consent shall be disregarded in any subsequent proceeding. A written notice of such rejection by the Disciplinary Panel shall be served upon the member, member organization or approved person in the manner provided in subsection (b) of Section 1 of this Article.

Upon the request of any [four members of the Board of Governors, the Board or a committee of governors delegated by the Board] member of the Amex Adjudicatory Council, the Council shall review the determination of, or the penalty imposed by, a Disciplinary Panel in connection with a written stipulation of facts and consent to a specified penalty. Any such request for review of such determination or penalty shall be made in writing and filed with the Secretary of the Exchange within ten days after notification of the determination and penalty, if any, is served upon the accused member, member organization or approved person. Upon review, the [Board or the review committee] Amex Adjudicatory Council may fix and impose the penalty agreed to in such stipulation and consent, or impose a lesser penalty or reject such consent, as it deems appropriate. [The quorum and vote required for such action by the Board shall be the quorum and vote provided in Section 1(b)(7) of this Article.

Article V. Discipline of Members

Sec. 03. Suspension in View of Financial or Operating Conditions

Automatic [suspension] *Suspension*

(a) No change.

Suspension by Chairman

(b) Whenever it shall appear to the Chairman that a member or a member organization has failed to meet his or its engagements or is insolvent, or [the Chairman has been advised by the Executive Committee that such member or member organization is, in its opinion,] is in such financial or operating condition that he or it cannot be permitted to continue in business with safety to investors, his or its creditors, other members of the Exchange, or whenever it shall appear to the Chairman that a

member or member organization has been suspended by another registered national securities exchange or national securities association for failure to meet his or its engagements, for insolvency or for being in such financial or operating condition that he or it cannot be permitted to continue in business with safety to investors, his or its creditors, other members, or such other exchange or securities association, the Chairman shall announce to the Exchange the suspension of such member or member organization, which suspension shall continue until such member or member organization has been reinstated as provided in Section 5 of Article IV.

Investigation by Exchange

(c) No change.

Sale of [regular or options principal membership and revocation of associate membership] *Regular or Options Principal Membership and Revocation of Associate Membership*

(d) No change.

Failure to [pay dues] *Pay Dues*, etc.

(e) No change.

(f) Any member or member organization suspended under the provisions of subsections (a) or (b) of this Section 3 shall be granted promptly a hearing with regard to such suspension before the [Executive Committee,] Board or such [other] committee as may be appointed by the Board for such purpose. Any determination by the Board or such committee as a result of such hearing to affirm the suspension shall be supported by a statement setting forth the specific grounds on which the suspension is based.

Article V. Discipline of Members

Sec. 04. Suspension or Expulsion

Examination by [another exchange] *Another Self-Regulatory Organization*

(a) If the Board of Governors shall deem that it is in the interest and welfare of the Exchange or in the public interest, or appropriate or necessary for the maintenance of just and equitable principles of trade, to facilitate the examination by the authorities of another [exchange] self-regulatory organization of any transaction in which a member or member organization of the Exchange has been concerned and that the testimony of such member or his employees or the testimony of such member organization or the members associated therewith, or approved persons or employees thereof or the books and papers of such member or member organization or the books and papers of any such persons are material to such examination and shall direct such member or member organization to appear and testify, or to cause any of such persons to appear and testify, or to produce such books and papers before the authorities of such other [exchange] self-regulatory organization, or any committee thereof, for the purposes of such examination, and the member or member organization of the Exchange shall refuse or fail to comply with any such direction, the member or the member organization may be adjudged guilty of an act detrimental to the interest and welfare of the Exchange.

Fraud

- (b) No change.

Fictitious [transactions] *Transactions*

- (c) No change.

Market [demoralization] *Demoralization*

- (d) No change.

Misstatements

- (e) No change.

Fraud [prior to election or approval] *Prior to Election or Approval*

- (f) No change.

[Dealings on another exchange

(g) Rescinded effective August 19, 1976.](g)
[Reserved]

Violation of Constitution, [rules] *Rules* or [resolution] *Resolution*—Inequitable [conduct] *Conduct*

- (h) No change.

Violation of Securities Exchange Act

- (i) No change.

Acts [detrimental] *Detrimental* to Exchange

- (j) No change.

Failure to [testify] *Testify*

- (k) No change.

Improper [conduct] *Conduct*

- (l) No change.

Betting

- (m) No change.

Fines in [addition] *Addition* to or in [lieu of suspension or expulsion] *Lieu of Suspension or Expulsion*

- (n) No change.

Termination of [rights] *Rights* by [expulsion] *Expulsion*

- (o) No change.

Termination of [rights] *Rights* by [suspension] *Suspension*

- (p) No change.

Proceedings [against suspended member or member organization] *Against Suspended Member or Member Organization*

- (q) No change.

Responsibility for [acts] *Acts* of [others] *Others*

- (r) No change.

Suspension or [expulsion of members of suspended or expelled member, member organization] *Expulsion of Members of Suspended or Expelled Member, Member Organization*

- (s) No change.

Continued [failure] *Failure* to [pay fines, dues] *Pay Fines, Dues, etc.*

- (t) No change.

Article V. Discipline of Members**Sec. 05. Suspension, Expulsion or Bar by Another Regulatory Authority**

- (a) No change.

