

certain regulatory obligations and performing certain regulatory functions under the Act.

3. *Members.* The Parties have brokers or dealers as their members, and some of the brokers or dealers are members of both Parties (hereinafter, members of both Parties and persons associated with such members are referred to collectively as Common Members). Each Party hereto has regulatory obligations under the Act and the rules of the Party for Common Members.

4. *Structure.* The Parties are participants in a multiparty options 17d-2 Agreement by and among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., ISE, NASD, the New York Stock Exchange, the Pacific Exchange Inc., and the Philadelphia Stock Exchange ("Multiparty 17d-2 Agreement"). Under the Multiparty 17d-2 Agreement, ISE is assigned as Designated Options Examining Authority ("DOEA") for certain Common Members. Under the Multiparty 17d-2 Agreement, a DOEA has examination and enforcement responsibilities ("Regulatory Responsibilities") relating to compliance by a Common Member and persons associated with such Common Member for certain Common Rules (as defined in the Multiparty 17d-2 Agreement) insofar as they apply to the conduct of accounts for listed options and index options (the "Covered Rules").

5. *Services.* NASD shall perform all the Regulatory Responsibilities (as set forth in the Multiparty 17d-2 Agreement, as amended (attached hereto as Exhibit 1-A)), for each Common Member that is allocated to ISE under the Multiparty 17d-2 Agreement as if NASD were the Designated Options Examining Authority (the "Covered Member").

6. *Fees.* NASD will charge ISE and ISE shall pay NASD a fee for services performed under this Agreement. In the event that NASD raises its rates in excess of what has been agreed to by the parties, NASD will provide ISE with ninety (90) days advance written notice of its intent. ISE will then have thirty (30) days from the date of such notification to inform NASD that ISE will perform for itself the applicable regulatory responsibilities allocated NASD under the Agreement or enter into an agreement pursuant to applicable rules of the SEC with respect to the performance of such responsibilities. ISE's failure to pay for services performed is a material breach of this Agreement.

7. *Indemnification.* Neither Party, including respective directors,

governors, officers, employees and agents, will be liable to the other Party and its directors, governors, officers, employees and agents for liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentiality. Both Parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either Party to the other Party with respect to any of the responsibilities to be performed by either of these Parties hereunder.

8. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation between the Parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association, provided, however, that (1) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the Parties agree upon another arbitration forum, (2) the foregoing shall not preclude either Party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the Parties shall not submit claims for punitive damages and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages.

9. *SEC Approval.*

(a) The Parties agree to promptly file this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, the Parties agree to send out a joint notice to Covered Members to announce this Agreement.

10. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a Party to conduct special or cause examinations of Covered Members as either Party, in its sole discretion, shall deem appropriate or necessary.

11. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

12. *Subsequent Parties; Limited Relationship.* This Agreement shall

inure to the benefit of and shall be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended to or shall (i) confer on any person other than the Parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (ii) constitute the Parties hereto partners or participants in a joint venture, or (iii) appoint one Party the agent of the other.

13. *Assignment.* Neither Party may assign the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that either Party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning Party without the prior written consent of the other Party.

14. *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

15. *Termination.*

(a) *Termination for Cause.* Either Party may terminate the Agreement due to breach by the other Party. The Party aggrieved by the breach shall give written notice to the other Party that the Agreement shall be terminated not earlier than sixty (60) calendar days from receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the Party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved Party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) *Termination for Convenience.* Either Party may terminate the Agreement for any other reason by giving written notice to the other Party that the Agreement will terminate not less than ninety (90) days from receipt of the notice. The notice will specify the basis for termination. ISE will pay NASD the amount due for authorized work and expenses incurred in completion of such authorized work as of the effective date of termination.