

establish a Board of Executives. Subject to the Board's ultimate authority, review and oversight and except with respect to the responsibilities delegated to the Standing Committees, pursuant to Article IV, Section 12, the Board of Executives shall advise the Chief Executive Officer in his or her management of the operations of the Exchange. Copies of any materials, documents or reports prepared or received by the Board of Executives shall be furnished to the Board of Directors. Industry Members of the Board of Executives (as defined in Section 2 of this Article) shall also be responsible for recommending to the Board candidates for Board membership in accordance with, and who meet the criteria provided for in, Article IV, Section 2 of this Constitution. In discharging this responsibility, the Industry Members of the Board of Executives shall propose persons who, in their opinion, (i) are committed to serving the interests of the public and strengthening the Exchange as a public market, and (ii) will allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning members of the Exchange.

Sec. 2. Composition of Board of Executives.

(a) The Board of Executives shall provide a reasonably balanced representation of the many communities that come together in the Exchange: listed companies, investors, members and member organizations, and lessor members.

(b) The Board of Executives shall consist of the Chairman of the Board (who shall be the Chairman of the Board of Executives), the Chief Executive Officer (if such individual is not also the Chairman), and at least 20 but no more than 25 members ("Board of Executives members"). The Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals who are either the chief executive or a principal executive officer of a specialist member organization, (iii) at least two individuals, each of whom spends a majority of his or her time on the Floor of the Exchange, and has as a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his

or her member organization, but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, at least one of whom shall be a fiduciary of a public pension fund; and (vi) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called "Industry Members of the Board of Executives"). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

Sec. 3. Term of Office. Board of Executives members shall serve for a term of one year (or until the end of the respective term of his or her predecessor if he or she shall have been appointed to succeed a person who has not completed his or her term).

Sec. 4. Resignation of Board of Executives Members. Any Board of Executives member may resign at any time by giving written notice of resignation to the Board of Directors, the Chairman of the Board, or the Secretary of the Exchange. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be so specified, then it shall take effect immediately upon its receipt.

Sec. 5. Vacancies. Any vacancy in the office of a Board of Executives member may be filled by the Board. A Board of Executives member so appointed shall serve until the next annual organizational meeting of the Board of Executives and until his or her successor is appointed by the Board and takes office.

Sec. 6. Meetings.

(a) **Frequency of Meetings.** The Board of Executives shall have not less than six meetings each year. Special meetings of the Board of Executives may be called by the Chairman of the Board,

or pursuant to the written request of not less than one third of the Board of Executives members then in office, in accordance with the provision of notice of meetings, except that when in the judgment of the Chairman of the Board, emergency requires shorter notice.

(b) **Place of Meetings.** Meetings of the Board of Executives shall be held at the Exchange's principal office in the state of New York or at such other place, within or without such state, as the Board of Executives may from time to time determine or as shall be specified in the notice of any such meeting.

(c) **Notice of Meetings.** Notice of a meeting of the Board of Executives shall be given by the Secretary of the Exchange or by a person calling the meeting to each Board of Executives member, other than any who have duly waived notice, by written notice mailed first class postage prepaid, not later than five business days before the meeting, or by electronic communication. Any notice shall be sufficient if addressed to a Board of Executives member at his or her office or at such other address as he or she shall have requested the Secretary of the Exchange to direct notices. Whenever any notice is required to be given under the provisions of the certificate of incorporation or the Constitution of the Exchange, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

(d) **Quorum; Action.** A majority of the entire Board of Executives shall be present in person at any meeting of the Board of Executives in order to constitute a quorum for the transaction of business at such meeting. Participation in a meeting 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 shall constitute presence in person at a meeting. Except as otherwise expressly required by law or the certificate of incorporation of the Exchange or the Constitution, the act of a majority of the members of the Board of Executives present at any meeting at which a quorum is present shall be the act of the Board of Executives. In the absence of a quorum at any meeting of the Board of Executives, a majority of the members of the Board of Executives present may adjourn such meeting from time to time until a quorum shall be present. Notice of any adjourned meeting shall be promptly given. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the