Procedure

(b) In any proceeding under this Section 5, the method of procedure required by Section 1(b) of this Article V shall not apply, but the accused shall be given not less than ten days'

notice in writing that an Exchange Disciplinary Panel will conduct a hearing to determine whether or not to suspend or expel the accused, as the case may be, as provided in this Section 5. At the hearing before the Disciplinary Panel, the accused member, or any person associated with the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes at such hearing, shall be afforded an opportunity to explain why it would be inappropriate for the Disciplinary Panel to accept the finding of such other exchange, association or agency or to suspend or expel the accused, notwithstanding the suspension, expulsion or bar by such other exchange, association or agency. In the event that the Disciplinary Panel determines not to accept the finding of guilt by such other exchange, association or agency, it may order a proceeding under any other Section of this Article V. In the event that the accused fails or refuses to appear before the Disciplinary Panel, the Disciplinary Panel may nevertheless determine the matter and suspend or expel the accused as provided in this Section 5. If the Disciplinary Panel determines to accept the finding of guilt by such other exchange, association or agency and to suspend or expel the accused, such determination shall be supported by a written statement setting forth the specific grounds on which such action is based. Such written statement shall be served upon the accused in the manner provided by Section 1(b) of this Article V, and a copy thereof shall be sent to each member of the [Board of Governors] *Amex Adjudicatory Council*. Any action by an Exchange Disciplinary Panel pursuant to this Section 5 shall be subject to review in accordance with the procedures specified in [Section 1(b)] *Sections 1(c) and (d)* of this Article V. In the event no request for review is filed within twenty days after the accused is notified of the determination of the Disciplinary Panel, such determination shall become final and conclusive.

- (c) No change.

Article V. Discipline of Members**Sec. 06. Retention of Jurisdiction over Former Members**

If, during the period of one year immediately following (a) the termination of a person's status as a member or member organization, (b) receipt by the Exchange of written notification of such termination, or (c) receipt by the Exchange of any amendment to such termination notice, whichever occurs later, the Secretary of the Exchange gives written notice to such person that the Exchange is making inquiry into any specified matter or matters occurring prior to the termination of such person's status as a member or member organization, the Board of Governors, the Chairman or any committee authorized by the Board or the Constitution may thereafter require such person to submit to the Exchange books and papers relating to the matter or matters specified in such notice, or to furnish information to, or to appear and testify before, the Board, the Chairman, any such committee or such officers, employees or representatives of the

Exchange as may be designated by the Chairman or such committee with respect to any such matter. Following the termination of such person's status as a member or member organization, provided such notice is given, such person may be charged with having refused or failed to comply with any such requirement or, as a result of the inquiry into the matter or matters specified in such notice, such person may be charged with having committed, prior to termination, any other offense with which such person might have been charged had such status not been terminated. Any charge against a former member or member organization may be brought before an Exchange Disciplinary Panel and determined as provided in Section 1(b) of this Article V in the case of a member or member organization. Whenever an Exchange Disciplinary Panel shall determine that any such former member or member organization is guilty of the offense or offenses charged, it may impose a fine, impose a censure, or direct that such person not be admitted or re-admitted as a member or member organization for a specified period of time; and, in the case of a former member, the Exchange may thereafter refuse to approve the employment of such person by a member or member organization:

(a) for such period of time as the Exchange may determine, or

(b) until such time as the Board, any committee authorized by the Board or the Constitution, or the Chairman or any officer, employee or representative of the Exchange designated by the Chairman, shall have completed the investigation of the matter with respect to which such former member or member organization refused or failed to submit books and papers, or to furnish information, or to appear and testify, and until the passage of such further period of time, if any, as the Exchange Disciplinary Panel shall have specified.

Article VI. Commissions

[Rescinded effective May 1, 1976.]
Intentionally omitted.

Article VII. Fees and Dues**Sec. 01. Annual Membership Fees****Regular [members] *Members***

[(a) Regular members—The initiation fee for regular membership shall be based upon the latest price at which a regular membership shall have been sold and transferred to an applicant for membership, otherwise than for a nominal consideration or through a private sale prior to the date when such initiation fee is due. Such initiation fee shall be \$1,000, if such sale price shall have been \$5,000 or less, and such fee shall be increased by \$500 for each additional \$5,000; but in no case shall such initiation fee exceed \$2,500.

Notwithstanding the foregoing provisions of this subsection,](a) *Regular members—The initiation fee for regular membership shall be \$2,500; provided, however, that if a regular member who is associated with a member organization transfers his membership to another person associated with such member organization and such organization continues to engage in the business of buying and selling securities as brokers or dealers*

without interruption or change, other than such changes as may be occasioned by the death or retirement of the regular member whose membership is being transferred, the initiation fee payable in connection with such transfer shall be \$1,500.

Notwithstanding other provisions of the Constitution, an applicant for regular membership who is an associate member on the effective date of this amendment and continues to be such down to the date of the filing of his application for regular membership, or is a general partner or a director of a firm or corporation which was an associate member firm or corporation on the effective date of this amendment and continues to be an associate member firm or corporation down to the date of the filing by such applicant of his application for regular membership, shall not be required to pay any initiation fee.

The above initiation fee shall be paid prior to the approval by the Exchange of an applicant for regular membership.

[Transfer of Chairman's membership

[The Board may nevertheless permit the transfer, without payment of any initiation fee, of a regular membership of a person elected to the office of Chairman and of a regular membership transferred to a person who has ceased to be Chairman if such person transferred a regular membership formerly owned by him in order to qualify as Chairman.

[Associate membership of Chairman

[Notwithstanding the provisions of this subsection the Exchange may approve as an associate member, without payment of an initiation fee, one who was a partner of the Chairman at the time of his election, but such associate membership shall continue only so long as such Chairman shall continue in office. The Exchange may also permit a former Chairman to become an associate member, without payment of any initiation fee, if he ceased to be an associate member of the Exchange by reason of his election to the office of Chairman.

[(b) Options principal members—A person acquiring an options principal membership directly from the Exchange pursuant to a plan offering such memberships to qualified applicants, and paying to the Exchange the fee prescribed in such plan for an options principal membership, shall not be required to pay an initiation fee. In all other cases (except as hereinafter provided), the initiation fee for options principal membership shall be based upon the latest price at which an options principal membership shall have been sold and transferred to an applicant for membership, otherwise than for a nominal consideration or through a private sale, prior to the date when such initiation fee is due. Such initiation fee shall be \$1,000, if such sale price shall have been \$5,000 or less, and such fee shall be increased by \$500 for each additional \$5,000, or fraction thereof, by which such sale price shall have exceeded \$5,000; but in no case shall such initiation fee exceed \$2,500.

