

after a written claim therefor by an indemnified person has been received by BOXR, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, BOXR shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

SEC. 25 BOXR shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member, employee or agent of BOXR, or who is or was serving as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not BOXR would have the power to indemnify such person against such liability hereunder.

Fiscal Year

SEC. 26 The fiscal year of BOXR shall begin on the first day of October in each year, or such other month as the BSE Board may determine by resolution.

Waiver of Notice

SEC. 27 (a) Whenever notice is required to be given by law, or these By-Laws, a written waiver thereof, signed by the person or persons entitles to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or members of a committee of any Directors need be specified in a written waiver of notice.

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

Execution of Instruments, Contracts, etc.

SEC. 28 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of BOXR by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board,

any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of BOXR, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

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

Form of Records

SEC. 29 Any records maintained by BOXR in the regular course of business, including its books of account and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Alteration of By-Laws by Directors

SEC. 30 To the extent permitted by law, these By-Laws, BSE Rules, BOX Rules, the L.L.C. Agreement or the Regulatory Services Agreement, these By-Laws may be altered, amended, repealed, or new By-Laws adopted by approval of a majority of the BSE Board at any regular or special meeting of the BSE Board.

Emergency By-Laws

SEC. 31 The Board may adopt emergency By-Laws subject to repeal or change by action of the BSE Board that shall, notwithstanding any different provision of law, the L.L.C. Agreement, the Regulatory Services Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which BOXR conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any

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

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Boston Stock Exchange, Inc.

Constitution

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Article II

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Board of Governors

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Composition of the Board

SEC. 1. The government of the Exchange shall be vested in a Board of Governors composed of the Chairman, Vice Chairman and twenty others, ten of whom shall be representatives from the securities industry and ten of whom shall be representatives of the public. Of the ten securities industry representatives, all must represent broker-dealer members of the Exchange, at least one shall represent BOX Participants, and at least five shall represent firms active on the trading floor (each of whom may satisfy more than one of these criteria). Of the floor representation, two must be active as specialists. Of the ten representatives of the public, at least five shall be from financial institutions not directly associated with a member organization or broker-dealer, and at least one shall be an officer or director of a company which has a class of stock listed on the Exchange.

The Chairman shall be appointed by the Board of Governors to serve at its pleasure. The Vice Chairman shall be a representative from a member organization and shall be elected to serve a one-year term. Neither the Chairman nor the listed company representative shall be associated with a member of the Exchange or a broker or dealer. All are to be elected in the manner hereinafter provided, except no governor other than the Chairman and the Vice Chairman may serve more than four consecutive terms.

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Specific Powers

SEC. 4. The Board of Governors, in furtherance of its powers specified in Section 1 of this Article, shall entertain appeals from the decisions of the Market Performance Committee and may hold hearings on any such appeal; shall have the entire control of the property and finances of the Exchange; including the authority to purchase and cancel memberships in the Exchange, shall fix the amount of fees and compensation, if any, to be paid to any member of the