

broker or dealer, or controls such broker or dealer, or is an officer or employee of a person, one of the significant subsidiaries of which is such broker or dealer. No person who is an employee of an issuer of securities that are admitted to dealings upon the Exchange shall be a public director, unless such person is the chief executive officer or a principal executive officer of such issuer at the time of his or her first election to the Board as a public director.]

(r) *The term "entire Board of Executives" means the total number of members that the Board of Executives would have if there were no vacancies on the Board of Executives.*

Other terms used in this Constitution may be defined by rules adopted by the affirmative vote of a majority of the entire Board.

Article II

Membership

Sec. 1. *Regular Members, Electronic Access Members, Physical Access Members.* Subject to Section 2 of this Article, the membership of the Exchange shall consist of:

(a) 1366 regular members, each of whom shall, upon liquidation, dissolution, or winding up of the affairs of the Exchange, have distributive rights in its assets; and

(b) such number of physical access members, not to exceed twenty-four (24), each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to enter physically upon the trading floor and to have facilities thereon for the execution of orders; and

(c) such number of electronic access members as the Board may from time to time determine, each of whom shall have paid an annual membership fee, which shall entitle such member, during the period for which such fee has been paid and while such member remains in good standing, to maintain electronic or telephonic access to (i) the floor facilities of a member or member organization, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board may from time to time determine.

None of the members described in subsections (b) or (c) of this Section shall have any interest in or any right to share in any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange.

Sec. 2. *Lessee Members.* A regular member in good standing may lease his or her membership to a person approved by the Exchange subject to and in accordance with such rules as may be adopted from time to time by the Board. During the term of such lease, for the purposes of this Constitution and the rules hereunder, the lessee shall be considered to be, and the lessor shall not be considered to be, a member of the Exchange, except that the lessor, and not the lessee, shall be deemed to be the member for the purposes of the Gratuity Fund, and shall be entitled to receive, with respect to such membership, any distribution of the assets of the Exchange in the event of any liquidation, dissolution, or winding up of the affairs of the Exchange. Under the lease agreement the lessor may retain the right to vote the leased membership or that right may pass to the lessee.

Sec. 3. *Approval of Members.* To become a member, or to be reinstated or readmitted as a member, a person must be approved by the Board.

Sec. 4. *Fee Payable by New Members.* Each person (hereinafter referred to as a "new member"), upon becoming a regular member, shall pay to the Exchange a fee which shall be determined as follows:

(a) in the event that the new member shall have purchased such membership through a membership auction facility furnished by the Exchange, then the fee shall be the lesser of \$7,500 or such amount as shall be equal to ten percent of the purchase price paid for the membership;

(b) in the event that:

(i) a regular member (hereinafter referred to as "outgoing member") whose membership shall be transferred to a new member shall have had a contractual obligation to transfer the membership to such person as may be designated by the member organization of which the outgoing member then shall be a partner or an officer or employee, and

(ii) said contractual obligation shall have been entered into at the same time as the outgoing member shall have acquired said membership, and

(iii) the Exchange at the time said contractual obligation shall have been entered into shall have in writing approved or consented to the entering into of said obligation, and

(iv) the membership of the outgoing member shall in satisfaction of such obligation be transferred to the new member pursuant to such a designation, and the new member shall have substantially the same relationship to and financial interest in the member

organization as the outgoing member had, and

(v) the new member shall have a contractual obligation to the same member organization to transfer the membership of the new member to such person as may be designated by the member organization, which obligation shall be upon substantially the same terms and conditions of said contractual obligation of the outgoing member to the member organization,

then the fee shall be lesser of \$7,500 or such amount as shall be equal to five percent of the purchase price at which the most recent contractual sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted; and

(c) in the event that the membership of a new member shall have been acquired in a manner other than as contemplated in either subsection (a) or subsection (b) of this Section, then the fee shall be the lesser of \$7,500 or such amount as shall be equal to ten percent of the purchase price at which the most recent contracted sale of a membership occurred through the auction facility prior to the date on which notice of the transfer shall have been posted.

Notwithstanding the foregoing provisions of this Section, the Board may by rule eliminate the fee payable by a new member or reduce such fee below the minimum otherwise provided in this Section. The Board may also by rule require the payment of a fee upon the commencement or termination, or both, of any lease of membership referred to in Section 2 of this Article.

Sec. 5. *Signing Constitution.* No person admitted to membership shall be entitled to any privileges thereof until such member shall have signed the Constitution of the Exchange. By such signature such member pledges to abide by the same as the same has been or shall be from time to time amended, and by all rules adopted pursuant to this Constitution.

Sec. 6. *Use of Exchange Facilities.* The Exchange shall not be liable for any damages sustained by a member, allied member or member organization growing out of the use or enjoyment by such member, allied member or member organization of the facilities afforded by the Exchange, except as provided in the rules.

Sec. 7. *Alternates on Floor.* The Board may, by the affirmative vote of a majority of the entire Board, extend to a member who [is a director, who is an officer of one of the affiliated companies of the Exchange] *serves on the Board of Executives* or who, in time of national