[Notwithstanding the foregoing provisions of this subsection,](b) *Options principal members—The initiation fee for options*

principal membership shall be \$2,500; provided, however, that if an options principal member who is associated with a member organization transfers his membership to another person associated with such member organization and such organization continues to engage in the business of buying and selling securities as brokers or dealers without interruption or change, other than such changes as may be occasioned by the death or retirement of the options principal member whose membership is being transferred, the initiation fee payable in connection with such transfer shall be \$1,500.

The initiation fee required by this subsection shall be paid prior to the approval by the Exchange of an applicant for options principal membership.

(c) No change.

(d) No change.

Associate Members

(e) No change.

(f) No change.

Article VII. Fees and Dues

Sec. 02. Dues, Fines and Assessments

Payment of [dues] Dues

(a) No change.

Apportionment of [dues] Dues

No change.

Exchange to [return unexpired dues paid by transferor and collect from transferee] *Return Unexpired Dues Paid by Transferor and Collect from Transferee*

(b) No change.

Unpaid [dues to date of transfer collectible from proceeds of sale] *Dues to Date of Transfer Collectible from Proceeds of Sale*

(c) No change.

Liability for [dues] *Dues* until [transfer] *Transfer*

(d) No change.

(e) No change.

Article VII. Fees and Dues

Sec. 03. Associate Member Fees

Fee [where associate member becomes director or executive officer of corporation] *Where Associate Member Becomes Director or Executive Officer of Corporation*

No change.

Article VII. Fees and Dues

Sec. 04. Special Charge

Exchange [may impose on members fees based on transactions] *May Impose on Members Fees Based on Transactions*

The Board of Governors may impose upon regular, options principal and associate members and upon regular, options principal and associate member organizations a charge on each securities transaction effected through the facilities of the Exchange, and may change, remove, and reimpose such charge. In fixing the amount of such charge, the Board may establish different rates for transactions effected for non-members, for members and member organizations and for various categories of members, or may omit

such charge for any category or categories of members or member organizations and may establish different rates for transactions effected in different securities or through different mechanisms. Such charges shall be payable at such times and shall be collected in such manner as the Board may determine, and the proceeds thereof shall be deposited among the general funds of the Exchange.

Article VII. Fees and Dues

Sec. 05. Options Transactions

In lieu of the charge authorized by Sec. 4 of this Article VII, the Board of Governors may impose upon regular, options principal and associate members and upon regular, options principal and associate member organizations in respect of options transactions effected on the Exchange a charge for each such options transaction, and may from time to time change, remove, and reimpose such charge. In fixing the amount of such charge, the Board may establish different rates for options transactions effected for non-members, for members and member organizations and for various categories of members and may establish different rates for transactions effected in different securities or through different mechanisms. Such charge shall be applicable to both the writing and the purchase of options on the Exchange and shall be payable at such times and shall be collected in such manner as the Board may determine and the proceeds thereof shall be deposited among the general funds of the Exchange.

Article VIII. Arbitration Procedure[*]

Sec. 01. Duty to Arbitrate

Members, member organizations, partners, officers and trustees of member organizations shall arbitrate all controversies arising in connection with their business between or among themselves or between them and their customers as required by any customer's agreement or, in the absence of a written agreement, if the customer chooses to arbitrate. Lessors and lessees shall arbitrate all controversies arising between them in connection with their special transfer agreement. Owners of memberships and their nominees shall arbitrate all controversies arising between them in connection with the membership and the business thereof.

[*Sections 1 to 5, together with Rules 600–609, were adopted effective June 8, 1964, to replace Sections 1 to 15 and amendments of September 4, 1962.]

Article VIII. Arbitration Procedure[*]

Sec. 02. Arbitration Forum

Arbitration shall be conducted pursuant to the NASD Code of Arbitration Procedure, except that [under the arbitration procedures of this Exchange, except as follows:

[(a) the Board of Governors may decline in any case to permit the use of the arbitration facilities of this Exchange;

(b) if all parties to the controversy are members, allied members, member firms or member corporations of the New York Stock Exchange, any party may elect to arbitrate under the arbitration procedures of that exchange.]; or

[(c) if any of the parties to a controversy is a customer, the customer may elect to arbitrate before the American Arbitration Association in the City of New York, unless the customer has expressly agreed, in writing, to submit only to the arbitration procedure of the Exchange.]

Article VIII. Arbitration Procedure[]*

Sec. 03. [Rules of Arbitration] Proceeding Instituted Prior to Combination

[The Board of Governors shall prescribe rules regarding arbitration and the conduct of arbitration proceedings, and may from time to time amend, alter or repeal any rule so adopted. These rules may, without limitation, cover the designation of an Arbitration Director and Assistant Arbitration Director, requests for arbitration, answers and counterclaims, the selection of panels and arbitrators, the arbitrability of a controversy, instructions to arbitrators, fees and costs, and such other matters as the Board shall deem necessary or appropriate.] *Any arbitration proceeding instituted with Predecessor Corporation prior to the closing date under the Transaction Agreement may continue to be conducted by means of the arbitration facilities of this Exchange and in accordance with Exchange arbitration rules and procedures in effect when such proceeding was instituted.*

Article VIII. Arbitration Procedure[]*

[Sec. 04. Arbitrators' Decision Final

[A majority of the arbitrators may determine any question and render an award. The decision of such majority shall be final and binding upon all parties to the arbitration, and there shall be no appeal therefrom to the Board of Governors. The decision and award of such majority shall be rendered to each party in writing, signed and acknowledged by the arbitrators rendering the decision.]

[Article VIII. Arbitration Procedure]*

[Sec. 05] Sec. 04. Penalties

(a) Failure to arbitrate—No change.
(b) Failure to pay award—Failure on the part of a member, member organization or owner of a membership to pay an award made pursuant to the [Exchange] arbitration [procedure] *procedures of an exchange or the NASD shall be deemed a failure to meet his or its engagements and subject him or it to suspension under Article V, Section 3.*

Article IX. The Gratuity Fund

Sec. 01. Participants Only

(a) No change.

Sec. 02. Purpose

No change.

Sec. 03. Contributions by New Participants

No change.

Sec. 04. Contributions on Death of Participant

No change.

Sec. 05. Payment of Benefits

No change.

Additions to [principal] *Principal*

No change.

Sec. 06. Beneficiaries Surviving Spouse

No change.

Surviving Spouse and Issue

No change.

Issue—No [surviving spouse] Surviving Spouse

No change.

Adopted [children] Children

No change.

No [issue] Issue—No [surviving spouse] Surviving Spouse

No change.

No [relatives] Relatives

No change.

Decision on [relationships] Relationships

No change.

Sec. 07. Income of Fund

There shall be credited annually to each Participant, in reduction of his payments under this Article, his proportion of the net income which has been received as interest on the Fund during each year, plus so much of his proportion of the principal of said Fund above two hundred fifty thousand dollars as the Trustees in their discretion may deem advisable.

In the event any extraordinary payment shall be received by the Gratuity Fund from any source, there shall be credited to each then participant, in reduction of his payments under this Article, his proportion of such payment.

Sec. 08. Restriction to Participants

No change.

Sec. 09. Management by Trustees

No change.

Sec. 10. Classification and Selection of Trustees

The Trustees of the [said] *Gratuity Fund* shall be [nominated and elected in the same manner, and at the same time, as governors of] *appointed by The Amex Corporation, based on the vote of the regular and options principal members of the Exchange.* The [said] Trustees shall be divided into three classes, each consisting of two Trustees. [Except as provided in Article XIV, said] Trustees shall hold office for three years from the date of their election and until Trustees are chosen and qualified in their stead.

Sec. 11. Vacancy Among Trustees

In case of a vacancy among the Trustees, the [Board of Governors] *board of The Amex Corporation shall appoint a person qualified to serve as Trustee until the next meeting at which the Trustees to be appointed are selected* [at its next regular meeting thereafter, shall fill the vacancy, pending the next annual election of the Exchange].

Sec. 12. Investments

No change.

Sec. 13. Officers of Fund

No change.

Sec. 14. Meetings of Trustees

No change.

Sec. 15. Report on Condition

No change.

Sec. 16. Management

It shall be the duty of the Secretary of the Fund to keep regular minutes of the proceedings of the Trustees, and to give notice of meetings.

Deposit of [funds:] *Funds*; Custody of [securities] *Securities*; Books

No change.

Sec. 17. Payments to Minors

No change.

Sec. 18. Beneficiary Not Located

No change.

Sec. 19. Expenses

No change.

Sec. 20. Vacancy Among Officers

No change.

Sec. 21. Supervision of Finances

No change.

Annual [audit] Audit

No change.

Sec. 22. Discipline of Trustees

No change.

Sec. 23. Transition Provisions

No change.

Article X. Clearing Organizations

Sec. 01. Clearing Organizations

No change.

Sec. 02. Settlement of Exchange Contracts

No change.

Sec. 03. Exchange Contracts Include

No change.

Article XI. Miscellaneous Provisions

Sec. 01. Rules of Exchange Included in Contract Terms

No change.

Sec. 02. Securities Admitted by New York Stock Exchange

Rescinded effective August 19, 1976.

Sec. 03. Keeping of Books

No change.

Sec. 04. [and Sec. 05.] Controlled Corporations and Associations

Broker for [securities corporation] *Securities Corporation*

No change.

Participation in [corporate commissions] *Corporate Commissions*

No change.

Corporate [use] *Use of [member office;] Member Office*; Corporate [use] *Use of [member name] Member Name*

No change.

Responsibility for [corporate subsidiary;] *Corporate Subsidiary*; Duty to [produce books] *Produce Books*

No change.

Sec. 05. Options

No employee of the Exchange and no employee of any corporation in which the Exchange owns the majority of the capital stock may purchase or sell for his own account or for any account in which he has a direct or indirect interest any option which entitles the purchaser to purchase or sell any security which is the subject of any option contract admitted to dealings on the Exchange; *provided, however, that this prohibition shall not extend to a standardized option issued by The Options Clearing Corporation unless such option is on an underlying security which is listed on the Exchange.*

Sec. 06. Rule of Construction

This Constitution shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to the principles of conflict of laws.

Article XII. Emergency Committee or Extraordinary Market Conditions

Current Article XII is deleted in its entirety.

Sec. 01. Authority to Take Action Under Emergency or

Extraordinary Market Conditions

The Board of Governors, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding the trading of any or all securities on the Exchange and the operation of any Exchange trading system or facility and the participation in any such system or facility by any or all persons, if in the opinion of the Board or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the Exchange or any Exchange system or facility.

Article XIII. Amendments To The Constitution

Sec. 01. Procedure

The provisions of this Constitution may be amended or repealed, and new provisions may be adopted, only [by the regular members of] *if approved by a majority of governors and by the holder of the Class B Interest in the Exchange in accordance with the procedure specified in this Article. The Board of Governors and the holder of the Class B Interest shall not approve any change to the Constitution that requires the consent of The Amex Corporation, the Amex Committee, or both under the terms of the Transaction Agreement without first obtaining such consent. The elimination of the foregoing sentence or any amendment thereto that would limit its effect shall also require the consent of The Amex Corporation.*

Article XIII. Amendments To The Constitution

Sec. 02. Adoption by Board

Amendments to the Constitution may be proposed by one or more members of the Board of Governors or by the signed petition of not less than 50 regular and options principal members of the Exchange setting forth the proposed amendment. Any such petition shall be filed with the Secretary of the Exchange who shall present it to the Board of Governors at its next regular meeting or within 30 days after the date such petition is filed.

Every proposed amendment to the Constitution must be presented in writing to the Board of Governors at a regular meeting or at a special meeting expressly called for the purpose of receiving it. The Secretary of the Exchange shall promptly cause a copy of every proposed amendment to be transmitted to each governor. Action on any proposed amendment shall be taken or postponed at a regular meeting of the Board of Governors or at a special meeting expressly called for the purpose of acting thereon. The Board of Governors may make such changes in an amendment so proposed as it may deem necessary or appropriate in order to carry out the intention of such proposed amendment or in order to make it conform to other provisions of the Constitution or any applicable Federal or State Law. *Subject to the requirements of Section 1 of this Article XIII, a proposed amendment shall be adopted if it is approved by the affirmative vote of the majority of governors then in office and by the holder of the Class B Interest in the Exchange.*

Article XIII. Amendments To The Constitution

Sec. 03. [Proposal of Amendments] Voting by Membership

[Amendments] *In the event that a proposed amendment to the Constitution cannot be made without the consent of The Amex Corporation, based on the vote of regular and options principal [may be proposed in the following manner:*

[a] (a) By one or more] members of the Exchange, [Board of Governors: Any such proposed amendment when approved by the affirmative vote of a majority of the Governors then in office shall be posted on the bulletin board and submitted to the regular members for vote thereon at a special meeting of the regular members of the Exchange called for the purpose as hereinafter provided in Section 4 of this Article XIII; or

[b] (b) By the signed petition of not less than fifty regular members of the Exchange setting forth in the proposed amendment and filing the same with] the Secretary of the Exchange [who shall present it to the Board of Governors at its next regular] *shall request that the Amex Corporation hold a special meeting [or within 30 days after the date such petition is filed. The Board may direct that such amendment be posted on the bulletin board and submitted, with or without the approval of the Board, to the regular members for vote thereon as hereinafter provided in Section 4 of this*

Article XIII; provided, however, that in any case the Board of Governors shall, within eight weeks after] for the purpose of considering such proposed amendment. *The Secretary shall furnish a copy of the proposed amendment with such request.*

[has been presented to the Board, cause it to be posted on the bulletin board and submitted to the regular members for a vote as hereinafter provided.

Article XIII. Amendments To The Constitution

Sec. 04. [Voting by] Adoption of Amendments Requiring a Membership Vote

In the event that [Promptly after the posting of] a proposed amendment[, notice of a special meeting] to the Constitution cannot be made without the consent of The Amex Corporation, based on the vote of the regular and options principal members of the Exchange [called pursuant to this Article shall be given by the Secretary of the Exchange to each regular member as provided in Section 8(e) of Article III. With the notice the Secretary shall furnish a copy of], the Predecessor Corporation shall grant such consent to the proposed amendment [and a form of proxy designating not less than three] if it is authorized to do so by a majority of the regular [or allied] and options principal members [of the Exchange selected by the Board of Governors to serve as a Proxy Committee authorized to act for regular members at] voting as a single class at a duly convened meeting at which a quorum is present. If a quorum shall not be present, in person or by proxy, at the place and time fixed for the special meeting[. The proxy shall provide, by boxes or otherwise, means by which a regular member may specify that his vote be cast for or against] called to consider the proposed amendment[. The proxy shall further provide as to how it will be voted if not so specified. All proxies to the Proxy Committee shall, unless revoked, be voted as specified or otherwise provided thereon, and the votes thereunder may be cast by any one or more members of the Proxy Committee present], the meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter or, if the Exchange is not open for business on that day, on the next succeeding business day. If a proposed amendment is not approved at the special meeting at the time fixed therefore or at such adjourned time, such amendment may not again be submitted to the membership for a period of ninety days[. Any member except one who has executed an irrevocable proxy to a member organization as provided in Section 8(d) of Article III, may attend and vote in person or may designate one or more regular or allied members of the Exchange other than the members of the Proxy Committee to act for him by proxy at the special meeting.

Article XIII. Amendments To The Constitution

Sec. 05[. Adoption of Amendments

[Except as otherwise required by law or by this Constitution, a proposed amendment shall be adopted if it is authorized by a majority of the votes cast at the special

meeting at which it is submitted, provided that a quorum is present, in person or by proxy. If a quorum shall not be present, in person or by proxy, at the place and time fixed for a special meeting of the regular members called pursuant to this Article, the meeting shall be adjourned to reconvene at the same time and place on the day two weeks thereafter or, if the Exchange is not open for business on that day, on the next succeeding business day. If a quorum shall not then be assembled, the meeting shall be dissolved and the proposed amendment shall not become effective. If a proposed amendment is not approved at the special meeting at the time fixed therefore or at such adjourned time, such amendment may not again be submitted to the regular membership for a period of ninety days.

[Sec. 06]. Provisions for Families of Deceased Members

Notwithstanding the foregoing provisions of this Article, no amendment of Article IX shall ever be made which will impair, in any essential particular, the obligation of each regular member to contribute, not less than the sum of twenty-five dollars to the provision for the families of deceased members, unless such amendment shall be authorized by a unanimous vote, or by the written request, of all of the regular members of the Exchange.

Article XIV. Reserved [Implementation of Reclassification Amendments]

Current Article XIV is deleted in its entirety.

EXHIBIT B—AMERICAN STOCK EXCHANGE, INC.

Proposed Rule Change

(Text in brackets indicates material to be deleted; italicized text indicates material to be added.)

Rule 345. Determinations Involving Employees and Prospective Employees

(a) through (d). No change.

(e) Upon the answer being filed, or if the person charged shall refuse or neglect to make answer as hereinbefore required, the Disciplinary Panel shall, at a hearing called for that purpose, proceed to consider the charge or charges. The Exchange shall cause copies of the charge or charges and of the answer, if any, and of any documents submitted in support thereof by the person charged, to be mailed or otherwise delivered to each member of the Disciplinary Panel at least five days before such hearing. Notice of such hearing shall be sent to the person charged; he shall be entitled to be present personally at the hearing, and shall be permitted to examine and cross-examine all witnesses produced at the hearing and also to present such testimony, defense or explanation as may be deemed responsive to the charge or charges. Any witnesses produced by the person charged shall be subject to cross-examination. After hearing all witnesses produced at the hearing and after hearing the person charged, the Disciplinary Panel shall by a majority vote determine whether or not the employee or prospective employee is guilty of the offense or offenses charged. If it determines that the

person charged is guilty, the Disciplinary Panel shall by a majority vote impose the penalty or prescribe the action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule. Any such determination shall be supported by a written statement setting forth (i) any act or practice in which such employee or prospective employee is found to have engaged or which such employee or prospective employee has been found to have omitted, (ii) the specific provision of the Securities Exchange Act of 1934, as amended, the rules and regulations thereunder, the Constitution or rules, procedures or policies of the Exchange, which any such act, practice or omission to act is deemed to violate and (iii) the penalty imposed or other action prescribed and the reasons therefore. Such written statement shall be served upon the person charged in the manner hereinbefore provided, and a copy thereof shall be sent to each member of the [Board of Governors] *Amex Adjudicatory Council*. The determination of the Disciplinary Panel and any penalty or other action prescribed shall become final and conclusive twenty days after notification thereof to the person charged, provided, however, that if a request for review of such determination, or of any penalty or other action prescribed by the Disciplinary Panel, is filed in writing with the Secretary of the Exchange as provided in paragraph (e) of this rule, the penalty or other action prescribed by the Disciplinary Panel shall be stayed pending the result of such review.

(f) Any person determined to be guilty of a charge or charges before an Exchange Disciplinary Panel pursuant to this rule may obtain a review of such determination or of any penalty or other action prescribed by the Disciplinary Panel in accordance with paragraph (a) or (b) of this rule, or of both the determination and such penalty or other action. Upon the request of any [four] member[s] of the [Board of Governors] *Amex Adjudicatory Council*, any determination by a Disciplinary Panel pursuant to this rule or any penalty or other action prescribed by such Disciplinary Panel, or both, shall be subject to review as hereinafter provided. A request for review of such determination, penalty or other action shall be made in writing and filed with the Secretary of the Exchange within twenty days after notification of the determination and penalty, if any, is served upon the person charged. The review of any disciplinary proceeding as herein provided [may] *shall* be conducted by the *Amex Adjudicatory Council* [Board of Governors, or in its discretion may be delegated to a committee of governors appointed by the Chairman with the approval of the Board]. In connection with any such review, the *Amex Adjudicatory Council* [Board or the review committee, as the case may be,] may affirm any determination by the Disciplinary Panel or sustain any penalty or other action prescribed, or both, may modify or reverse any such determination, or may decrease or eliminate any penalty or other action prescribed in accordance with paragraph (a) or (b) of this rule, or impose any lesser penalty or prescribe any lesser action permitted under paragraph (a) or (b) of this rule, as it deems appropriate; or if the

Amex Adjudicatory Council [Board or such review committee] shall determine that the Disciplinary Panel has not adequately considered all of the matters which should have been considered in connection with the charge or charges, or has improperly applied or interpreted the Constitution, rules, requirements and policies of the Exchange, or has prescribed action or has imposed a penalty or penalties which the *Amex Adjudicatory Council* [Board or such review committee] determines to be inadequate in light of all the circumstances, the *Amex Adjudicatory Council* [Board or such review committee] may remand the matter to the Disciplinary Panel for further consideration consistent with such determination. Upon such remand, the Disciplinary Panel shall conduct a further hearing in accordance with the provisions of this rule and may as a result thereof modify, reverse or reaffirm its previous determination or prescribe any action or impose any penalty permitted under paragraph (a) or (b) of this rule regardless of whether such action or penalty shall be greater than the action prescribed or penalty imposed as a result of the original hearing. Any determination, action prescribed or penalty imposed by the Disciplinary Panel as a result of a remand from the *Amex Adjudicatory Council* [Board or a review committee, as the case may be,] shall be subject to further review upon request as hereinabove provided. [If, upon review, the matter is not remanded to the Disciplinary Panel, the determination and the penalty or other action prescribed, if any, by the Board or the review committee, as the case may be, shall be final and conclusive.]

The Amex Adjudicatory Council shall transmit its proposed written decision to each member of the Board of Governors. The Board may call the proceeding for review pursuant to paragraph (g) of this rule. If the Board does not call the proceeding for review, the proposed written decision of the Amex Adjudicatory Council shall become final. Unless the Amex Adjudicatory Council remands the proceeding, the decision shall constitute the final action of the Exchange.

(g) Upon the request of any four of its members, the Board of Governors may review a proposed written decision of the Amex Adjudicatory Council. Such a request for review shall be made not later than the next meeting of the Board of Governors that is at least 15 days after that date on which the proposed written decision of the Amex Adjudicatory Council is transmitted to the Board. By a unanimous vote of the Board of Governors, the Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Board then in office, the Board may, during the 15 day period, vote to extend the period to more than 15 days. The review by the Board of Governors shall occur not later than the next regularly scheduled meeting of the Board following the request for review. Ten Governors shall be required to constitute a quorum for any meeting of the Board at which the Board shall review a disciplinary proceeding as herein provided, and any action taken pursuant to the vote of a majority of the Governors present at such meeting shall be deemed to be the action of the Board.

After review, the Board of Governors may affirm, modify, or reverse the proposed written decision of the Amex Adjudicatory Council. Alternatively, the Board of Governors may remand the proceeding with instructions. The decision of the Board of Governors shall constitute the final action of the Exchange, unless the Board remands the proceedings.

(h)[(g)] If any employee or prospective employee of a member or member organization is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities, the Exchange may, in view of such suspension, expulsion or bar, suspend or withdraw its approval of, or disapprove, his employment by a member or member organization, but no such suspension imposed by the Exchange shall commence before or expire after the suspension imposed by such other exchange, association or agency, and no such withdrawal of approval and no such disapproval shall be imposed by the Exchange unless such employee or prospective employee has been expelled or barred by such other exchange, association or agency. Nothing in this paragraph (h) [(f)] shall preclude any proceeding against any employee or prospective employee under the foregoing provisions of this Rule 345. In any proceeding under this paragraph (h) [(f)], the method of procedure required by paragraphs (c) and (d) of this rule shall not apply, but the employee or prospective employee shall be given not less than ten days' notice in writing of a hearing before an Exchange Disciplinary Panel to determine whether or not the Exchange shall suspend or withdraw its approval of, or disapprove, as the case may be, his employment by a member or member organization, as provided herein. At such hearing, the employee or prospective employee shall be afforded an opportunity to explain why it would be inappropriate for the Exchange to accept the finding of such other exchange, association or agency or to suspend or withdraw its approval of, or disapprove, his employment, notwithstanding his suspension, expulsion or bar by such other exchange, association or agency. The Disciplinary Panel shall thereupon on behalf of the Exchange determine the matter by a majority vote. In the event that the Disciplinary Panel determines that the Exchange should not accept the finding of guilt by such other exchange, association or agency, it may order a proceeding under any other paragraph of this rule. In the event that the employee or prospective employee fails or refuses to appear at such hearing, the Disciplinary Panel may nevertheless determine the matter and suspend or withdraw Exchange approval of, or disapprove, his employment or prospective employment as provided herein. If the Disciplinary Panel determines to accept the finding by such other exchange, association or agency and to suspend or withdraw its approval of, or disapprove, the employment of such employee or prospective

employee by a member or member organization such determination shall be supported by a written statement setting forth the specific grounds for such action. Such written statement shall be served upon the employee or prospective employee in the manner hereinbefore provided by paragraph (c) of this rule and a copy thereof shall be sent to each member of the Amex Adjudicatory Council [Board of Governors]. Any action by an Exchange Disciplinary Panel pursuant to this paragraph (h) [(f)] shall be subject to review in accordance with the procedures specified in paragraphs (f) and (g) [(e)] of this rule. In the event no request for review is filed within twenty days after the employee or prospective employee is notified of the determination of the Disciplinary Panel, such determination shall become final and conclusive. Notwithstanding the foregoing, the employee or prospective employee may, nevertheless, consent to the penalty that the Exchange suspend or withdraw its approval of, or disapprove, his employment or prospective employment by a member or member organization solely by reason of the imposition of such penalty by such other exchange, association or agency, and without either the separate determination of an Exchange Disciplinary Panel as provided above in this paragraph (h) [(f)] or the procedure provided for in the foregoing paragraphs of this rule. Such consent shall be in writing, signed by the employee or prospective employee, and shall be delivered to the Exchange not later than two business days after the Exchange gives notice in writing to him that it intends to proceed under Rule 345(h) [(f)]. The consent shall take effect immediately upon approval by the Exchange.

(i)[(h)] In accordance with rules adopted by the Board of Governors, the Exchange may publicly disclose its disapproval or suspension or withdrawal of approval of the employment of any employee or prospective employee of a member or member organization and it may publicly disclose any fine, censure or other determination, provided, however, that no such disclosure shall be permitted until there has been a final determination of the matter.

(j)[(i)] Unless otherwise directed by the Amex Adjudicatory Council [Board of Governors], a copy of any accusation under paragraph (c) of this rule or a copy of any notice of hearing under paragraph (h) [(f)] of this rule served on an employee or a prospective employee of a member or member organization shall be furnished to his employer or prospective employer and a representative of the employer or prospective employer may be present at the hearing of the matter.

(k)[(j)] In lieu of the procedures set forth in paragraph (d) of this rule, an Exchange Disciplinary Panel, selected in accordance with the provisions of Section[s] 1(b)[(1) and 1(b)(2)] of Article V of the Constitution, at a hearing called for that purpose may determine whether an employee or prospective employee of a member or member organization is guilty of having committed an offense or offenses on the basis of a written stipulation of facts and consent to a specified penalty entered into between

such employee or prospective employee and any officer of the Exchange, and may fix and impose the penalty or prescribe such other action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule as shall be agreed to in such stipulation and consent, or impose any lesser action permitted under paragraph (a) or (b) of this rule. A written notice of the result shall be served upon the employee or prospective employee in the manner provided in paragraph (c) of this rule and a copy thereof shall be sent to each member of the Amex Adjudicatory Council [Board of Governors]. The determination of the Disciplinary Panel and any penalty or other action prescribed shall become final and conclusive ten days after notification thereof to the employee or prospective employee, provided, however, that if a request for review of such determination or, of any penalty or other action prescribed by the Disciplinary Panel, is filed as hereinafter provided, the penalty or other action prescribed by the Disciplinary Panel shall be stayed pending the result of such review. If the Disciplinary Panel rejects the stipulation and consent to a specified penalty, the matter shall proceed as if the stipulation and consent had not been entered into, and such stipulation and consent shall be disregarded in any subsequent proceeding. A written notice of such rejection by the Disciplinary Panel shall be served upon the employee or prospective employee in the manner provided in paragraph (c) of this rule.

Upon the request of any [four] member[s] of the Amex Adjudicatory Council [Board of Governors], the Amex Adjudicatory Council [Board] shall review the determination of, or the penalty or other action prescribed by, a Disciplinary Panel in connection with a written stipulation of facts and consent to a specified penalty. A request for review by the Amex Adjudicatory Council [Board] of such determination, penalty or other action shall be made in writing and filed with the Secretary of the Exchange within ten days after notification of the determination and penalty, if any, is served upon the employee or prospective employee. Upon review, the Amex Adjudicatory Council [Board] may fix and impose the penalty or prescribe such action to be taken by the Exchange in accordance with paragraph (a) or (b) of this rule as shall have been agreed to in such stipulation and consent, impose any lesser penalty or prescribe any lesser action permitted under paragraph (a) or (b) of this rule, or reject each stipulation and consent, as it deems appropriate. The quorum and vote required for such action by the Amex Adjudicatory Council [Board] shall be the quorum and vote provided in Section 6(h) of Article II [Section 1(b)(5) of Article V] of the Constitution.

(k) *renumbered as (l)*. No other change.

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D. Office Rules

Minor Rule Violation Fine Systems

Rule 590. Minor Rule Violation Fine Systems

Part 1 General Rule Violations

(a) & (b). No change.

(c) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Disciplinary Panel and to an appeal to the *Amex Adjudicatory Council* [Board of Governors of the Exchange].

(d) through (h). No change.

Part 2 Floor Decorum Violations

(a) through (c). No change.

(d) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Disciplinary Panel and to an appeal to the *Amex Adjudicatory Council* [Board of Governors of the Exchange].

(e) through (g). No change.

Part 3 Reporting Violations

(a) & (b). No change.

(c) If the person against whom a fine is imposed pays the fine, such payment will be deemed to be a waiver of such person's right to a hearing before an Exchange Disciplinary Panel and to an appeal to the *Amex Adjudicatory Council* [Board of Governors of the Exchange].

(d) through (g). No change.

* * * Commentary. No change.

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E. Arbitration

Arbitration Rules

Rule 600. Arbitration

Commentary .01: Amex Rules 600 through 624 only apply to arbitrations commenced prior to (insert date of Closing) and are otherwise of no force or effect. Article VIII, Sec. 2 of the Exchange Constitution provides that arbitration shall be conducted pursuant to the NASD Code of Arbitration Procedure, except that, if all parties to the controversy are members, allied members or member corporations of the New York Stock Exchange, any party may elect to arbitrate under the arbitration procedures of that exchange. Any violation of the NASD Code of Arbitration Procedure by members or member organizations arbitrating thereunder would be deemed a violation of Exchange rules and subject the violator to Exchange disciplinary procedures.

Rules 600 through 624. No change.

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K. Exchange Disciplinary Proceedings

Rule 8. Record of Proceedings

(a). No change.

(b) Where a meeting of a Disciplinary Panel has been convened pursuant to Article V,

Section 2 of the Exchange Constitution or Exchange Rule 345(k) [(i)] for the purpose of considering a written stipulation of facts and consent to a specified penalty, a record may be made by tape recording. Records of such meetings need not be transcribed except upon the request of a party to the proceeding, the Exchange or the Panel, or upon a request by the *Amex Adjudicatory Council* [Board of Governors] for review of the determination of the Panel.

Rule 9. Requests for Review

A request by a party for review of a determination by a Disciplinary Panel shall state the specific decisions of the Panel with respect to which objection is made, and any decision of the Panel which is not expressly objected to in such request shall be deemed accepted by the party making the request. Upon the filing by a party of a request for review of a determination by a Disciplinary Panel, such party shall have twenty days thereafter in which to file with the Secretary of the Exchange any brief and supporting documents for submission to the *Amex Adjudicatory Council* [Board of Governors or review committee, as the case may be]. The representative of the Exchange shall have an additional twenty days thereafter in which to file an answering brief and supporting documents in connection with such review. If a request for review of a determination by a Disciplinary Panel is initiated by members of the *Amex Adjudicatory Council* [Board of Governors], all briefs and supporting documents to be submitted by the parties must be filed with the Secretary of the Exchange within twenty days after notice of such request is served upon them. The *Amex Adjudicatory Council* [Board of Governors or the review committee, as the case may be.] shall determine in each instance whether it will hear oral argument in connection with any such review.

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Amex Company Guide Listing Standards—Policies—Requirements

Part 10. Suspension and Delisting—Suspension and Delisting Procedures

Sec. 1010. Delisting Procedures

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (such as redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(a) No change.

(b) If, after such conference, the Exchange determines that the security should be

removed, it will notify the company in writing, indicating the basis for such decision and the specific delisting policies and guidelines under which action will be taken. Such notice will also inform the company that it may appeal to the Board of Governors of the Exchange, *or such committee or committees as the Board may authorize, and request a hearing.*

(c) through (f) No change.

(g) After the conclusion of the company's presentation, the committee will determine whether or not to recommend to the Board of Governors that the security be removed from listing (or unlisted trading). If the committee determines to recommend removal of the security from listing (or unlisted trading), such recommendation shall be sent to the Board of Governors for its consideration. The Board of Governors may authorize a *review committee* [the Executive Committee] to consider any or all appeals from decisions of the Exchange, and in such case the decision of the *review committee* [Executive Committee] with respect thereto shall be final and conclusive. A governor who serves on the committee or is present at the hearing will not as a result thereof be prohibited from voting on the recommendation when it is considered by the Board of Governors or by the *review committee* [Executive Committee], as the case may be.

(h) If the Board of Governors or the *review committee* [Executive Committee], as the case may be, shall approve the recommendation of the committee which has heard the matter, an application shall be submitted by the Exchange to the SEC to strike the security from listing (or unlisted trading) and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

The action required to be taken by the Exchange to strike a security from listing and registration for routine reasons, such as redemption, maturity and retirement, is set forth in Rule 12d2-2(a) promulgated under the Securities Exchange Act.

The relevant portions of the Section and Rules under such Act pertaining to the suspension, removal or withdrawal of securities for all other reasons, and the requirements of the Exchange (Rule 18) applicable in certain cases, are summarized below:

(a) through the end of Section 1010. No change.

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